

**BEFORE THE OFFICE OF ADMINISTRATIVE-
HEARINGS ENERGY FACILITY SITING COUNCIL OF THE
STATE OF OREGON**
for the
OREGON DEPARTMENT OF ENERGY

IN THE MATTER OF:) **~~PROPOSED~~ CONTESTED**
) **CASE ORDER**
THE APPLICATION FOR SITE)
CERTIFICATE FOR THE) OAH Case No. 2019-ABC-02833
BOARDMAN TO HEMINGWAY)
TRANSMISSION LINE)

This Contested Case Order was issued by Council-appointed Hearing Officer, Senior Administrative Law Judge Office of Administrative Hearings (ALJ) Alison Greene Webster, and amended and adopted by the Energy Facility Siting Council (EFSC or Council) on September 27, 2022.

Amendments incorporated to the Contested Case Order following Council’s review at the August 29-30-31, 2022 Council meeting are listed below:

- Additional facts on the record were added to findings of fact, after #68, to support the evaluation of Issue HCA-3
- Correction incorporated to the Opinion for Issue SS-5 to clarify that the extent of work conducted to date was reconnaissance level
- Reasoning added to address proposed conditions improperly dismissed on “untimely” in Closing Arguments, as had been presented in the Proposed Contested Case Order
 - Marlette Proposed Conditions for Issue M-6
 - Geer Revised Condition related to Trifolium douglasii
 - Gilbert Proposed Condition for Issue FW-9
 - Gilbert Proposed Condition for Issue FW-3
 - Geer Proposed Condition for Issue FW-3
 - Gilbert Proposed Condition for Issue HCA-3
 - Williams Proposed Condition for Issue HCA-7
 - Gilbert Proposed Condition for Issues LU-7 and LU-8
 - Gray Proposed Condition for Issue NC-6
 - STOP B2H’s Proposed Condition for Issue NC-1
 - STOP B2H’s Proposed Condition for Issue NC-2
 - Cooper Proposed Condition for Issue PS-4
 - Gilbert Proposed Condition for Issue RFA-1

HISTORY OF THE CASE

This matter involves the Application for a Site Certificate (ASC) for the Boardman to Hemingway Transmission Line (Project or proposed facility) submitted by Idaho Power

Company (Idaho Power or Applicant) to the Energy Facility Siting Council (Council or EFSC). The Oregon Department of Energy (Department or ODOE) determined the ASC was complete on September 21, 2018. On May 16, 2019, the Council appointed Senior Administrative Law Judge (ALJ) Alison Greene Webster of the Office of Administrative Hearings (OAH) as the hearing officer in this matter.

On May 22, 2019, the Department issued a Draft Proposed Order (DPO), public notice of a comment period on the DPO, and notice of public hearings on the DPO. On June 13, 2019, the Department referred this matter to the OAH for the ALJ to facilitate the public hearings and conduct the contested case proceedings. Thereafter, on June 18, 19, 20, 26, and 27, 2019, ALJ Webster held public hearings on the DPO.¹ Members of the public had the opportunity to provide oral and written comments at the public hearings. At the June 26, 2019 hearing in Pendleton, Oregon, the Council extended the public comment period to August 22, 2019, and extended Idaho Power's deadline to respond to the DPO comments to September 23, 2019.

On July 2, 2020, the Department issued a Proposed Order on Application for Site Certificate. The Department set August 27, 2020 at 5:00 p.m. Pacific Time as the filing deadline for submitting petitions for party or limited party status in the above-captioned matter.

On September 8, 2020, the ALJ issued an *Amended Notice of Petitions to Request Party Status; Order Scheduling Pre-Hearing Conference*, notifying the Department and Idaho Power of the petitions for party status or limited party status received in this matter. On September 16, 2020, in response to the Department's Request for Clarification, the ALJ issued a *Second Amended Notice of Petitions to Request Party Status; Order Scheduling Pre-Hearing Conference*.

¹ The June 18, 2019 public hearing was held in Ontario, Oregon; the June 19, 2019 hearing was held in Baker City, Oregon; the June 20, 2019 hearing was held in La Grande, Oregon; the June 26, 2019 hearing was held in Pendleton, Oregon; and the June 27, 2019 hearing was held in Boardman, Oregon.

First Prehearing Conference: On September 25, 2020, the ALJ convened a prehearing conference by telephone to address the petitions for party or limited party status and the Department and Idaho Power's responses to the petitions. The ALJ continued the prehearing conference to October 1, 2020 to complete the agenda. At the September 25, 2020 prehearing conference, the ALJ provided petitioners for party status an opportunity to address whether they had satisfied the eligibility requirements for party or limited party status. The ALJ provided Idaho Power and the Department the opportunity to respond.

At the October 1, 2020 continued telephone prehearing conference, the ALJ provided petitioners for party status the opportunity to clarify their interests in the outcome of the proceeding and the issues identified in their respective petitions. Likewise, the ALJ provided Idaho Power and the Department the opportunity to respond. The ALJ granted the petitioners leave to file supplemental written arguments, and granted the Department and Idaho Power leave to file amended responses to the petitions for party and limited party status.

Order on Party Status: On October 29, 2020, the ALJ issued an *Order on Petitions for Party Status, Authorized Representatives and Issues for Contested Case (Order on Party Status)*. The *Order on Party Status* addressed the applicable law to establish standing in a contested case proceeding on an application for site certificate and the limitations on party status. In addition, the *Order on Party Status* granted limited party status to 35 petitioners, denied limited or full party status to 18 petitioners, identified 70 properly raised discrete contested case issues and denied 47 issues.

On October 30, 2020, the Council notified the parties and petitioners for party status that the Council would review any properly filed appeals of the ALJ's *Order on Party Status* during its November 19-20, 2020 Council Meeting.

On November 9, 2020, the ALJ issued a *Notice to Council of Appeals Pursuant to OAR 345-015-0016(6) and Corrected Table of Identified Issues (Notice to Council)*. The *Notice to Council* identified the 26 petitioners that timely filed appeals on the *Order on Party Status*.

On November 20, 2020, the Council held a hearing on the appeals. The Council continued the hearing to November 25, 2020 through a Special Council Meeting. Following the hearing on November 25, 2020, the Council issued an *Order on Appeals of Hearing Officer Order on Party Status, Authorized Representatives and Issues (Order on Appeals)*. In the *Order on Appeals*, the Council directed the ALJ to grant one additional petitioner limited party status; clarify three issues; and grant eight additional issues as properly raised issues in the contested case. The Council directed the ALJ to issue an amended *Order on Party Status* based on the final list of parties with standing on issues and the list of identified issues set out in the *Order on Appeals*.

Amended Order on Party Status: On December 4, 2020, in accordance with the Council's *Order on Appeals*, the ALJ issued an *Amended Order on Party Status*. Concurrently with the *Amended Order on Party Status*, the ALJ issued the *Notice of Pre-Hearing Conference; Pre-Hearing Conference Agenda on Case Management Matters; Proposed Contested Case*

Schedule and Revised Service List. That notice set the prehearing conference for January 7, 2021.

On December 22, 2020, in response to queries from limited party Irene Gilbert, the ALJ issued a *Response to Request for Clarification Regarding OAR 345-015-0022, Petitions for Indigent Status*. The response set out the definition of indigent and the eligibility standard for purposes of OAR 345-015-0022.

On January 4, 2021, in response to a question from limited party Charles Gillis, the ALJ issued a *Response to Question Regarding Attendance at Pre-Hearing Conference on Contested Case Matters*. The response clarified that once the parties, limited parties and issues for the contested case are identified, a party or limited party does not lose standing to participate in the contested case under OAR 345-015-0083 by failing to attend a prehearing conference on case management or scheduling matters.

Prehearing Conference on Case Management Matters and Case Management Order: On January 7, 2021, the ALJ convened a telephone Prehearing Conference on Case Management Matters with the parties and limited parties. Thereafter, on January 14, 2021, the ALJ issued an *Order on Case Management Matters and Contested Case Schedule (Case Management Order)*, setting out the following: the parties and limited parties; the identified issues in the contested case and parties/limited parties with standing on the issue(s); the manner for joint presentation of public issues where more than one limited party has standing; guidelines for filing and serving documents; naming conventions; the contested case process; and the contested case schedule.

In addition, the ALJ, in her discretion, authorized motions for summary determination. In the *Case Management Order*, the ALJ established the deadlines for filing such motions, the responses to the motions, and any reply briefs.

On February 3, 2021, in response to motions from limited party Irene Gilbert, the ALJ issued a *Response to Motions for Clarification Regarding Informal Discovery Requests*. The response explained that it was not appropriate for the ALJ to rule on objections to informal discovery requests or to provide legal advice or direction to the parties and/or limited parties regarding the informal exchange of information.

Discovery Phase: As of February 19, 2021, the ALJ received 36 requests for discovery orders. The ALJ received requests from Idaho Power and limited parties K. Andrew, Badger-Jones, Lois Barry (2 requests), Peter Barry, Cooper (3 requests), Eastern Oregon University (EOU), Geer (2 requests), Gillis, Mammen (4 requests), March (2 requests), Marlette, McAllister (2 requests), STOP B2H, Webster (12 requests) and Williams. Ms. Gilbert requested and received an extension of the filing deadline and subsequently submitted four motions seeking discovery from the Union County Planning Department and the Oregon Department of Fish and Wildlife (ODFW) and additional discovery from Idaho Power and the Department. Limited parties Anne and Kevin March later withdrew their request for discovery from ODFW.

On March 4 and 5, 2021, the ALJ issued 24 separate rulings denying limited parties' requests for discovery (interrogatories and requests for production of documents) from non-

parties to the contested case.² In the rulings, the ALJ explained that she had no authority to compel a non-party to the contested case to respond to written questions and/or to produce requested documents. The ALJ granted the limited parties leave, until April 2, 2021, to file a written request to take the deposition of a material witness in accordance with ORS 183.425 and OAR 137-003-0025.

Between March 16 and 26, 2021, the ALJ issued an additional 15 separate rulings on requests for discovery. The ALJ partially granted Idaho Power's motion, ordering limited parties Miller, Myers, and Proesch to respond to Idaho Power's discovery requests by April 16, 2021. In addition, the ALJ granted Idaho Power's request for an order establishing a September 3, 2021 deadline for parties and limited parties to identify expert witnesses and hearing exhibits for direct testimony.

The ALJ denied Lois Barry's requests for discovery orders to Idaho Power and the Department, sustaining the objections and finding that Idaho Power and the Department sufficiently responded to the discovery requests. The ALJ denied Peter Barry's request for a discovery order to Idaho Power, sustaining Idaho Power's objections and finding that Idaho Power sufficiently responded to the discovery requests. The ALJ denied EOU's request for a discovery order to Idaho Power, sustaining Idaho Power's objections and finding that the company sufficiently responded to the discovery requests. The ALJ denied Susan Geer's request for a discovery order to Idaho Power, sustaining Idaho Power's objections and finding that Idaho Power sufficiently responded to the discovery requests. The ALJ denied Irene Gilbert's requests for discovery orders to Idaho Power and the Department, sustaining the objections and finding that the parties sufficiently responded to the discovery requests. The ALJ denied Charles Gillis' request for an order compelling Idaho Power to respond further or produce additional discovery. The ALJ denied the Marches' request for an order to Idaho Power, sustaining objections and finding that Idaho Power sufficiently responded to the discovery requests.

In addition, the ALJ denied JoAnne Marlette's request for a discovery order compelling Idaho Power to provide a further response. The ALJ denied Michael McAllister's requests for discovery orders to Idaho Power and the Department, sustaining the objections and finding that the parties sufficiently responded to the discovery requests. The ALJ denied the STOP B2H Coalition's request for discovery from ODFW based on lack of jurisdiction and the request for further discovery from Idaho Power, finding that Idaho Power sufficiently responded to the requests. The ALJ denied Stacia Webster's request for further discovery from the Department, sustaining the Department's objections and finding that the Department provided responsive answers to the questions posed. Finally, the ALJ denied John Williams' request for additional discovery from Idaho Power, finding that Idaho Power provided adequate responses.

² This included the Union County Planning Department; Union County Public Works Department; Union County Emergency Services Department; Union County Weed Supervisor; the City of La Grande; La Grande Rural Fire Department; Avista; Grande Ronde Hospital; Terra Firma; US Forest Service; Adrian Rural Fire Protection District; Baker City Rural Fire Department; Bureau of Land Management-Baker Field Office; Boardman Fire Department; Huntington Fire Department; Ione Fire Department; North Powder Rural Fire Department; ODFW; and the Oregon Department of Forestry.

Material Witness Depositions: On April 2, 2021, the ALJ received three petitions for depositions of material witnesses: (1) Matt Cooper and Stacia Webster’s Petition for Deposition of Craig Kretschmer of La Grande Rural Fire Protection District; Issues PS-4 and PS-10; (2) Susan Geer’s Petition for Deposition of Brian Clapp, Union County Weed Supervisor, Issues FW-3, FW-6 and SR-5; and (3) Irene Gilbert’s and Kathryn Andrew’s Petition for Deposition of Scott Hartell of Union County Planning, with request for subpoena *duces tecum*, Issues LU-3, LU-5, LU-7 and LU-8. On April 15, 2021, the ALJ signed and issued the deposition subpoenas. The depositions of Mr. Kretschmer and Mr. Clapp took place in May 2021 and the deposition of Mr. Hartell took place in June 2021.

Notice of Ex Parte Communication: On May 7, 2021, the ALJ received notice from Council that, on April 22, 2021, in advance of the April 2021 Council meeting, Idaho Power submitted a letter to the Council outlining its concerns regarding potential rulemaking revisions and updates to the siting standards related to Protected Areas, Scenic Resources, and Recreation Resources. The Council requested that the ALJ provide notice to all parties of the substance of Idaho Power’s April 22, 2021 letter to the Council pursuant to OAR 137-003-0055.

On May 11, 2021, the ALJ issued a *Notice of Ex Parte Communication Pursuant to OAR 137-003-0055(2)*, attaching a copy of Idaho Power’s April 22, 2021 letter to the Council, and providing any party/limited party the opportunity to rebut the substance of the ex parte communication. Limited parties STOP B2H, Lois Barry, Lyons, Geer, Gilbert, McAllister and Eastern Oregon University filed timely rebuttals to Idaho Power’s April 22, 2021 letter.

B2H Project Record Admitted into the Contested Case Hearing Record: On May 26, 2021, in response to an inquiry from the Department, the ALJ issued a *Response to ODOE’s Inquiry Re: Marking and Submitting Exhibits*. In that response, for the convenience of the parties and limited parties in the contested case, the ALJ admitted the entirety of the Decision-Making and Administrative Project Record for the Boardman to Hemingway Transmission Line (the B2H Project Record) into the contested case hearing record.

Summary Determination Phase: On May 28, 2021, in accordance with the established Contested Case Schedule, Idaho Power timely filed 13 motions for summary determination.³ Also on May 28, 2021, the Department timely filed eight motions for summary determination.⁴

³ Idaho Power filed motions for summary determination on the following issues:

- (1) Issues SR-1, SR-4, SR-5, and SR-6 (Lois Barry; Moyal/D. White; Geer; STOP B2H);
- (2) Issues FW-1, FW-2, and FW-12 (STOP B2H/Squire; EOU; A. March);
- (3) Issues M-1, M-2, M-3, M-4, M-5, and M-7 (Badger-Jones; Gilbert; Cooper; Howell; Proesch);
- (4) Issue SS-4 (Mammen);
- (5) Issues LU-1, LU-2, LU-3, LU-5, and LU-6 (EOU; K. Andrew; Gilbert; Gilbert);
- (6) Issues HCA-2 and HCA-5 (Carbiener; Miller);
- (7) Issues N-1, N-2, and N-3 (STOP B2H);
- (8) Issue R-2 (Lois Barry and McAllister);
- (9) Issue SP-2 and FW-13 (McAllister);
- (10) Issue NC-5 (Gilbert);
- (11) Issue RFA-3 (Gillis);
- (12) Issue FW-9, FW-10, FW-11, and LU-10 (Applicant); and

On June 1, 2021, limited party Gilbert filed a request for clarification regarding the summary determination process and the procedures for responding to such motions. On June 2, 2021, the ALJ issued a *Response to Irene Gilbert's Request for Clarification Re Responses to Motions for Summary Determination* providing the requested clarification.

On June 1, 2021, Ms. Gilbert also filed a Motion to Dismiss All Motions for Summary Determination. On June 4, 2021, Idaho Power filed a response to the motion, and on June 8, 2021, Ms. Gilbert filed a reply. On June 9, 2021, the ALJ issued a *Ruling on Limited Party Irene Gilbert's Request to Dismiss All Motions for Summary Determination*, denying Ms. Gilbert's Motion to Dismiss.

On June 9, 2021, limited party McAllister filed a Motion to Amend Contested Case Schedule. On June 11, 2021, Idaho Power filed a response to the motion. On June 15, 2021, the ALJ issued a *Ruling on Limited Party McAllister's Motion to Amend Contested Case Schedule*, denying Mr. McAllister's request to adjust and extend the contested case hearing schedule.

On June 10, 2021, limited party Carbiener filed a Request for Consideration as Limited Party for Issue HCA-5 and to Respond by June 25, 2021 to Motion for Summary Determination. On June 16, 2021, the Department filed an Objection to Mr. Carbiener's Request and on June 17, 2021, Idaho Power filed its Response to Mr. Carbiener's Request. On June 21, 2021, the ALJ issued a *Ruling on Limited Party Gail Carbiener's Motion for Standing to Respond on Contested Case Issue HCA-5*, denying the request based upon OAR 345-015-0016 and OAR 137-003-0040(3)(b).

On June 16, 2021, limited party Kevin March filed a request for clarification regarding document naming in the B2H Project Record and a request to extend the June 25, 2021 deadline to respond to motions for summary determination. On June 21, 2021, the ALJ issued a *Response to Limited Party Kevin March's Request for Clarification and Ruling on Motion to Extend Summary Determination Response Deadline*. The ALJ declined to extend the response deadline for all parties and limited parties subject to motions for summary determination.

On June 17, 2021, Mr. McAllister filed a Second Motion to Amend Deadline for Responding to Motions for Summary Determination for Good Cause. Mr. McAllister described circumstances, personal to him, preventing him from filing timely responses to the motions for

(13) Issue TE-1 (Geer).

⁴ The Department filed the following motions:

- (1) Issue FW-4 (Gilbert);
- (2) Issue FW-13 (McAllister);
- (3) Issue LU-1 (EOU);
- (4) Issue N-2 (STOP B2H);
- (5) Issue SP-2 (McAllister);
- (6) Issue SR-1 (Lois Barry);
- (7) Issue SR-4 (Moyal/D. White); and
- (8) Issue TE-1 (Geer).

summary determination on Issues FW-13 and SP-2. On June 23, 2021, the ALJ issued a *Ruling on Limited Party McAllister's Second Motion to Extend Deadline for Responding to Motions for Summary Determination for Good Cause*, finding good cause to extend the deadline for Mr. McAllister's responses to July 9, 2021.

On June 23, 2021, Ms. Gilbert filed a request for an extension of time to submit responses to motions for summary determination, seeking a two-week extension of the June 25, 2021 deadline to file her responses to Idaho Power's and the Department's motions. On June 24, 2021, the ALJ issued a *Ruling on Limited Party Irene Gilbert's Request to Extend Deadline for Responding to Motions for Summary Determination*, finding that Ms. Gilbert had not shown good cause to extend her deadline and denying the request.

On June 25, 2021, the ALJ received the parties/limited parties' responses to the motions for summary determination.⁵ The ALJ did not receive responses from limited parties on the following issues subject to summary determination motions: Issue M-1 (Badger-Jones), Issue M-3 (Cooper), Issues M-4 and M-5 (the Howells), Issue M-7 (Proesch), Issue HCA-5 (Miller); Issue NC-5 (Gilbert); Issue SR-1 (L. Barry); and Issue SR-4 (Moyal and D. White).

On July 9, 2021, the ALJ received additional replies from Mr. McAllister in response to the Department and Idaho Power's motions for summary determination.⁶ Also on July 9, 2021, the ALJ received replies from Idaho Power⁷ and the Department.⁸ On July 23, 2021, Idaho

⁵ The ALJ received the following: (a) Idaho Power's Response to the Department's Motions for Summary Determination; (b) The Department's Responses to Applicant's Motions for Summary Determination of Limited Party Issues; (c) SSTOP B2H Coalition's Opposition to Motion on Issue FW-1; Stop B2H's Opposition to Motions on Issues N-1, N-2, and N-3; STOP B2H's Opposition to Motion on Issue SR-6; (d) Kathryn Andrew's Response to Motion on Issue LU-3; (e) Lois Barry's Responses on Issues R-2 and SR-6; (f) Gail Carbiener's Response on Issue HCA-2; (g) Susan Geer's Responses on Issues SR-5 and TE-1; (h) Irene Gilbert's Responses on Issues M-2; FW-4; and LU-5; (i) Charles Gillis' Response on Issue RFA-3; (j) Anne March's Response on Issue FW-12; (k) Michael McAllister's Response on Issue R-2; and (l) Louise Squire's Response on Issue FW-1.

⁶ The ALJ received the following: (1) Mr. McAllister's Opposition to Idaho Power's Motion on Issues FW-13 and SP-2; (2) Mr. McAllister's Opposition to the Department's Motion on Issue FW-13; and (3) Mr. McAllister's Opposition to the Department's Motion on Issue SP-2.

⁷ The ALJ received the following reply briefs from Idaho Power: (1) Reply to STOP B2H's Response to Motion on Issues N-1, N-2, and N3; (2) Reply to Susan Geer's Response to Motion on Issue TE-1; (3) Reply to ODOE's and Irene Gilbert's Responses to Motions on Issues FW-9, FW-10, FW-11 and LU-10; (4) Reply to Limited Parties' Responses to Motions on Issues SR-1, SR-4, SR-5 and SR-6; (5) Reply to Limited Parties' Responses to Motion on Issues HCA-2 and HCA-5; (6) Reply to Limited Parties' Responses to Motion on Issues M-1, M-2, M-3, M-4, M-5, and M-7; (7) Reply to Limited Parties' Responses to Motion on Issues FW-1 and FW-12; (8) Reply to Limited Parties' Responses to Motion on Issue R-2; (9) Reply to Limited Parties' Responses to Motion on Issues LU-2, LU-3, LU-5, and LU-6; (10) Reply to Irene Gilbert's Response to Motion on Issue NC-5; (11) Reply to Dale and Virginia Mammen Response to Motion on Issue SS-4; and (12) Reply to Charles Gillis' Response to Motion on Issue RFA-3.

Power and the Department filed Replies to Mr. McAllister's oppositions to the respective motions on Issues FW-13 and SP-2.

Between July 14, 2021 and August 17, 2021, the ALJ issued the following Rulings and Orders on Motions for Summary Determination:

- (1) July 14, 2021, *Ruling and Order on Motion for Summary Determination of Contested Case Issue M-7*, granting Idaho Power's motion and dismissing Issue M-7 and limited party Tim Proesch from the contested case.
- (2) July 14, 2021, *Rulings and Order on Motion for Summary Determination of Contested Case Issues M-1, M-2, M-3, M-4, and M-5*, granting Idaho Power's motion(s) and dismissing Issues M-1, M-2, M-3, M-4, and M-5 from the contested case.
- (3) July 14, 2021, *Rulings and Order on Motions for Summary Determination of Contested Case Issue SR-4, Limited Parties David Moyal and Daniel White*, granting Idaho Power's motion, granting the Department's motion, dismissing Issue SR-4 and limited parties David Moyal and Daniel White from the contested case.
- (4) July 14, 2021, *Ruling and Order on Motions for Summary Determination on Contested Case Issue SR-1*, granting Idaho Power's motion, granting the Department's motion and dismissing Issue SR-1 from the contested case.
- (5) July 20, 2021, *Ruling and Order on Motions for Summary Determination of Contested Case Issue TE-1*, granting Idaho Power's motion, granting the Department's motion and dismissing Issue TE-1 from the contested case.
- (6) July 20, 2021, *Ruling and Order on Motion for Summary Determination of Contested Case Issue RFA-3*, granting Idaho Power's motion, dismissing Issue RFA-3 and limited party Charles Gillis from the contested case.
- (7) July 21, 2021, *Ruling and Order on Motion for Summary Determination of Contested Case Issues LU-2, LU-3, LU-5, and LU-6*, granting Idaho Power's motion(s) and dismissing Issues LU-2, LU-3, LU-5, and LU-6 from the contested case.
- (8) July 21, 2021, *Ruling and Order on Motion for Summary Determination of Contested Case Issue SR-5*, granting Idaho Power's motion and dismissing Issue SR-5 from the contested case.

⁸ The ALJ received the following reply briefs from the Department: (1) Reply to Limited Party Response on Issue TE-1; (2) Response to Limited Party Response on Issue N-2; and (3) Response to Limited Party Response on Issue FW-4.

(9) July 23, 2021, *Ruling and Order on Motion for Summary Determination on Contested Case Issue SS-4*, granting Idaho Power's motion and dismissing Issue SS-4 from the contested case.

(10) July 26, 2021, *Ruling and Order on Motion for Summary Determination on Contested Case Issue SR-6*, granting Idaho Power's motion and dismissing Issue SR-6 from the contested case.

(11) July 29, 2021, *Ruling and Order on Motions for Summary Determination of Contested Case Issues N-1, N-2, and N-3*, granting Idaho Power's motions on Issues N-1, N-2, and N-3, granting the Department's motion on Issue N-2, and dismissing Issues N-1, N-2, and N-3 from the contested case.

(12) August 3, 2021, *Ruling and Order on Motions for Summary Determination of Contested Case Issues FW-13, R-2, and SP-2*, granting Idaho Power's motions on Issues FW-13, R-2, and SP-2; granting the Department's motions on Issues FW-13 and SP-2; dismissing Issues FW-13, R-2, and SP-2 from the contested case; and dismissing limited party Michael McAllister from the contested case.

(13) August 5, 2021, *Ruling and Order on Motion for Summary Determination of Contested Case Issue FW-1*, granting Idaho Power's motion on Issue FW-1; dismissing Issue FW-1 from the contested case; and dismissing limited party Louise Squire from the contested case.

(14) August 9, 2021, *Ruling and Order on Motion for Summary Determination of Contested Case Issue NC-5*, granting Idaho Power's motion and dismissing Issue NC-5 from the contested case.

(15) August 10, 2021, *Ruling and Order on Motion for Summary Determination of Contested Case Issues HCA-2 and HCA-5*, granting Idaho Power's motion and dismissing Issues HCA-2 and HCA-5 from the contested case.

(16) August 12, 2021, *Ruling and Order on Motion for Summary Determination of Contested Case Issue FW-4*, granting the Department's motion and dismissing Issue FW-4 from the contested case.

(17) August 13, 2021, *Ruling and Order on Motion for Summary Determination of Contested Case Issue FW-12*, granting Idaho Power's motion and dismissing Issue FW-12 from the contested case.

(18) August 17, 2021, *Ruling and Order on Idaho Power Company's Motion for Summary Determination of Contested Case Issues FW-9, FW-10, FW-11, and LU-10*, granting Idaho Power's motion.

On July 28, 2021, Ms. Gilbert filed a Petition for Reconsideration of the Decision Allowing Summary Determination Denying My Contested Case [Issue] LU-5 (Petition for

Reconsideration). On July 29, 2021, Ms. Gilbert filed supplemental material in support of her Petition for Reconsideration. On August 24, 2021, the ALJ issued a *Ruling Denying Limited Party Irene Gilbert's Petition for Reconsideration of the Ruling and Order on Motion for Summary Determination of Contested Case Issue LU-5*.

On August 10, 2021, Mr. McAllister filed an interlocutory appeal to the Council of the ALJ's August 3, 2021 *Ruling and Order on Motions for Summary Determination of Contested Case Issues FW-13, R-2, and SP-2*. The Department and Idaho Power filed responses to the appeal.

At its August 27, 2021 Council meeting, the Council conducted a hearing on the interlocutory appeal. In an *Order on Interlocutory Appeal for Administrative Law Judge's Ruling on Motion for Summary Determination for Limited Party McAllister's Issues FW-13, SP-2 and R-2*, issued September 17, 2021, the Council affirmed the ALJ's Ruling dismissing Issues FW-13 and SP-2, and reversed the dismissal of Issue R-2. The Council reinstated Mr. McAllister as a limited party with standing on Issue R-2.

Motion to Remove Hearing Officer: On July 26, 2021, Ms. Gilbert filed with the Council a Motion for Removal of Ms. Webster as Hearings Officer for B2H. On August 2, 2021, Idaho Power filed a Response to Ms. Gilbert's Motion to Remove Hearing Officer. The Council addressed the motion and response its August 27, 2021 meeting. On September 21, 2021, the Council issued an *Order on Limited Party Gilbert's Motion to Remove Hearing Officer*, denying the motion and concluding that Ms. Gilbert did not present substantial evidence to prove bias, incompetence, or both for the actions or category of actions identified in the motion.

Limited Party Withdrawals: On February 17, 2021, during the discovery phase, limited party John Milbert submitted a notice of withdrawal from the contested case. Thereafter, on February 22, 2021, the ALJ issued an Acknowledgement of Withdrawal of Limited Party and Contested Case Issue FW-8, acknowledging Mr. Milbert's withdrawal from the case and dismissing Issue FW-8 from the contested case.

On June 24, 2021, during the summary determination phase, limited party Eastern Oregon University/Dr. Karen Antell submitted a notice of withdrawal from the contested case. On June 29, 2021, the ALJ issued an Acknowledgement of Withdrawal of Limited Party Eastern Oregon University and Contested Case Issues LU-1 and FW-2, acknowledging the withdrawal and dismissing Issues LU-1 and FW-2 from the contested case.

On July 25, 2021, limited party Ryan Browne submitted a notice of withdrawal from the contested case. On July 27, 2021, the ALJ issued an Acknowledgement of Withdrawal of Limited Party Ryan Browne and Contested Case Issue HCA-1 acknowledging the withdrawal and dismissing Issue HCA-1 from the contested case.

On August 3, 2021, limited parties Jane and Jim Howell submitted their notice of withdrawal from the contested case. That same date, the ALJ issued an Acknowledgement of

Withdrawal of Limited Parties Jane and Jim Howell and Contested Case Issue PS-7, acknowledging the withdrawal and dismissing Issue PS-7 from the contested case.

Second Prehearing Conference/Second Case Management Order: On August 26, 2021, the ALJ convened a second telephone prehearing conference to address requests from the limited parties for clarification on procedural matters pertaining to naming conventions and the filing and service of documents, including written direct testimony and written rebuttal testimony.

On August 30, 2021, the ALJ issued a *Second Order on Case Management Matters and Contested Case Schedule*, with clarifications of procedural matters, a revised list of parties and limited parties, and a revised table of identified issues and parties with standing on the issues.

Direct Testimony: As of the September 17, 2021 deadline for filing direct testimony and evidence pursuant to OAR 345-015-0043 and proposed site certificate conditions pursuant to OAR 345-015-0085, the ALJ received written direct testimony and/or exhibits on 33 issues⁹ along with proposed site certificate conditions from limited parties Carbiener, Cooper, Fouty, Geer, Gilbert, March, STOP B2H and Webster.

The ALJ did not receive written direct testimony or exhibits for Issues FW-5, HCA-6, LU-4, LU-7, LU-8, PS-1, PS-5, SS-1, and SS-2.

Motion to Dismiss Issues: On September 29, 2021, Idaho Power filed a Motion to Dismiss Contested Case Issues FW-5, HCA-6, LU-4, LU-7, LU-8, PS-1, PS-5, SS-1, and SS-2, requesting dismissal of those issues for which the limited parties did not file testimony or evidence. The Department filed a Response to the Motion. Limited parties Matthew Cooper, Irene Gilbert, and Stacia Webster filed objections to the Motion.

On October 8, 2021, the ALJ issued a *Ruling on Idaho Power Company's Motion to Dismiss Issues FW-5, HCA-6, LU-4, LU-7, LU-8, PS-1, PS-5, SS-1, and SS-2*, granting the motion.

On October 15, 2021, the Department filed a Motion to Reconsider Dismissal of Issues FW-5, HCA-6, LU-4, LU-7, LU-8, PS-1, PS-5, SS-1, and SS-2. On October 19, 2021, limited party STOP B2H filed an Amicus Memorandum in support of the Department's Motion to Reconsider and, on October 20, 2021, limited party Irene Gilbert similarly filed an Amicus Memorandum. On October 22, 2021, Idaho Power filed its Response to the Department's Motion to Reconsider.

On October 25, 2021, the ALJ issued an *Order Granting Reconsideration and Withdrawing Ruling on Idaho Power Company's Motion to Dismiss Issues FW-5, HCA-6, LU-4, LU-7, LU-8, PS-1, PS-5, SS-1, and SS-2*.

⁹ The ALJ received written direct testimony and/or exhibits for the following issues: M-6, FW-3, FW-6, FW-7, HCA-3, HCA-4, HCA-7, LU-9, LU-11, NC-1, NC-2, NC-3, NC-4, NC-6, PS-2, PS-3, PS-4, PS-6, PS-8, PS-9, PS-10, R-1, R-2, R-3, R-4, RFA-1, RFA-2, SR-1, SR-3, SR-7, SP-1, SS-3, and SS-5.

Thereafter, on November 2, 2021, the ALJ issued a *Ruling on Idaho Power Company's Motion to Dismiss Issues FW-5, HCA-6, LU-4, LU-7, LU-8, PS-1, PS-5, SS-1, and SS-2 (Ruling on Motion to Dismiss)*, declining to dismiss these issues. The ALJ found that because Idaho Power retains the burden under OAR 345-021-0100(2) to prove the proposed facility complies with applicable statutes and siting standards, it was not appropriate to dismiss these issues from the contested case despite the limited parties' failure to submit written direct testimony or exhibits in support of these issues. The ALJ further found that by failing to present any written direct testimony and supporting exhibits by the September 17, 2021 deadline, the limited parties with standing on Issues FW-5, HCA-6, LU-4, LU-7, LU-8, PS-1, PS-5, SS-1, and SS-2 waived their opportunity to present any testimony or new evidence in support of their claims.

Rulings on Objections to Direct Testimony and Exhibits: On October 1, 2021, both Idaho Power and the Department filed Objections to the Limited Parties' Direct Testimony and Exhibits. The following limited parties filed responses to the Department's and Idaho Power's objections: STOP B2H, Cooper, Deschner, Geer, Gilbert, Lyons, Mammen, March, Myers, and Webster.

On October 15, 2021, the ALJ issued *Rulings on Objections to Direct Testimony and Exhibits*, determining the admissibility of evidence to which the Department and/or Idaho Power objected.

On October 21, 2021, the ALJ issued a *List of Direct Testimony and Exhibits Admitted into the Contested Case Record*, identifying, by issue code and number, the written direct testimony and new evidence admitted into the contested case hearing record as of October 15, 2021.

Limited parties STOP B2H, Gilbert, March, and Marlette filed motions seeking reconsideration of the ALJ's rulings sustaining Idaho Power's objections and excluding certain direct testimony and exhibits.

On November 2, 2021, the ALJ issued a *Ruling on Anne and Kevin March's Motion to Reconsider Rulings on Objections to Direct Testimony and Exhibits – Issue FW-7*, declining to reconsider the rulings and denying the Motion to Reconsider. Also on November 2, 2021, the ALJ issued a *Ruling on Irene Gilbert's Motion to Reconsider Rulings on Objections to Direct Testimony and Exhibits – Issues NC-2 and LU-11*, denying the Motion to Reconsider.

On November 5, 2021, the ALJ issued a *Ruling on STOP B2H Coalition's Motion to Reconsider Ruling on Objections to Direct Testimony and Exhibits – Issues NC-2 and SR-7*, denying the Motion to Reconsider. On November 9, 2021, the ALJ issued a *Ruling on JoAnn Marlette's Motion to Reconsider Ruling on Objections to Exhibit 7 – Issue HCA-3*, denying the Motion to Reconsider.

Status Conference/Third Case Management Order: On November 4, 2021, the ALJ convened a status conference by telephone to discuss logistics for the cross-examination hearing. The ALJ notified the parties and participants that, due to the ongoing COVID-19 pandemic and

restrictions on in-person gatherings, she would be holding the cross-examination hearing virtually, via the Cisco WebEx platform.

On November 9, 2021, the ALJ issued a *Third Order on Case Management Matters and Guidelines for the Virtual Cross-Examination Hearing*.

On November 22, 2021, in follow up to the *Third Order on Case Management*, the ALJ issued a *Response to Idaho Power Company's Request for Clarification Regarding Procedures for Responding to Surrebuttal Evidence and New Proposed Site Certificate Conditions*. That same date, the ALJ issued an *Amended Response* to correct an omission in the original Response.

Rebuttal Evidence: The deadline for submitting rebuttal testimony and evidence, and responses to proposed site certificate conditions was November 12, 2021. Idaho Power and the Department timely submitted rebuttal evidence on that date.

On November 17, 2021, limited party STOP B2H filed a Motion to Strike Portions of ODOE Rebuttal to Direct Testimony and Evidence. On November 18, 2021, Ms. Gilbert filed a Motion to Strike Portions of the Department's Rebuttal to Direct Testimony and Evidence and Response to Proposed Site Certificate Conditions.

On November 22, 2021, Ms. Gilbert filed a Motion to Exclude testimony and exhibits offered by Idaho Power in connection with Issues FW-3, FW-6 and LU-11 (Motion to Exclude).

On November 23, 2021, the ALJ issued a *Ruling on STOP B2H Coalition's Motion to Strike Portions of ODOE Rebuttal to Direct Testimony and Evidence*, denying STOP B2H's Motion to Strike. The ALJ accepted the Department's submission as an opening brief/hearing memorandum responsive to legal arguments in the direct testimony and to the limited parties' proposed site certificate conditions.

Also on November 23, 2021, the ALJ issued a *Ruling on Irene Gilbert's Motion to Strike Portions of ODOE Rebuttal to Direct Testimony and Evidence*, denying Ms. Gilbert's Motion to Strike on the same basis.

On November 30, 2021, the ALJ issued a *Ruling on Limited Party Irene Gilbert's Motion to Exclude Idaho Power's Testimony and Exhibits – Witness Jessica Taylor*, denying Ms. Gilbert's Motion to Exclude testimony and exhibits.

Surrebuttal Evidence: The deadline for submitting sur-rebuttal testimony and evidence was December 3, 2021.

On November 22, 2021, limited party Anne March requested that the December 3, 2021 deadline be extended to midnight on Sunday, December 5, 2021. Also on November 22, 2021, limited party Stacia Webster requested adjustments to the filing deadline. Idaho Power objected to the limited parties' requests to extend the surrebuttal deadline. Idaho Power also provided the limited parties with alternate means to access the referenced data files.

On November 24, 2021, the ALJ issued a *Ruling Denying Limited Parties' Requests to Adjust Contested Case Schedule Filing Deadlines*.

On November 22, 2021, Ms. Gilbert requested that her deadline to submit sur-rebuttal evidence and cross-examination requests be extended nine days, to December 12, 2021. On November 23, 2021, Idaho Power objected to Ms. Gilbert's request to extend the sur-rebuttal deadline. On November 24, 2021, the ALJ issued a *Ruling on Limited Party Irene Gilbert's Request to Extend Deadline for Filing Sur-rebuttal and Cross-Examination Requests*, denying the request to extend the deadline.

On November 30, 2021, Ms. Gilbert requested reconsideration of the Ruling denying her request for a deadline extension. On December 1, 2021, the ALJ issued a *Ruling on Limited Party Irene Gilbert's Motion to Reconsider Denial of Request to Extend Deadline for Filing Sur-rebuttal and Cross-Examination Requests* adhering to her November 24, 2021 ruling.

On December 3, 2021, the ALJ received sur-rebuttal evidence from the following limited parties: Cooper (Issue PS-4), Fouty (Issue SP-1), Geer (Issues FW-3 and FW-6), Gilbert (Issues FW-3 and LU-11), March (Issue FW-7), STOP B2H (Issues NC-2, NC-3, NC-4 and SP-1), and Williams (Issue HCA-7).

On December 10, 2021, Idaho Power filed its Objections to Limited Parties' Sur-rebuttal Testimony and Exhibits. Limited parties STOP B2H, Fouty, Geer, Gilbert, March, and Williams filed responses to Idaho Power's objections.

On January 3, 2022, the ALJ issued *Rulings on Idaho Power's Objections to Limited Parties' Surrebuttal Testimony and Exhibits*.

Court Reporter for Cross-Examination Hearing: On December 2, 2021, the ALJ issued an *Acknowledgement of Court Reporter for Cross-Examination Hearing*, approving Idaho Power's request to use Buell Realtime Reporting to produce transcripts of the cross-examination hearing.

Cross-Examination Requests: On December 3, 2021, the ALJ also received requests for cross-examination of witness(es) from the following parties/limited parties:

- Idaho Power, requesting cross-examination of Greg Larkin (Issues NC-2, NC-3, NC-4);¹⁰ Kerri Standlee (Issue NC-2); Isobel Lingenfelter (Issue SR-2); Lois Barry (Issue SR-7).
- Lois Barry, requesting cross-examination of Louise Kling (Issues R-2, R-3, and R-4).
- Gail Carbiener, requesting cross-examination of Louise Kling and Dennis Johnson (Issue SR-2).

¹⁰ On December 15, 2021, Idaho Power withdrew its request to cross-examine Mr. Larkin.

- Matt Cooper, requesting cross-examination of Douglas Dockter, Dennis Johnson and Chris Lautenberger (Issue PS-4).
- Suzanne Fouty, requesting cross-examination of Mark Madison (Issue SP-1).
- Irene Gilbert, requesting cross-examination of Tim Butler and Jessica Taylor (Issues FW-3 and LU-11).
- Anne and Kevin March, requesting cross-examination of Chris James, Greg Apke, Sara Reif, and “an Oregon Department of Energy representative.” (Issue FW-7).
- STOP B2H, requesting cross-examination of Mark Bastasch and Ken Kosky (Issues NC-1, NC-2, NC-3, and NC-4), Mark Madison (Issue SP-1), and Louise Kling (Issue SR-7).

The Department timely objected to the Marches’ request to cross-examine “an Oregon Department of Energy representative,” as no Oregon Department of Energy representative provided testimony on Issue FW-7.

Certified Questions to Council: On December 14, 2021, the ALJ sent *Certified Questions to Council Regarding Interpretation of OAR 345-015-0085(1) and (2)*, asking the Council for guidance in harmonizing apparently conflicting provisions in the procedures governing site certificate contested case proceedings and interpreting OAR 345-015-0085(1) and (2).

On December 23, 2021, the Council notified the ALJ that the Council added the certified questions to the agenda of its regularly scheduled meeting on December 16 and 17, 2021. During the meeting, the Council considered several motions on the questions, but none of the motions passed. By email dated December 23, 2021, the Council notified the ALJ that it declined to provide answers to the certified questions.

Status Conference/Cross-Examination Hearing Schedule: On December 15, 2021, the ALJ convened a status conference, by WebEx, with the parties/limited parties to address the schedule and logistics for the cross-examination hearing. During the conference, the ALJ sustained the Department’s objection to the Marches’ request to cross-examine an Oregon Department of Energy representative.

On December 16, 2021, the ALJ issued a *Notice of Virtual Cross-Examination Hearing; Cross-Examination Hearing Schedule*, providing notice of the Webex hearing set for January 10, 11, 13, 14, 18, and 19, 2022, the schedule for witnesses, and document filing deadlines.

Cross-Examination Hearing: The cross-examination hearing convened via WebEx over the course of seven days, January 10, 11, 13, 14, 18, 19, and 21, 2022. Attorneys Lisa Rackner, Jocelyn Pease, and David Stanish appeared on behalf of Applicant. Assistant Attorney General (AAG) Patrick Rowe appeared on behalf of the Department, with Sarah Esterson, Senior Policy

Advisor and Kellen Tardaewether, Senior Siting Analyst.¹¹ Attorneys Karl Anuta and Mike Sargetakis appeared on behalf of limited party STOP B2H. The following limited parties participated *pro se*: Irene Gilbert, Suzanne Fouty, Matt Cooper, Anne and Kevin March, Gail Carbiener, and Lois Barry.

On January 10, 2022, the following witnesses testified regarding Issues NC-1, NC-2, NC-3 and NC-4: Gage Miller, Golder Associates; Mark Bastasch, Jacobs Consulting; and Kerri G. Standlee, DSA Acoustical Engineers.

On January 11, 2022, Mark Madison of Jacobs Consulting testified regarding Issue SP-1.

On January 13, 2022, the following witnesses testified regarding Issue PS-4: Douglas J. Dockter from Idaho Power and Chris Lautenberger, Reax Engineering.

On January 14, 2022, Jessica Taylor with Tetra Tech testified regarding Issues FW-3 and LU-11. On the Department's request, due to the unavailability of Department witness Tim Butler from the Oregon Department of Agriculture (ODA), the ALJ continued the witness cross-examination on Issues FW-3 and LU-11 to Friday, January 21, 2022.

On January 18, 2022, the following witnesses testified regarding Issue FW-7: Greg Apke, ODFW; Sarah Reif, ODFW; and Chris James, Tetra Tech.

On January 19, 2022, the following witnesses testified regarding Issues R-2, R-3, R-4, SR-2 and SR-7: Dennis Johnson, POWER Engineers; Louise Kling, AECOM; and Isobel Lingenfelter.

On January 21, 2022, Mark Porter with the ODA testified regarding Issues FW-3 and LU-11.¹² The cross-examination hearing concluded on January 21, 2022.

Fourth Case Management Order: On January 25, 2022, following the close of the cross-examination hearing, the ALJ issued the *Fourth Order on Case Management Matters and Contested Case Schedule*, setting the evidentiary record closing date and closing brief schedule.

Cross-Examination Hearing Transcripts and Corrections Thereto: On January 31, 2022, the ALJ admitted the Cross-Examination Hearing Transcripts and the timely corrections/errata sheets submitted thereon into the evidentiary record.

¹¹ Wally Adams from the Department was also present throughout the hearing to provide technical assistance.

¹² Mr. Butler, the manager of the Oregon Department of Agriculture (ODA) Noxious Weed Program, was unavailable to appear and testify at the cross-examination hearing due to a family medical emergency. The Department provided Mr. Porter, ODA's Integrated Noxious Weed Management Specialist for Northeast Oregon, as its ODA expert on noxious weed management. Mr. Porter reports directly to Mr. Butler at ODA. The ALJ overruled Ms. Gilbert's objections to Mr. Porter testifying on behalf of the ODA in Mr. Butler's stead.

Close of Evidentiary Record: The evidentiary record in this matter closed on January 31, 2022.

Table of Admitted Testimony and Exhibits: On February 1, 2022, the ALJ issued a *List of Testimony and Exhibits Admitted into the Contested Case Hearing Record*. The ALJ provided a table of the evidence (in addition to the B2H Project Record) received by the ALJ and admitted into the contested case record as of January 31, 2022, the evidentiary record close date. Also on February 1, 2022, the ALJ issued a *Response to Idaho Power Company's Request for Clarification Regarding Motions for Summary Determination and Supporting Documents*.

On February 4, 2022, in response to requests from Idaho Power and limited party Dr. Fouty, the ALJ issued an *Amended List* including evidence the ALJ inadvertently omitted from the original list.

On February 11, 2022, the ALJ issued a *Response to Dr. Suzanne Fouty's Request for Clarification on Evidentiary Record*.

On February 14, 2022, the ALJ issued a *Second Amended List of Testimony and Exhibits Admitted into the Contested Case Hearing Record*, with corrections to the *Amended List*.

On February 16, 2022, the ALJ issued a *Response to Irene Gilbert's Request to Amend List of Testimony and Exhibits*, denying Ms. Gilbert's request to add five documents not offered during the Hearing phase to the Table of Additional Admitted Evidence. The ALJ upheld her determination in a *Ruling on Gilbert's Request to Rescind Ruling Denying Request to Amend List of Testimony and Exhibits and Response to Idaho Power Company's Request for Clarification* issued February 25, 2022.

Closing Briefs. The deadline for filing written closing briefs was February 28, 2022. The ALJ received closing briefs from the Department, Idaho Power, and the following limited parties: STOP B2H (Issues NC-1, NC-2, NC-3, NC-4, SR-7 and SP-1); Lois Barry (Issues R-2, R-3, and R-4); Carbiener (Issue SR-2); Cooper (Issues PS-4 and SS-2); Deschner (Issue SR-3); Fouty (Issue SP-1); Geer (Issues FW-3 and FW-6); Gilbert (Issues FW-3, FW-5, HCA-6, LU-7, LU-8, LU-11, NC-2, PS-5, and RFA-1); Gray (Issue NC-6); Horst (Issues HCA-4, PS-6, and SS-3); Lyons (Issue PS-10); Mammen (Issue PS-6); March (Issue FW-7); Marlette (Issues HCA-3 and M-6); McAllister (Issue R-2); Myers (Issues LU-9 and NC-2); and Williams (Issue HCA-7).

The ALJ did not receive closing briefs from the following limited parties: Colin Andrew (Issues R-1 and R-3); Kathryn Andrew (Issue R-3); Badger-Jones (Issue PS-1); Peter Barry (Issue R-3); Foss (Issue LU-4); Miller (Issues SR-2, PS-2, and PS-3); S. Webster (Issues HCA-6; SS-1, and PS-10); White (Issue SS-5); and Winters (Issue PS-4).

The filing deadline for filing written response briefs was March 30, 2022. The ALJ received response briefs from the Department, Idaho Power, and the following limited parties: STOP B2H (Issues NC-1, NC-2, NC-3, NC-4, and SR-7); Lois Barry (Issues R-2, R-3, and R-4); Peter Barry (Issue R-3); Carbiener (Issues RFA-2 and SR-2); Cooper (Issue PS-4); Deschner (Issue SR-3); Fouty (Issue SP-1); Geer (Issues FW-3 and FW-6); Gilbert (Issues FW-3, RFA-1,

HCA-3, and NC-2); Gray (Issue NC-6); Horst (Issues HCA-4, NC-2, PS-6, and SS-3); Lyons (Issue PS-10); Marlette (Issues HCA-3 and M-6); McAllister (Issue R-2); Myers (Issues LU-9 and NC-2); and Williams (Issue HCA-7).

Motions to Strike Portions of Limited Parties' Closing Arguments and Response

Briefs. As part of several response briefs, Idaho Power also filed motions to strike portions of the limited parties' closing briefs that Idaho Power contended referenced evidence not included in the contested case record and/or that raised arguments outside the scope of the issues for which the limited party had standing. Specifically, Idaho Power moved to strike specific statements in the following briefs: STOP B2H's closing brief; Ms. Barry's closing brief on Issues R-2, R-3, and R-4; Mr. Cooper's closing brief on Issue SS-2; Mr. Deschner's closing brief on Issue SR-3; Dr. Fouty's closing brief on Issue SP-1; Ms. Geer's closing brief on Issue FW-6; Ms. Gilbert's closing briefs on Issues FW-3 and FW-5, LU-7 and LU-8, and NC-2; Mr. Horst's closing brief on Issue PS-6; Mr. Lyons' closing brief on Issue PS-10; the Mammens' closing brief on Issue PS-6; Mr. McAllister's closing brief in Issue R-2; and Mr. Myers' closing briefs on Issues LU-9 and NC-2.

On April 6, 2022, the ALJ issued a Response regarding Motions to Strike, advising the parties and limited parties that she would be addressing and incorporating her rulings on the motions to strike in the Proposed Order on Contested Case. The ALJ also gave the limited parties subject to a motion to strike until April 14, 2022 to file their oppositions to the motions.

On April 7, 2022, Idaho Power filed a Motion to Strike Portions of the Response Briefs Filed by STOP B2H (Issue RFA-2); Irene Gilbert, (Issues FW-3, HCA-3, LU-9); Susan Geer (Issue FW-6), Joe Horst and Anna Cavinato (Issue PS-6), Charles Lyons (Issue PS-10), Lois Barry (Issues R-2, R-3, and R-4); Michael McAllister (Issue R-2); Peter Barry (Issue R-3), Gail Carbiener (Issue RFA-2), and Suzanne Fouty (Issue SP-1).

Also on April 7, 2022, Irene Gilbert filed a Motion to Reopen File for Submission of Evidence and Arguments Responding to Idaho Power's Motions to Strike. On April 14, 2022, the ALJ issued a *Ruling on Irene Gilbert's Motion to Reopen the Record for Submission of Additional Evidence in Response to Motions to Strike*, denying the request to reopen the evidentiary record, but allowing Ms. Gilbert additional time to respond to the Motions to Strike.

The ALJ received responses to Idaho Power's motions to strike from the following limited parties: STOP B2H; Lois Barry; Peter Barry; Cooper; Fouty; Geer; Gilbert; Horst/Cavinato; Lyons; and McAllister.

Other Motions to Strike. In response to Idaho Power's motions, limited parties Peter Barry and Matt Cooper filed their own Motions to Strike. Mr. Barry moved to strike the entirety of Idaho Power's application for site certificate (ASC). Mr. Cooper moved to strike portions of Idaho Power's Response Brief regarding Issue PS-4. These motions are also addressed herein.

BURDEN OF PROOF

ORS 183.450(2) and OAR 345-021-0100(2), together, identify the appropriate allocation

of the burdens applicable to EFSC contested case proceedings on an ASC. Applicant bears the burden of proving that the proposed facility complies with all applicable statutes, administrative rules, and local government ordinances. OAR 345-021-0100(2). The party/limited party raising an issue in this contested case by challenging the Department's Proposed Order bears the burden of producing evidence in support of the facts alleged and/or positions taken on any properly raised issue. ORS 183.450(2). That party/limited party also bears the burden of persuading the trier of fact that the alleged facts are true or the proffered position on the issue is correct. Neither Applicant nor the Department is required to disprove an opposing party/limited party's allegations and argument that Applicant has not met a particular statutory/regulatory requirement or Council siting standard. Rather, the party/limited party asserting a deficiency in the findings and/or conclusions in the Department's Proposed Order on the ASC bears the burden of establishing the claim or alleged facts.

Accordingly, Applicant maintains the burden to show by a preponderance of the evidence in the decision record that the proposed facility complies with the Council's siting standards and other applicable statutes and rules. The Department's Proposed Order, as conditioned, determined that the decision record on the ASC indicates Applicant satisfied the requirements for issuance of the requested site certificate. That determination creates a rebuttable presumption that Applicant has satisfied its burden to show that the proposed facility will, more likely than not, comply with all applicable statutes, administrative rules, and local government ordinances. Thus, with regard to provisions of the Department's Proposed Order not challenged in this contested case, the presumption stands and Applicant is not required to make additional showings at the contested case hearing to meet its initial burden. With regard to those provisions of the Department's Proposed Order challenged through the petitions for party status/requests for contested case hearing, a limited party with standing on a particular issue bears the burden of producing evidence sufficient to establish the claim with regard to that issue (*i.e.*, the alleged deficiency in the Department's Proposed Order) to rebut the presumption created by the Department's Proposed Order. Applicant has no obligation to disprove unsubstantiated claims and/or allegations raised by the limited parties.

ISSUES DISMISSED OR RESOLVED ON SUMMARY DETERMINATION

As set out above in the History of the Case, the ALJ authorized motions for summary determination in this matter. Idaho Power timely filed motions for summary determination seeking a favorable ruling on 34 contested case issues.¹³ The Department filed motions for summary determination seeking a favorable ruling on eight issues, seven of which overlapped with Idaho Power's motions.¹⁴ Between July 14, 2021 and August 17, 2021, the ALJ issued a

¹³ Idaho Power sought summary determination on Issues FW-1, FW-2, FW-9, FW-10, FW-11, FW-12, FW-13, HCA-2, HCA-5, LU-1, LU-2, LU-3, LU-5, LU-6, LU-10, N-1, N-2, N-3, NC-5, R-2, RFA-3, SR-1, SR-4, SR-5, SR-6, SP-2, SS-4, TE-1, and miscellaneous issues M-1, M-2, M-3, M-4, M-5, and M-7. Because limited party EOU withdrew from the contested case in June 2021, the ALJ dismissed Issues FW-2 and LU-1 without ruling on Idaho Power's motions regarding these two issues.

¹⁴ Like Idaho Power, the Department sought summary determination on Issues FW-13, LU-1, N-2, SR-1, SR-4, SP-2, and TE-1. The Department also sought summary determination on Issue FW-4. As noted

series of Rulings and Orders on the motions. Those Rulings and Orders dismissed or resolved the following contested case issues:

Fish and Wildlife Habitat Standard (FW)

Issue FW-1: Whether Applicant adequately analyzed sage grouse habitat connectivity in the Baker and Cow Valley Priority Areas of Conservation (PAC), the potential indirect impacts of the proposed facility on sage grouse leks, and the existing number of sage grouse in the Baker and Cow Valley PACs.

The *Amended Order on Party Status* granted STOP B2H and Louise Squire limited party status with standing on Issue FW-1. In the *Ruling and Order on Motions for Summary Determination of Contested Case Issue FW-1*, issued August 5, 2021, and incorporated herein by this reference, the ALJ dismissed Issue FW-1 from the contested case, and dismissed Ms. Squire as a limited party. The ALJ found that neither STOP B2H nor Ms. Squire presented evidence demonstrating any insufficiencies in Idaho Power’s analysis of the proposed facility’s potential impacts to sage grouse leks and/or sage grouse habitat connectivity. The ALJ further found that Idaho Power had no obligation to ascertain the existing number of sage grouse in the Baker and Cow Valley PACs to establish the proposed facility’s compliance with the Fish and Wildlife Habitat Standard.

Ms. Squire did not appeal the ruling terminating her right to participate in the contested case proceeding and dismissing Issue FW-1. Therefore, the *Ruling and Order on Motions for Summary Determination of Contested Case Issue FW-1*, issued August 5, 2021, is final as to Ms. Squire.¹⁵

Issue FW-4: Whether Applicant is required to evaluate habitat impacts of species listed as threatened or endangered under the Federal Endangered Species Act.

The *Amended Order on Party Status* granted Ms. Gilbert limited party status on Issue FW-4. In the *Ruling and Order on Motion for Summary Determination of Contested Case Issue FW-4*, issued August 12, 2021, and incorporated herein by this reference, the ALJ dismissed Issue FW-4 from the contested case. The ALJ found that, as a matter of law, the Council’s Fish and Wildlife Habitat standard does not require an applicant for a site certificate to specifically evaluate impacts to federally-listed threatened or endangered species and/or their habitats separate and apart from the general analysis of fish and wildlife habitats located within the analysis area.

above, because EOU withdrew from the case, the ALJ did not rule on the Department’s motion on Issue LU-1.

¹⁵ See OAR 345-015-0024(2) (an order permanently excluding a party/limited party from further participation in the contested case proceeding is final unless the party/limited party submits an appeal to the Council within seven calendar days of service of the order); see also OAR 345-015-0057 (authorizing a party excluded from participation in the contested case to submit an interlocutory appeal to the Council “within seven calendar days after the date of the ruling of the hearing officer.”)

Issue FW-9: Whether State Sensitive Bat species should be removed from the list of preconstruction surveys required by Fish and Wildlife Condition 16.

Only the Department and Idaho Power have standing on Issue FW-9. In the *Ruling and Order on Idaho Power Company's Motion for Summary Determination on Contested Case Issues FW-9, FW-10, FW-11 and LU-10 (Ruling on Issues FW-9, FW-10, FW-11 and LU-10)*, issued August 17, 2021 and incorporated herein by this reference, the ALJ found that Idaho Power was entitled to a favorable ruling on Issue FW-9.¹⁶ Specifically, the ALJ found:

In Fish and Wildlife Condition 16, “State Sensitive bat species” shall be removed from the list of required surveys. In addition, footnote 373 of the Proposed Order shall be deleted.

Issue FW-10: Whether Department-proposed revisions to Fish and Wildlife Condition 12 should be removed to allow specific protocol surveys to meet survey needs of other species.

Only the Department and Idaho Power have standing on Issue FW-10. In the *Ruling on Issues FW-9, FW-10, FW-11 and LU-10*, the ALJ found that Idaho Power was entitled to a favorable ruling on Issue FW-10 as well. Specifically, the ALJ ruled:

In Fish and Wildlife Condition 12, line 3, the reference to Condition 14 shall be removed. The first sentence shall be corrected to state: “During construction, if active pygmy rabbit colonies or the roost of a State Sensitive bat species is observed during the biological surveys set forth in Fish and Wildlife Conditions 15 and 16, the certificate holder shall submit to the Department for its approval a notification addressing the following: * * * .”.

Issue FW-11: Whether Department-proposed revisions to Fish and Wildlife Condition 17 incorrectly assign traffic assumptions to new roads.

Only the Department and Idaho Power have standing on Issue FW-11. In the *Ruling on Issues FW-9, FW-10, FW-11 and LU-10*, the ALJ also found that Idaho Power was entitled to a favorable ruling on Issue FW-11. Specifically, the ALJ ruled:

In Fish and Wildlife Condition 17, paragraph b.iii. shall be corrected to state as follows:

¹⁶ Ms. Gilbert filed an affidavit offering exhibits related to Issue FW-9. Because she does not have standing on Issue FW-9, the ALJ did not consider her affidavit or the exhibits referenced therein in ruling on the Motion on Issue FW-9. *See Ruling on Issues FW-9, FW-10, FW-11 and LU-10* at 1 n.2. Subsequently, on February 28, 2022, Ms. Gilbert filed a Closing Brief regarding Issue FW-9, proposing revisions to Recommended Amended Fish and Wildlife Condition 16, including returning “State Sensitive bat species” to the list of required pre- and post-construction surveys. Ms. Gilbert’s ~~(untimely)~~ proposed revisions to Recommended Amended Fish and Wildlife Condition 16 are addressed *infra* under the heading *Proposed Site Certificate Conditions Unrelated to Identified Issues on Which the Limited Parties Have Standing in the Contested Case*.

iii. The final Sage-Grouse Habitat Mitigation Plan shall include compensatory mitigation sufficient to address impacts from, at a minimum, all facility components except indirect impacts from existing access roads substantially modified for the facility (related or supporting facilities). For calculation purposes, new facility roads with access control will be assigned a “no-traffic” designation, and new roads without access control will be assigned a “low-traffic” designation.

Issue FW-12: Whether Applicant should include in its Fish Passage Plan and be required to replace a culvert on an unnamed stream (referenced as Crossing ID R-37969 in Exhibit BB-2, Table 1) to an appropriate size for fish passage.

The *Amended Order on Party Status* granted Anne March limited party status on Issue FW-12. In the *Ruling and Order on Motion for Summary Determination of Contested Case Issue FW-12*, issued August 13, 2021, and incorporated herein by this reference, the ALJ dismissed Issue FW-12 from the contested case. The ALJ found that Idaho Power is not required to prepare a Fish Passage Plan for Crossing R-37969 or replace the existing culvert at that location because Idaho Power did not propose new construction or major replacement of the artificial obstruction at that crossing location.

Issue FW-13: Whether the proposed Morgan Lake Alternative route complies with the Fish and Wildlife Habitat standard.

The *Amended Order on Party Status* granted Michael McAllister limited party status on Issue FW-13. In the *Ruling and Order on Motions for Summary Determination of Contested Case Issues FW-13, R-2, and SP-2*, issued August 3, 2021 and incorporated herein by this reference, the ALJ dismissed Issue FW-13 from the contested case. The ALJ found that Mr. McAllister did not present any evidence demonstrating that the proposed facility is inconsistent with general fish and wildlife habitat mitigation goals and standards along the Morgan Lake Alternative route.

Mr. McAllister took an interlocutory appeal of this ruling.¹⁷ In the *Energy Facility Siting Council Order on Interlocutory Appeal of Administrative Law Judge’s Ruling on Motion for Summary Determination for Limited Party McAllister’s Issues FW-13, SP-2 and R-2*, issued September 17, 2021, and incorporated herein, the Council affirmed the ALJ’s Ruling and dismissed Issue FW-13 from the contested case proceeding.

Historic, Cultural and Archeological Resources Standard (HCA)

Issue HCA-2: Whether the revision of Historic, Cultural and Archeological Resources Condition 1 (mitigation for NRHP-Eligible Oregon Trail/NHT

¹⁷ Mr. McAllister was entitled to take an interlocutory appeal to the Council because the *Ruling and Order on Motions for Summary Determination of Contested Case Issues FW-13, R-2, and SP-2* would have terminated Mr. McAllister’s right to participate in the contested case proceeding. OAR 345-015-0057(1).

segments) fails to consider BLM Programmatic Agreement and adds new requirements for mitigation that are inconsistent with the Department's definition of "mitigation" in OAR 345-001-0010(33).

The *Amended Order on Party Status* granted Gail Carbiener and the Oregon California Trail Association limited party status on Issue HCA-2. In the *Ruling and Order on Motion for Summary Determination of Contested Case Issues HCA-2 and HCA-5*, issued August 10, 2021 and incorporated herein by this reference, the ALJ dismissed Issue HCA-2 from the contested case. The ALJ found that there is no Council standard or rule requiring Idaho Power to adhere to the BLM Programmatic Agreement, and the Department acted within its authority under OAR 345-001-0010(33) in recommending a county-level mitigation requirement to the HPMP.

Issue HCA-5: Whether Applicant adequately analyzed the feasibility of undergrounding the transmission line as mitigation for potential visual impacts at Flagstaff Hill/NHOTIC.

The *Amended Order on Party Status* granted Jennifer Miller limited party status on Issue HCA-5. In the *Ruling and Order on Motion for Summary Determination of Contested Case Issues HCA-2 and HCA-5*, issued August 10, 2021 and incorporated herein by this reference, the ALJ dismissed Issue HCA-5 from the contested case. The ALJ found that Idaho Power had no obligation to analyze the feasibility of undergrounding the transmission line and the Department had no authority to evaluate alternative routes or mitigation plans not proposed in the ASC.

Land Use Standard (LU)

Issue LU-2: Whether Applicant erred in calculating the percentage of forestland in Umatilla and Union Counties, thereby underestimating and misrepresenting the amount of potentially impacted forestland.

The *Amended Order on Party Status* granted Kathryn Andrew limited party status on Issue LU-2. In the *Ruling and Order on Motion for Summary Determination of Contested Case Issues LU-2, LU-3, LU-5 and LU-6 (Ruling on Issues LU-2, LU-3, LU-5 and LU-6)*, issued July 21, 2021 and incorporated herein by this reference, the ALJ dismissed Issue LU-2 from the contested case. The ALJ found that although Idaho Power erred in calculating the percentage loss to the forestland base in Umatilla and Union Counties, the math errors were not material to Idaho Power's Goal 4 analysis and the proposed project's compliance with the Land Use Standard.

Issue LU-3: Whether Applicant's analysis of forestland impacts failed to consider all lands defined as Forest Land under state law, thereby misrepresenting forest land acreage.

The *Amended Order on Party Status* also granted Ms. Andrew limited party status on Issue LU-3. In the *Ruling on Issues LU-2, LU-3, LU-5 and LU-6*, the ALJ dismissed Issue LU-3 from the contested case. The ALJ found that Idaho Power properly identified all forestland in the project area for purposes of its Goal 4 analysis and compliance with the Land Use Standard.

Issue LU-5: Whether calculation of forestlands must be based on soil class or whether it is sufficient to consider acreage where forest is predominant use.

The *Amended Order on Party Status* granted Irene Gilbert limited party status on Issue LU-5. In the *Ruling on Issues LU-2, LU-3, LU-5 and LU-6*, the ALJ dismissed Issue LU-5 from the contested case. The ALJ found that, in accordance with the Union County Zoning, Partition, and Subdivision Ordinance (UCZPSO), Idaho Power properly used SSURGO soil classification data in determining the predominant use of hybrid-zoned land in Union County.

Issue LU-6: Whether the alternatives analysis under ORS 215.275 included all relevant farmland.

The *Amended Order on Party Status* also granted Ms. Gilbert limited party status with standing on Issue LU-6. In the *Ruling on Issues LU-2, LU-3, LU-5 and LU-6*, the ALJ dismissed Issue LU-6 from the contested case. The ALJ found that Idaho Power's analysis under ORS 215.275 of the need to site the facility on EFU-zoned land included all relevant farmland.

Issue LU-10: Whether the Department-proposed revisions to the Proposed Order requiring landowner consultation pursuant to ORS 215.276 are unnecessarily specific as to high-value farmland owners.

Only the Department and Idaho Power have standing on Issue LU-10. In the *Ruling on Issues FW-9, FW-10, FW-11 and LU-10*, the ALJ found that Idaho Power was entitled to a favorable ruling on Issue LU-10. Specifically, the ALJ ruled:

With regard the Land Use standard, the pertinent language in Section 7.2 (General Provisions) of Attachment K-1, Agricultural Lands Assessment, shall be revised as follows:

- Prior to construction, IPC shall provide notification to the record owner of any land within the site boundary, of the opportunity to consult with IPC for the purpose of locating and constructing the transmission line in a manner that minimizes impacts to farming operations or other operations of land uses for non-agricultural lands.
- The initial notification to the record owner shall allow two weeks to respond to the opportunity to consult with IPC. If the record owner does not respond to IPC within two weeks of the initial notification, IPC shall provide a second notification of the opportunity to consult with IPC via certified mail. If the record owner does not respond within two weeks of the second notification, IPC will have satisfied its obligation to consult pursuant to ORS 215.276(2).

- IPC shall establish the notification list using georeferenced maps containing property owner tax lot information, obtained from the most recent county tax assessor roll.
- IPC shall maintain the georeferenced map and notification list, including a list of record owners that completed consultation and record owners that failed to respond.

Need Standard (N)

Issue N-1: Whether the Department erred in defining capacity in terms of kilovolts instead of megawatts.

The *Amended Order on Party Status* granted STOP B2H limited party status on Issue N-1. In the *Ruling and Order on Motion for Summary Determination of Contested Case Issues N-1, N-2, and N-3 (Ruling on Issues N-1, N-2 and N-3)*, issued July 29, 2021 and incorporated herein by this reference, the ALJ dismissed Issue N-1 from the contested case. The ALJ found that the Department did not err in defining capacity in terms of kilovolts for purposes of evaluating the need for the B2H Project under the Least-Cost Plan Rule.

Issue N-2: Whether in evaluating capacity, the Department applied balancing considerations in contravention of OAR 345-022-0000(3)(d).

The *Amended Order on Party Status* also granted STOP B2H limited party status on Issue N-2. In the *Ruling on Issues N-1, N-2, and N-3*, the ALJ dismissed Issue N-2 from the contested case. The ALJ found that the Department concluded Idaho Power demonstrated the need for the facility under the Least-Cost Plan Rule, OAR 345-023-0020(2), and did not apply balancing considerations to the Need Standard in contravention of OAR 345-022-0000(3)(d).

Issue N-3: Whether Applicant demonstrated need for the proposed facility when Applicant only showed that its needs represent 21 percent of the total capacity.

The *Amended Order on Party Status* also granted STOP B2H limited party status on Issue N-3. In the *Ruling on Issues N-1, N-2, and N-3*, the ALJ dismissed Issue N-3 from the contested case. The ALJ found that Idaho Power demonstrated the need for the proposed facility under the Least-Cost Plan Rule in accordance with OAR 345-023-0005(1) and OAR 345-023-0020(2).

Noise Control Regulations (NC)

Issue NC-5: Whether the revisions in the Proposed Order, Section IV.Q.1, Noise Control Regulation (Methods and Assumptions for Corona Noise Analysis) are inaccurate, specifically the use of the 12:00 a.m. to 5:00 a.m. timeframe to establish ambient noise levels.

The *Amended Order on Party Status* granted Ms. Gilbert limited party status on Issue NC-5. In the *Ruling and Order on Motion for Summary Determination of Contested Case Issue NC-5*, issued August 9, 2021 and incorporated herein by this reference, the ALJ dismissed Issue NC-5 from the contested case. The ALJ found that neither Idaho Power nor the Department limited its analysis of potential noise exceedances to the 12:00 a.m. to 5:00 a.m. timeframe. Rather, the potential noise exceedance analysis was based on data from all hours of the day, throughout the entire year.

Retirement and Financial Assurance Standard (RFA)

Issue RFA-3: Whether Applicant has satisfied the Retirement and Financial Assurance standard, whether the financial assurances in the Proposed Order adequately address the risk of stranded assets, and whether Council must evaluate the ability of other project partners to meet financial assurance and retirement cost requirements.

The *Amended Order on Party Status* granted Charles Gillis limited party status on Issue RFA-3. In the *Ruling and Order on Motion for Summary Determination of Contested Case Issue RFA-3*, issued July 20, 2021 and incorporated herein by this reference, the ALJ dismissed Issue RFA-3 from the contested case and dismissed Mr. Gillis as a limited party. The ALJ found that Idaho Power satisfied the Retirement and Financial Assurance Standard, that the financial assurances in the Proposed Order adequately address the risk of stranded assets, and that and the Council is not required to consider the ability of other project partners to meet financial assurance and retirement cost requirements.

Mr. Gillis did not appeal the ruling terminating his right to participate in the contested case proceeding and dismissing Issue RFA-3. Therefore, the *Ruling and Order on Motion for Summary Determination of Contested Case Issue RFA-3* issued July 20, 2021 is final.¹⁸

Scenic Resources Standard/Protected Areas Standard (SR)

Issue SR-1: Whether Applicant was required to evaluate impacts to Morgan Lake Park under the Scenic Resources standard because it is recognized as a scenic resource in a local plan (Morgan Lake Recreational Use and Development Plan).

The *Amended Order on Party Status* granted Lois Barry limited party status on Issue SR-1. In the *Ruling and Order on Motion for Summary Determination of Contested Case Issue SR-1*, issued July 14, 2021 and incorporated herein by this reference, the ALJ dismissed issue SR-1 from the contested case. The ALJ found that Idaho Power was not required to evaluate impacts to Morgan Lake Park under the Scenic Resources standard because no local land use plan identified Morgan Lake Park as a significant or important scenic resource.

Issue SR-4: Whether Applicant should have evaluated Union County as an important scenic resource under the Scenic Resources standard and, if so, whether

¹⁸ See OAR 345-015-0024(2) and OAR 345-015-0057(2).

the Department erred in concluding that the proposed facility is not likely to result in significant adverse impact to this scenic resource.

The *Amended Order on Party Status* granted David Moyal and Daniel White limited party status on Issue SR-4. In the *Rulings and Order on Motions for Summary Determination of Contested Case Issue SR-4, Limited Parties David Moyal and Daniel White*, issued July 14, 2021 and incorporated herein by this reference, the ALJ dismissed Issue SR-4 and limited parties David Moyal and Daniel White from the contested case. The ALJ found that Idaho Power had no obligation to evaluate Union County as a significant or important scenic resource in the ASC and the Department did not err in omitting an evaluation of Union County as a significant or important scenic resource under the Scenic Resources standard.

Neither Mr. Moyal nor Mr. White appealed this ruling dismissing Issue SR-4 and terminating their right to participate in the contested case proceeding. Therefore, the *Rulings and Order on Motions for Summary Determination of Contested Case Issue SR-4, Limited Parties David Moyal and Daniel White*, is final.¹⁹

Issue SR-5: Whether the Rice Glass Hill Natural Area should be evaluated as a Protected Area.

The *Amended Order on Party Status* granted Susan Geer limited party status on Issue SR-5. In the *Ruling and Order on Motion for Summary Determination on Contested Case Issue SR-5*, issued July 21, 2021 and incorporated herein by this reference, the ALJ dismissed Issue SR-5 from the contested case. The ALJ found that because the Rice Glass Hill Natural Area was not registered as a Natural Area as of May 11, 2007, Idaho Power had no obligation to evaluate the Rice Glass Hill Natural Area as a Protected Area in ASC Exhibit L.

Issue SR-6: Whether Applicant's visual impact assessments are invalid because Applicant did not incorporate Oregonians' subjective evaluation of their resources to evaluated visual impacts, thereby invalidating the visual impact analysis for Morgan Lake Park and other protected areas, scenic resources and important recreational opportunities.

The *Amended Order on Party Status* granted STOP B2H and Lois Barry limited party status on Issue SR-6. In the *Ruling and Order on Motion for Summary Determination of Contested Case Issue SR-6*, issued July 26, 2021 and incorporated herein by this reference, the ALJ dismissed Issue SR-6 from the contested case. The ALJ found Idaho Power's visual impact assessments are valid. In addition, the ALJ found that Idaho Power had no obligation under the Council's siting standards to incorporate Oregonians' subjective evaluations of the resource and that Idaho Power's visual impact methodology accounted for viewer subjective evaluations by assuming that all identified visual resources were highly sensitive to impacts.

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¹⁹ See OAR 345-015-0024(2) and OAR 345-015-0057(2).

Soil Protection Standard (SP)

Issue SP-2: Whether the proposed Morgan Lake Alternative complies with the Soil Protection standard.

The *Amended Order on Party Status* granted Mr. McAllister limited party status with standing on Issue SP-2. In the *Ruling and Order on Motions for Summary Determination of Contested Case Issues FW-13, R-2, and SP-2*, issued August 3, 2021 and incorporated herein by this reference, the ALJ dismissed Issue SP-2 from the contested case. The ALJ found that Mr. McAllister did not present any evidence demonstrating that the proposed facility will result in significant adverse impacts to soils in the analysis area along the Morgan Lake Alternative route.

Mr. McAllister took an interlocutory appeal of this ruling. In the *Energy Facility Siting Council Order on Interlocutory Appeal of Administrative Law Judge's Ruling on Motion for Summary Determination for Limited Party McAllister's Issues FW-13, SP-2 and R-2*, issued September 17, 2021, and incorporated herein, the Council affirmed the ALJ's Ruling and dismissed Issue SP-2 from the contested case proceeding.

Structural Standard (SS)

Issue SS-4: Whether Applicant should remove the Hawthorne Loop as a construction access route due to the steep grade and the potential landslide risks if modifications are needed to support construction-related traffic.

The *Amended Order on Party Status* granted Dale and Virginia Mammen limited party status on Issue SS-4. In the *Ruling and Order on Motion for Summary Determination of Contested Case Issue SS-4*, issued July 23, 2021 and incorporated herein by this reference, the ALJ dismissed Issue SS-4 from the contested case. The ALJ found that Idaho Power did not propose the Hawthorne Loop as a "related or supporting facility" within the site boundary and did not propose modifications to the Hawthorne Loop as a construction access route, and that the Council lacks jurisdiction to consider and review roads that Idaho Power did not propose as related or supporting facilities.

Threatened and Endangered Species Standard (TE)

Issue TE-1: Whether Applicant was required to have an Oregon Department of Agriculture botanist review the ASC.

The *Amended Order on Party Status* granted Susan Geer limited party status on Issue TE-1. In the *Ruling and Order on Motions for Summary Determination of Contested Case Issue TE-1*, issued July 20, 2021 and incorporated herein by this reference, the ALJ dismissed Issue TE-1 from the contested case. The ALJ found that Idaho Power was not obligated to have an Oregon Department of Agriculture botanist review the ASC, and that the Council (through the Department) properly consulted with the ODA in evaluating the proposed project's compliance with the Threatened and Endangered Species standard as required by OAR 345-022-0070.

General Standard - Miscellaneous Issues (M)

Issue M-1: Site Boundary: Whether, due to substantial modifications likely necessary but not proposed, Applicant should be required to amend the site boundary to include Morgan Lake Road (La Grande, Union County) and, if so, whether the Department should provide notice and the opportunity to comment to potentially affected landowners.

The *Amended Order on Party Status* granted Susan Badger-Jones limited party status with standing on Issue M-1. In the *Ruling and Order on Motion for Summary Determination on Contested Case Issues M-1, M-2, M-3, M-4, and M-5 (Ruling on Issues M-1, M-2, M-3, M-4, and M-5)*, issued July 14, 2021, and incorporated herein by this reference, the ALJ dismissed issue M-1 from the contested case. The ALJ found that the Council lacks jurisdiction to require Idaho Power to amend the site boundary to something other than what Idaho Power proposed in the ASC.

Issue M-2: Site Boundary: Whether Applicant failed to include roads and other areas of use and potential modification from the site boundary thereby prohibiting affected landowners in the proximity of these areas from the opportunity to request a contested case during the ASC process.

The *Amended Order on Party Status* granted Ms. Gilbert standing on Issue M-2. In the *Ruling on Issues M-1, M-2, M-3, M-4, and M-5*, the ALJ dismissed issue M-2 from the contested case. The ALJ found that the Council lacks the authority to evaluate routes and structures that Idaho Power did not propose in its ASC.

Issue M-3: Whether the maps provided in ASC Exhibit F, Maps 50 and 51, fail to comply with OAR 345-021-0010(1)(c)(A) because they do not name major roads or use an appropriate scale; whether Council can issue a site certificate when the proposed facility site boundary does not accurately identify access roads in Union County as related or supporting facilities.

The *Amended Order on Party Status* granted Matt Cooper standing on Issue M-3. In the *Ruling on Issues M-1, M-2, M-3, M-4, and M-5*, the ALJ dismissed issue M-3 from the contested case. The ALJ found that Idaho Power was not required to label major roads or use a particular scale on the notification maps submitted as part of ASC Exhibit F. In addition, the ALJ found the Council did not have jurisdiction to review or evaluate roads not included in the ASC as related or supporting facilities.

Issue M-4: Whether the maps provided in ASC Exhibit B, Road Classification Guide and Access Control, fail to comply with OAR 345-021-0010(1)(c)(A) because they do not include road names or use an appropriate scale; whether Council can issue a site certificate when the maps provided in the ASC are incomplete and do not accurately identify access roads in Union County as related or supporting facilities.

The *Amended Order on Party Status* granted Jane and Jim Howell standing on Issue M-4. In the *Ruling on Issues M-1, M-2, M-3, M-4, and M-5*, the ALJ dismissed Issue M-4 from the contested case. The ALJ found that the Council lacks jurisdiction to review or evaluate roads not included in the ASC as related or supporting facilities.

On August 3, 2021, after the ALJ dismissed Issue M-4, the Howells withdrew as limited parties from the contested case.

Issue M-5: Whether the maps provided in the ASC were sufficient to give notice of potential impacts from the proposed facility.

The Howells also had standing as limited parties on Issue M-5. In the *Ruling on Issues M-1, M-2, M-3, M-4, and M-5*, the ALJ dismissed issue M-5 from the contested case. The ALJ found, among other things, that the maps provided in the ASC are in compliance with the Council's requirements and there is a Council rule requiring that the maps in the ASC suffice to "give notice of potential impacts" from the proposed facility.

On August 3, 2021, after the ALJ dismissed Issue M-5, the Howells withdrew as limited parties from the contested case.

Issue M-7: Notice: Whether Mr. Proesch received adequate notice regarding the proposed transmission line.

The *Amended Order on Party Status* granted Tim Proesch limited party status with standing on Issue M-7. In the *Ruling and Order on Motion for Summary Determination of Contested Case Issue M-7*, issued July 14, 2021 and incorporated herein by this reference, the ALJ dismissed issue M-7 from the contested case and dismissed Mr. Proesch as a limited party. In the Ruling, the ALJ found that Mr. Proesch had no recorded ownership interest in property in the immediate vicinity of the proposed facility and therefore neither Idaho Power nor the Department had any obligation to send him written notice of the proposed project.

Mr. Proesch did not appeal the ruling dismissing Issue M-7 and terminating his right to participate in the contested case proceeding. Therefore, the *Ruling and Order on Motion for Summary Determination of Contested Case Issue M-7*, is final.²⁰

Attached to this Proposed Order as Appendix 2 is a **Table of Exhibits Admitted – Summary Determination Phase**, that sets out, by issue, the affidavits and supporting documents submitted in support of, and opposition to, the motions for summary determination.

REMAINING ISSUES FOR THE CONTESTED CASE HEARING

Fish and Wildlife Habitat Standard

Issue FW-3: Whether the Draft Noxious Weed Plan (Proposed Order Attachment

²⁰ See OAR 345-015-0024(2) and OAR 345-015-0057(2).

P1-5) adequately ensures compliance with the weed control laws, ORS 569.390, ORS 569.400, and ORS 569.445.

Issue FW-5: Whether Applicant should be required to mitigate impacts to riparian areas from the setback location to the outer edges of the riparian area because the riparian habitat should be rated as Category 2 at a minimum.

Issue FW-6: Whether the Noxious Weed Plan provides adequate mitigation for potential loss of habitat due to noxious weeds when it appears to relieve Applicant of weed monitoring and control responsibilities after five years and allows for compensatory mitigation if weed control is unsuccessful.

Issue FW-7: Whether Applicant's Fish Passage Plans, including 3A and 3B designs, complies with the Fish and Wildlife Habitat standard's Category 2 mitigation requirements; whether Applicant must revisit its plans because threatened Steelhead redds have been identified in the watershed.

Historic, Cultural and Archeological Resources (HCA) Standard

Issue HCA-3: Whether Historic, Cultural and Archeological Resources Condition [2]²¹ (HPMP) related to mitigation for crossings of Oregon Trail resources provides adequate mitigation for visual impacts and sufficient detail to allow for public participation.

Issue HCA-4: Whether National Historical Oregon Trail segments with ruts located on Mr. Horst's property (Hawthorne Drive, La Grande) can be adequately protected from adverse impacts from the proposed facility.

Issue HCA-6: Whether, as part of the HPMP (Historic, Cultural and Archeological Resources Condition 2)²², Applicant should be required to have an Oregon Trail expert, recommended by OCTA and agreed to by the Field Director, added to the Cultural Resource Team and present during preconstruction surveys to adequately identify emigrant trail locations.

Issue HCA-7: Whether Applicant adequately evaluated archeological resource "Site 6B2H-MC-10" on Mr. Williams' property, Parcel 03S37E01300.

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²¹ This issue statement has been amended to refer to the correct condition number. Recommended HCA Condition 2 imposes requirements related to the HPMP. *See* ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 513 of 10016. Recommended HCA Condition 1 requires that the facility components avoid direct impacts to Oregon Trail/NHT resources. *Id.* at page 474 of 10016,

²² *See* footnote above.

Land Use Standard

Issue LU-4: The adequacy of the analysis of potential impacts of transmission line interference with GPS units on irrigation system.

Issue LU-7: Whether the evaluation of the proposed facility impacts to the cost of forest practices accurately determined the total acres of lost production or indirect costs.

Issue LU-8: The adequacy of Applicant's evaluation of the proposed facility impacts to the cost of forest management practices and whether mitigation must be provided for the entire length of the transmission line for the operational lifetime.

Issue LU-9: Whether Applicant adequately analyzed the risk of wildfires from operation of the proposed transmission lines, especially during "red flag" warning weather conditions, and the impact the proposed transmission lines will have on Mr. Myers' ability to use an aerial applicator on his farmland.

Issue LU-11: Whether the impacts from the proposed facility on accepted farm practices and the cost of accepted farm practices have been adequately evaluated or mitigated.

Noise Control Rules

Issue NC-1: Whether the Department improperly modified/reduced the noise analysis area in Exhibit X from one mile of the proposed site boundary to ½ mile of the proposed site boundary and whether OAR 345-021-0010(1)(x)(E) requires notification to all owners of noise sensitive property within one mile of the site boundary.

Issue NC-2: Whether the Department erred in recommending that the Council grant a variance/exception from the Oregon DEQ's Noise Rules, OAR 340-035-0035, and whether the variance/exception is inconsistent with ORS 467.010.

Issue NC-3: Whether the methodologies used for the noise analysis to evaluate compliance with OAR 340-035-0035 were appropriate and whether the ODOE erred in approving the methodology used to evaluate compliance with OAR 340-035-0035.

Issue NC-4: Whether the mitigation/proposed site conditions adequately protect the public health, safety and welfare.

Issue NC-6: Whether Applicant's methodology to assess baseline noise levels (described in the Proposed Order at pp. 635-638) reflect reasonable baseline noise estimates for residents of the Morgan Lake area.

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Public Services Standard

Issue PS-1: Traffic Safety: Whether Applicant was required to evaluate traffic safety impacts from construction-related use of Morgan Lake Road.

Issue PS-2: Fire Protection: Whether the site certificate should require that the public have the opportunity to review and comment on the final Wildfire Mitigation Plan; whether the Wildfire Mitigation Plan should include remote cameras to detect wildfire, safety procedures during red flag conditions, and the requirement that firefighting equipment be present on-site during construction.

Issue PS-3: Fire Protection: Whether the Council’s reliance on the Wildfire Mitigation Plan (Public Services Condition 7) prepared by Applicant for the Oregon Public Utility Commission (OPUC) is adequate to address wildfire response consistent with the Public Services standard.

Issue PS-4: Fire Protection: Whether Applicant adequately analyzed the risk of wildfire arising out of operation of the proposed facility and the ability of local firefighting service providers to respond to fires.

Issue PS-5: Whether the Wildfire Mitigation Plan is adequately developed and includes sufficient detail to allow for public participation.

Issue PS-6: Traffic Safety: Whether Applicant adequately evaluated the potential traffic impacts and modifications needed on Hawthorne Drive and Modelaire Drive (Hawthorne Loop).²³

Issue PS-8: Whether Department-proposed revisions to Public Services Condition 7 are redundant with Attachment U-3 and existing condition requirements.

Issue PS-9: Whether Department-proposed revisions to the Fire Prevention and Suppression Plan (Public Services Condition 6, Proposed Order Attachment U-3) incorrectly reference applicability to facility operations.

Issue PS-10: Whether the Draft Fire Suppression Plan (Attachment U-3) is adequate and whether local service providers would be able to respond to a facility-related fire.

Recreation Standard (R)

Issue R-1: Whether Applicant adequately evaluated the potential adverse impact

²³ Although this issue, as written, references “the Hawthorne Loop,” the limited parties also challenge Idaho Power’s evaluation of traffic impacts on the unpaved, privately owned portion of Hawthorne Drive. This latter portion of existing road is included within the site boundary as a related or supporting facility. See ODOE - B2HAPPDoc3-4 ASC 03_Exhibit C_Project_Location_ASC 2018-09-28, page 94 of 193.

of the proposed facility on recreational opportunities at Morgan Lake Park.

Issue R-2: Whether the visual impacts of the proposed facility structures in the viewshed of Morgan Lake Park are inconsistent with the objectives of the Morgan Lake Park Recreational Use and Development Plan and should therefore be reevaluated.

Issue R-3: Whether the mitigation proposed to minimize the visual impacts of the proposed facility structures at Morgan Lake Park (\$100,000 for recreational facility improvements) is insufficient because the park's remote areas will not benefit from the proposed mitigation.

Issue R-4: Whether Applicant's visual impact assessment for Morgan Lake Park adequately evaluates visual impacts to the more than 160 acres of undeveloped park land and natural surroundings, as visual simulations were only provided for high-use areas.

Retirement and Financial Assurance Standard (RFA)

Issue RFA-1: Whether the \$1 bond amount adequately protects the public from facility abandonment and provides a basis for the estimated useful life of the facility.

Issue RFA-2: Whether, in the event of retirement of the proposed transmission line, removal of concrete footings to a depth of one foot below the surface is sufficient to restore the site to a useful, nonhazardous condition.

Scenic Resources Standard (SR)

Issue SR-2: Whether Applicant satisfied the Scenic Resources and Protected Area standards at Flagstaff Hill/ NHOTIC and whether Applicant adequately analyzed the feasibility of undergrounding the transmission line as mitigation for potential visual impacts.

Issue SR-3: Whether Applicant adequately assessed the visual impact of the proposed project in the vicinity of the NHOTIC and properly determined the impact would be "less than significant."

Issue SR-7: Whether the methods used to determine the extent of an adverse impact of the proposed facility on scenic resources, protected area and recreation along the Oregon Trail were flawed and developed without peer review and/or public input. Specifically, whether Applicant erred in applying numeric values to the adverse impact and whether Applicant used unsatisfactory measurement locations/observation points in its visual impact assessment.

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Soil Protection Standard (SP)

Issue SP-1: Whether the Soil Protection Standard and General Standard of Review require an evaluation of soil compaction, loss of soil structure and infiltration, and loss of stored carbon in the soil and loss of soil productivity as a result of the release of stored carbon in soils.

Structural Standard (SS)

Issue SS-1: Whether Design Feature 32 of the Proposed Order Attachment G-5 (Draft Framework Blasting Plan) should be a site certificate condition to ensure repair of landowner springs from damage caused by blasting.

Issue SS-2: Whether Applicant adequately analyzed the risk of flooding in areas adjacent to the proposed transmission line arising out of the construction-related blasting. Whether Applicant should be required to evaluate hydrology, including more detailed and accurate mapping of existing creeks and ditches that drain into streets and private property, and core samples of sufficient variety and depth to determine the flooding risk to neighborhoods of south and west La Grande.

Issue SS-3: Whether Applicant should be required to test the water quality of private water wells to ensure that construction-related activities are not impacting water quality and quantity.

Issue SS-5: Whether Applicant has adequately evaluated construction-related blasting in Union County, City of La Grande, under the Structural Standard. Specifically, whether Applicant should be required to conduct site-specific geotechnical surveys to characterize risks from slope instability.²⁴

Miscellaneous Issue

Issue M-6: Whether the Proposed Order fails to provide for a public review of final monitoring plans, fails to provide long-term hazardous materials monitoring, and improperly allows exceptions that substantially increase the likelihood of a hazardous material spill in violation of OAR 345-021-0010(w).

LIMITED PARTIES AND ISSUES WITH STANDING

For the reader's convenience, the following table lists the remaining limited parties in this matter and the remaining issues on which each limited party has standing in the contested case hearing:

²⁴ As set out in the *Case Management Order*, Issue SS-5 also raised a concern about "radon emissions." *Case Management Order* at 8. However, in his hearing testimony, Mr. White focused only on slope instability. He did not offer evidence or argument regarding radon emissions. Because Mr. White did not pursue his concern about radon emissions, the ALJ considers it waived. Issue SS-5 is therefore limited to the statement above.

STOP B2H Coalition	NC-1, NC-2, NC-3, NC-4, SR-7, and SP-1
Andrew, Colin	R-1, R-3
Andrew, Kathryn	R-3
Badger-Jones	PS-1
Barry, Lois	R-2, R-3, and R-4
Barry, Peter	R-3
Carbiener, Gail/OCTA	PS-2, PS-3, RFA-1, RFA-2, and SR-2
Cooper, Matt	NC-1, PS-4, and SS-2
Deschner, Whit	SR-3
Foss, Jim and Kay	LU-4
Fouty, Suzanne	SP-1
Geer, Susan	FW-3 and FW-6
Gilbert, Irene	FW-3, FW-5, HCA-3, LU-7, LU-8, LU-11, NC-2, PS-5, R-3, and RFA-1
Gray, Dianne	NC-2 and NC-6
Horst, Joe/Cavinato, Anna	HCA-4, NC-2, PS-6 and SS-3
Lyons, Charles	PS-10
Mammen, Dale and Virginia	PS-6
March, Anne	FW-7
March, Kevin	FW-7
Marlette, JoAnne	M-6 and HCA-3
McAllister, Michael	R-2
Miller, Jennifer	SR-2, PS-2, and PS-3
Myers, Sam	LU-9 and NC-2
Webster, Stacia	HCA-6, SS-1, and PS-10
White, Jonathan	SS-5
Williams, John	HCA-7
Winters, John	PS-4

EVIDENTIARY RULINGS

As discussed above, on May 26, 2021, the ALJ admitted the entirety of the Decision-Making and Administrative Project Record for the Boardman to Hemingway Transmission Line (the B2H Project Record) into the contested case hearing record.

In addition, during the hearing phase of the contested case, the parties and limited parties in this matter filed written direct testimony and exhibits; rebuttal testimony and exhibits; surrebuttal testimony and exhibits; sur-surrebuttal testimony and exhibits; and cross-examination hearing exhibits. The **Table of Additional Admitted Evidence**, attached hereto as Appendix 1, sets out, by identified issue, the additional evidence (testimony and exhibits) admitted into the evidentiary record during the hearing phase of this matter.

The limited parties with standing on Issues FW-5, HCA-6, LU-4, LU-7, LU-8, PS-1, PS-5, SS-1 or SS-2 did not timely submit direct testimony and/or supplemental exhibits on these

nine issues.²⁵ In the *Ruling on Idaho Power Company's Motion to Dismiss Issues FW-5, HCA-6, LU-4, LU-7, LU-8, PS-1, PS-5, SS-1 and SS-2 (Motion to Dismiss Ruling)*, issued November 2, 2021, the ALJ found that by failing to present any written direct testimony and supporting exhibits by the September 17, 2021 deadline, the limited parties waived their opportunity to present any testimony or new evidence in support of their claim(s) on these issues.

In the *Rulings on Objections to Direct Testimony and Exhibits*, issued October 15, 2021, the ALJ sustained the objections of the Department and/or Idaho Power and excluded the following documents (listed by issue) from the evidentiary record:

Issue M-6: Michael Blank testimony summary.
Issue FW-3: Geer Exhibits 1, 2, 4, and 5.
Issue FW-6: Geer Exhibits 1, 2, 4, and 5.
Issue HCA-3: Marlette Witness List with witness summaries; Marlette Exhibits 6 and 7.
Issue LU-11: Unmarked Gilbert Exhibit (Myers Testimony; Issue LU-9).
Issue NC-2: STOP B2H Exhibits 7, 8, and 9; Gilbert Exhibits 5 and 10; Ritchie statement.
Issue PS-4: Cooper Exhibits 15 and 26.
Issue PS-6: Mammen Exhibit 5; Horst/Cavinato Exhibit K.
Issue PS-10: Webster Witness List; Webster Exhibit 35; Lyons Exhibits 10 and 11.
Issue SR-7: STOP B2H Exhibit 15.

In the *Rulings on Idaho Power's Objections to Limited Parties' Surrebuttal Testimony and Exhibits*, issued January 3, 2022, the ALJ sustained Idaho Power's objections and excluded the following evidence:

Issue FW-6: Geer Surrebuttal Exhibit 5S
Issue FW-7: March Surrebuttal Exhibit D.
Issue HCA-7: Williams Surrebuttal testimony (second bullet point only).

In a *Response to Irene Gilbert's Request to Amend List of Testimony and Exhibits* issued February 16, 2022, the ALJ denied Ms. Gilbert's request to add five exhibits to Contested Case Issues LU-7, LU-8 and LU-11 in the Table of Additional Admitted Evidence.²⁶ The ALJ declined to amend the Table of Additional Admitted Evidence because Ms. Gilbert did not offer these documents in support of her position(s) on Issues LU-7, LU-8 and LU-11. The ALJ upheld this determination in a *Ruling on Gilbert's Request to Rescind Ruling Denying Request to Amend List of Testimony and Exhibits and Response to Idaho Power Company's Request for*

²⁵ Ms. Gilbert has standing on Issues FW-5, LU-7, LU-8, and PS-5. Stacia Webster has standing on Issues HCA-6 and SS-1. Jim and Kaye Foss have standing on Issue LU-4. Susan Badger-Jones has standing on Issue PS-1, and Matt Cooper has standing on Issue SS-2.

²⁶ Ms. Gilbert requested to add the Scott Hartell deposition transcript and four Land Use Board of Appeals (LUBA) decisions to Issues LU-7, LU-8, and LU-11.

Clarification issued February 25, 2022.²⁷

In a *Ruling on Irene Gilbert's Motion to Reopen the Record for Submission of Additional Evidence in Response to Motions to Strike* issued April 14, 2022, the ALJ denied Ms. Gilbert's request to reopen the evidentiary record based on a lack of good cause to do so.

FINDINGS OF FACT

Overview: the Applicant, the proposed facility and the project history

1. The applicant for the site certificate at issue herein is Idaho Power Company (Idaho Power). Idaho Power is a wholly owned subsidiary of IDACORP, Inc., incorporated in 1915. Its core business is the generation, transmission, distribution, sale, and purchase of electric energy. Idaho Power serves more than 530,000 customers within a service territory of approximately 24,000 miles in southern Idaho and eastern Oregon. Its power supply system currently includes 4,868 miles of transmission lines, including 692 miles in Oregon. The Company also operates 305 transmission and other stations, and operates and maintains 27,072 miles of distribution lines, 2,212 miles of which are located in Oregon. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 68 of 10016.)

2. The proposed facility, including four alternative route segments, is an approximately 300 mile-long, 500-kilovolt (kV) electric transmission line, plus supporting facilities including access roads and other facility components. The proposed and alternative routes for the facility extend from a switching station to be built near Boardman, Oregon, to the existing Hemingway Substation in Owyhee County, Idaho. The proposed and alternative routes cross five counties in Oregon (Morrow, Umatilla, Union, Baker, and Malheur) and Owyhee County in Idaho. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 8 of 10016.)

3. Because the proposed facility also crosses land managed by the Bureau of Land Management (BLM), the Bureau of Reclamation (BOR), the Department of Defense/United States Army Corps of Engineers (USACE), and the United States Forest Service (USFS), the proposed facility is also subject to the permitting process of these federal agencies. (Ranzetta Rebuttal Test. at 12; ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 8 of 10016.)

4. On July 10, 2010, the Department received a Notice of Intent (NOI) from Idaho Power stating the Company's intent to file an ASC for the proposed Boardman to Hemingway transmission line. On July 16, 2010, the Department issued a public notice of the NOI to the Council's mailing lists and to adjacent property owners as defined in OAR 345-020-0011(1)(f). The Department distributed this public notice jointly with the BLM, the lead agency overseeing the National Environmental Policy Act (NEPA) federal review process, to satisfy both Council and NEPA requirements. The Department also published the notice in multiple local area newspapers within the vicinity of the proposed facility announcing a series of public scoping

²⁷ Because Ms. Gilbert and Ms. Andrew submitted the Hartell deposition transcript with their oppositions to Idaho Power's Motion for Summary Determination on Issues LU-2, LU-3, LU-5, LU-6, there was no need to accept Ms. Gilbert's offer of proof for this document.

meetings in several cities along the proposed transmission line route and requesting public comments on the NOI. In addition, the Department issued review requests to Special Advisory Groups (SAGs), state agencies, local governments, and tribal governments. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 10 of 10016.)

5. On March 2, 2012, the Department issued a Project Order in accordance with OAR 345-015-0160. The Project Order set out the state statutes, administrative rules, and permitting requirements applicable to the construction and operation of the proposed facility and the necessary contents for the ASC. In addition, the Project Order specified the analysis area for the proposed facility. (ODOE - B2HNOIDoc85 B2H-0185 Project Order 2012-03-02, pages 1-40.)

6. On February 27, 2013, Idaho Power submitted its preliminary application for site certificate (pASC) to the Department. (ODOE - B2HAPPDoc1 pASC 00_TOC - 2013-02-28.) The Department, in turn, prepared a review request memorandum to reviewing agencies and compiled a distribution list including all pertinent reviewing agencies listed in OAR 345-001-0010. In accordance with ORS 469.350(2) and OAR 345-021-0050, Idaho Power distributed the Department's memorandum and the pASC to each reviewing agency. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 11 of 10016.)

7. On December 22, 2014, in anticipation of Idaho Power amending the pASC, the Department issued a First Amended Project Order that described and updated the site certificate application requirements. (ODOE - B2HAPPDoc100 First Amended Project Order_12-22-2014, pages 1-34.)

8. The BLM issued its Final Environmental Impact Statement (EIS) in November 2016, and then published its Record of Decision (ROD) on November 17, 2017. The ROD identified the BLM's preferred route for the proposed facility. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 12 of 10016.)

9. In July 2017, Idaho Power submitted an Amended Preliminary Application for Site Certificate (ApASC) to the Department. The Department determined that the ApASC was incomplete and, on September 17, 2017, issued a memorandum to Idaho Power setting out the remaining required information and pending agency comments. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 12 of 10016.)

10. On July 26, 2018, the Department issued a Second Amended Project Order reflecting changes resulting from recent rulemaking and updating the reviewing agency list based on the proposed route and alternative route segments set out in the ApASC. (ODOE - B2HAPPDoc15 ApASC Second Amended Project Order 2018-07-26, pages 1-29.)

11. Between September 2017 and September 2018, the Department reviewed the ApASC and issued formal requests to Idaho Power for additional information (RAIs). The Department issued RAIs pertaining to ASC exhibits and in response to reviewing agency, local government, and tribal government comment letters. Idaho Power provided responses to the RAIs. After reviewing Idaho Power's responses and, where appropriate, consulting with reviewing agencies to verify the sufficiency of information related to ASC exhibit requirements, the Department

determined the ASC complete as of September 21, 2018.²⁸ (ODOE - B2HAPPDoc1 ASC Determination of Complete Application 2018-09-21, pages 1-3; ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 14 of 10016.)

12. On October 3, 2018, the Department issued a Public Notice of the complete ASC. The Department published the notice in local newspapers in Morrow, Umatilla, Union, Baker and Malheur counties, emailed the notice to those on the Department’s email list serve, and mailed printed notices to approximately 8,300 physical addresses on the Council’s special meeting list for the proposed facility. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 13 of 10016.)

13. In the ASC, as a result of its siting studies and the federal review process, Idaho Power proposed a primary route (“the proposed route”) and, in certain areas, alternative routes (the West of Bombing Range Road alternative, the Morgan Lake alternative, and the Double Mountain alternative).²⁹ The proposed and alternative routes allowed Idaho Power options in selecting the final route. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 18 of 10016.)

14. In October 2018, the Department held a series of public information meetings on the completed ASC in the cities of Ontario, Baker City, La Grande, Pendleton, and Boardman, Oregon. The Department also provided notice of the complete ASC to reviewing agencies, along with a request for agency reports on the ASC. Idaho Power mailed all reviewing agencies copies of the complete ASC with the notice and a request for an agency report. In November 2018, the Department received comments from the following agencies, special advisory groups, and tribal governments:

- Baker County Planning Department/Board of Commissioners (Special Advisory Group)
- City of La Grande Planning Department
- Confederated Tribes of the Umatilla Indian Reservation
- Confederated Tribes of the Warm Springs Reservation of Oregon
- Oregon Department of Aviation
- Oregon Department of Environmental Quality
- Oregon Department of Forestry

²⁸ Pursuant to OAR 345-015-0190(5), an ASC is complete “when the Department finds that the applicant has submitted information adequate for the Council to make findings or impose conditions on all applicable Council standards.”

²⁹ In selecting the proposed and alternative routes identified in the ASC, Idaho Power had to balance a myriad of competing constraints and opportunities, which it discussed in detail in ASC Exhibit B. Constraints that drove Idaho Power to select the routes identified in the ASC included federal land management agency requirements and federal land management plans, Western Electricity Coordinating Council Common Corridor Criteria and prudent utility practice, the ODFW’s sage grouse habitat rules and fish and wildlife habitat mitigation policies including the prohibitions against siting an energy facility on lands designated Category 1 habitat, prohibitions against siting an energy facility in an identified protected area, and other requirements imposed as part of the Council review process and compliance with site certificate conditions. (Stippel Rebuttal Test., Issues NC-1 and NC-2, at 11.)

- Oregon Department of Fish and Wildlife
- Oregon Department of Transportation
- Oregon Department of State Lands
- Oregon State Historic Preservation Office
- Oregon Water Resources Department
- Union County Planning Department/Board of Commissioners
- United States Bureau of Land Management
- United States Bureau of Reclamation
- United States Department of the Navy
- United States Forest Service

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 13-14 of 10016.)

15. In March 2019, Idaho Power submitted additional information and errata in response to the reviewing agency comments and in response to additional information requests from the Department pursuant to OAR 345-015-0190(9). Thereafter, the Department issued a notice and posted the errata information on its website. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 14 of 10016.)

16. On May 16, 2019, the Council appointed the undersigned ALJ as the hearing officer to conduct the public hearings on the draft proposed order and the contested case proceeding. (ODOE - B2HAPPDoc1 DPO Hearing Officer Appointment 2019-05-16, pages 1-3.)

17. On May 22, 2019, the Department issued a Draft Proposed Order (DPO), public notice of a 62-day comment period on the DPO, and notice of public hearings on the DPO. (ODOE - B2HAPPDoc2 DPO Public Notice 2019-05-22, pages 1-4).

18. In June 2019, on the Council's behalf, the ALJ conducted a public hearing on the DPO in each of the five Oregon counties to be crossed by the proposed facility. The Malheur County hearing was held in Ontario on June 18, 2019. The Baker County hearing was held in Baker City on June 19, 2019. The Union County hearing was held in La Grande on June 20, 2019. The Umatilla County hearing was held in Pendleton on June 26, 2019. And the Morrow County hearing was held in Boardman on June 27, 2019. At the June 26, 2019 hearing in Pendleton, the Council extended the public comment period from July 23, 2019 to August 22, 2019, and extended the applicant's deadline to respond to DPO comments by 60 days, from July 23, 2019 to September 23, 2019. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 14-17 of 10016.)

19. On September 19, 2019, Idaho Power requested an extension of time to respond to comments received on the DPO from September 23, 2019 to November 7, 2019, based on the volume and substance of the comments. Chair Beyeler granted the extension via emergency action, which the Council ratified at its September 26, 2019 Council meeting. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 15 of 10016.)

20. On July 2, 2020, the Department issued the Proposed Order on Application for Site

Certificate (Proposed Order), setting out recommended findings of fact, reasoning, recommended conditions and conclusions of law. The Department proposed as follows:

Subject to compliance with the recommended site certificate conditions, the Department recommends that the Council find that preponderance of evidence on the record supports the following conclusions:

1. The proposed Boardman to Hemingway Transmission Line complies with the requirements of the Oregon Energy Facility Siting Council Statutes, ORS 469.300 to 469.520.
2. The proposed Boardman to Hemingway Transmission Line complies with the standards adopted by the Council pursuant to ORS 469.501.
3. The proposed Boardman to Hemingway Transmission Line complies with all other Oregon statutes and administrative rules identified in the second amended project order as applicable to the issuance of a site certificate for the proposed facility.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 697 of 10016.)

Findings related to the Fish and Wildlife Habitat standard

21. In the Second Amended Project Order, the Department stated, in pertinent part, as follows with regard to the requirements of OAR 345-021-0010(1)(p) and the Fish and Wildlife Habitat standard:

The applicant has proposed a “phased survey” approach for data collection during the site certificate review process. * * * For linear facilities, such as transmission lines, there may be situations where the applicant is able to conduct field surveys on several parcels within the site boundary but may not have access on adjacent parcels. In such circumstances, it may be possible that the combination of on-site field surveys plus a desktop evaluation of existing data, aerial photography, and “over the fence” surveys may meet the information requirements of Exhibit P. If the field survey coverage is sufficient for ODOE and Oregon Department of Fish and Wildlife (ODFW) to consider that the information provided is representative of the fish and wildlife habitat, and sensitive species occurrence or habitat, it is possible that this information could be sufficient to be evaluated for compliance with the applicable Council fish and wildlife habitat standard. Exhibit P shall include as much information as possible about the results of the field surveys conducted to date for biological resources and the schedule for future surveys.

Exhibit P shall include an analysis of how the evidence provided supports a finding by the Council that the proposed facility meets the Council’s fish and wildlife habitat standard. Exhibit P must include the results of all surveys for fish

and wildlife habitat in the analysis area. Exhibit P must also identify all state sensitive species that may be present in the analysis area and include the results of surveys for state sensitive species. Also include the survey methodology, including scope and timing of each survey. Surveys must be performed by qualified survey personnel during the season or seasons appropriate to the detection of the species in question. The applicant must also include in Exhibit P its habitat categorization and tables depicting the estimated temporary and permanent impacts, broken down by habitat categories.

* * * * *

Fish and Wildlife Habitat Mitigation Policy (OAR Chapter 635, Division 415) classifies six habitat categories and establishes a mitigation goal for each category. The applicant for a site certificate must identify the appropriate habitat category for all areas affected by the proposed facility and provide the basis for each category designation, subject to ODFW review. The applicant must show how it would comply with the habitat mitigation goals and standards by appropriate monitoring and mitigation.

(ODOE - B2HAPPDoc15 ApASC Second Amended Project Order 2018-07-26, pages 18-19 of 29.)

Noxious weed control

22. In ASC Exhibit P1, Attachment P1-5, Idaho Power provided a draft Noxious Weed Plan to describe the measures the Company will take to control noxious weed species and prevent the introduction of these species prior to construction, during construction, and during operation and management of the project. Idaho Power acknowledged that it is the responsibility of the Company and its construction contractors, working with the appropriate land management agencies and the Department, to ensure that noxious weeds are identified and controlled during the construction and operation of the facility and that all applicable federal, state, county, and other local requirements are satisfied. (ODOE - B2HAPPDoc3-25 ASC 16A_Exhibit P1_Wildlife_ASC_Part 1_Main thru Attach P1-6 rev 2018-09-28, page 744 of 940.)

23. As noted in ASC Exhibit P1, Attachment P1-5, the goal of the Noxious Weed Plan is to describe methods for early detection, containment, and control of noxious weeds that will be implemented during project construction and operation. The Noxious Weed Plan describes the known status of noxious weed species within the project site boundary, the regulatory agencies responsible for the control of noxious weeds, and steps Idaho Power will take in controlling and preventing the establishment and spread of noxious weed species during construction and operation of the facility. The Noxious Weed Plan also describes general preventive and treatment measures, monitoring to evaluate of the effectiveness of the prescribed noxious weed prevention and the control measures to be implemented during the operational phase of the project. (ODOE - B2HAPPDoc3-25 ASC 16A_Exhibit P1_Wildlife_ASC_Part 1_Main thru Attach P1-6 rev 2018-09-28, pages 744-69 of 940.)

24. In the Noxious Weed Plan, Idaho Power explained that the Company will only be responsible for controlling noxious weeds that are within project right-of-ways (ROWs) and that are a result of the company's construction or operation-related, surface-disturbing activities in the following areas:

Transmission line: Entirety of the ROWs and/or easements;
New roads: Entirety of the ROWs and/or easements;
Existing roads needing substantial improvement: Only areas involving ground-disturbing construction and/or improvement (e.g., new cutouts);
Communication stations: Entirety of the ROWs and/or easements;
Multi-use areas: Entirety of the temporary ROWs and/or licenses; and
Pulling and tensioning sites: Entirety of the temporary ROWs and/or licenses.

Idaho Power noted that the Company is not responsible for controlling noxious weeds that occur outside of project ROWs or for controlling or eradicating noxious weed species that were present prior to the project. Idaho Power added the following with respect to pre-existing weed infestations:

[Idaho Power] recognizes ORS Chapter 569 imposes onto occupiers of land within a weed district certain obligations to control and prevent weeds; if [Idaho Power] identifies pre-existing weed infestations within a Project ROW, [the Company] will work with the relevant landowner or land management agency to address the same consistent with ORS Chapter 569.

(ODOE - B2HAPPDoc3-25 ASC 16A_Exhibit P1_Wildlife_ASC_Part 1_Main thru Attach P1-6 rev 2018-09-28, page 760 of 940.)

25. In addition to the draft Noxious Weed Plan, Idaho Power also provided in ASC Exhibit P1 a draft Reclamation and Revegetation Plan (Attachment P1-3) and a draft Vegetation Management Plan (Attachment P1-4). The purpose of the Reclamation and Revegetation Plan is to provide a framework for the reclamation treatments to be applied to areas impacted by the project construction, operation, and maintenance activities. (ODOE - B2HAPPDoc3-25 ASC 16A_Exhibit P1_Wildlife_ASC_Part 1_Main thru Attach P1-6 rev 2018-09-28, page 556-592 of 940.) The purpose of the Vegetation Management Plan is to describe the methods in which vegetation along the transmission line will be managed during operation of the project. (*Id.* at page 596 of 940.)

26. In the Proposed Order, Section IV.H.1, General Fish and Wildlife Mitigation, the Department addressed, among other things, Idaho Power's methodology for evaluating habitat quantity and quality within the analysis area, the habitat assessment, the potential impacts to fish and wildlife habitat from construction and operation of the proposed facility, and the proposed habitat mitigation plans. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 313-20 of 10016.) The Department described the components of the draft Reclamation and Revegetation Plan, and as Recommended Fish and Wildlife Condition 1, required Idaho Power to finalize, prior to construction of a phase or segment of the facility, the

draft Reclamation and Revegetation Plan. (*Id.* at pages 320-323 of 10016.) As Recommended Fish and Wildlife Condition 2, the Department required Idaho Power to, prior to construction of a phase or segment of the facility, finalize and submit to the Department for its approval, in consultation with ODFW, a final Vegetation Management Plan. (*Id.* at page 324 of 10016.)

27. In the Proposed Order, the Department described the components of the Noxious Weed Plan and found, in pertinent part, as follows:

The draft Noxious Weed Plan provides for control of the two State-level weed lists - Class A and Class B weeds (including those that have been T-designated),³⁰ along with county-level Class A, Class B, and Class C weeds (Attachment P1-5 Section 2.1 of this order). T-designated weeds indicate that the weed is a priority target for control. Further, the Plan ensures that the list of weeds being managed would be up to date, stating: “IPC will review the county lists on a regular basis to ensure that monitoring and control actions are targeting the appropriate species.” If there are weeds listed at the State or county level that are not currently listed in the plan, those weeds would be incorporated during plan finalization, in accordance with the Agency Review Process incorporated by the Department.

The draft Noxious Weed Plan requires pre-construction noxious weed surveys (see Section 4.0 of the plan) for the purpose of establishing pre-disturbance treatment areas, to minimize potential for weed dispersal following commencement of construction activities. The plan also requires vehicle washing stations (wheel washing) in areas identified with noxious weeds, prior to and during construction. During construction and operation, the plan requires control and treatment measures. The final treatment methodologies would be developed based on state and country regulations; applicable land use management requirements; consultation with land managers, county weed boards, and ODOE; and site-specific circumstances; to occur based on the pre-construction Agency Review Process incorporated by the Department consistent with OAR 345-025-0016. The Agency Review Process includes a dispute resolution process to ensure the final plan appropriately satisfies applicable regulatory requirements. * * *.

The plan requires agency consultation to establish frequency for long-term monitoring, which would be site-specific. In other words – there may be increased long-term monitoring frequency in disturbance areas with identified noxious weed infestations, and decreased monitoring frequency in disturbance areas without infestations. The plan also addresses ORS Chapter 569, which imposes certain obligations onto occupiers of land within a weed district. To address those obligations, the plan requires that the applicant work with landowners or land management agencies to identify and address weed infestations within the site boundary. Council cannot require the applicant to control weeds outside of the site boundary, either under its standards or ORS Chapter 569, because Council’s

³⁰ T-designated weeds are designated by the Oregon State Weed Board for prevention and control by the Noxious Weed Control Program. Action against T-designated weeds receive priority. (Taylor Rebuttal Test. at 12.)

jurisdiction covers the “site” of the proposed facility. However, land owner consultation would be an ongoing mitigation process under the Agricultural Mitigation Plan, Revegetation Plan and Noxious Weed Plan, where adequate opportunities to evaluate potential offsite impacts could be discussed – additionally, county weed districts have funding and the authority to support landowners with recommendations and implementation of control measures.

* * * At this time, other than presence of noxious weeds within the analysis area, no evidence has been provided on the record that questions the validity of the Noxious Weed Plan or the applicant’s ability to implement and adhere to the requirements of the plan.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 324-25 of 10016.)

28. The Department also included, as Recommended Fish and Wildlife Condition 3, the following:

Recommended Fish and Wildlife Condition 3: The certificate holder shall:

a. Prior to construction of a phase or segment of the facility, in accordance with the OAR 345-025-0016 agency consultation process outlined in the draft Noxious Weed Plan(s) (Attachment P1-5 of the Final Order on the ASC), finalize, and submit to the Department for its approval, a final Noxious Weed Plan. The protective measures as described in the draft Noxious Weed Plan provided as Attachment P1-5 to the Final Order on the ASC, shall be included and implemented as part of the final Noxious Weed Plan, unless otherwise approved by the Department.

b. During operation, the certificate holder shall conduct all work in compliance with the final Noxious Weed Plan referenced in sub(a) of the condition.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 326 of 10016; emphasis in original.)

29. After issuance of the Proposed Order, and in response to concerns raised by the limited parties, Idaho Power updated its draft Noxious Weed Plan to provide more clarity. In the updated draft Noxious Weed Plan, Idaho Power added the requirement that the Company will review the state and county lists annually to ensure that monitoring and control actions are targeting the appropriate species. (Taylor Rebuttal Ex. B at 12.) Idaho Power also updated Table 1, Designated Noxious Weeds Known to Occur or with the Potential to Occur within the Site Boundary. (*Id.* at 15.) With regard to preconstruction surveys, Idaho Power added that surveyors will be trained to identify Oregon flora, specifically native plants, noxious weeds, and threatened and endangered plant species. (*Id.* at 27.) With regard to prevention, and in particular vehicle cleaning, Idaho Power added that “all Construction Contractor(s) will clean construction vehicles and equipment at the Project multi-use areas or other cleaning stations each night or

morning prior to returning to the Project construction areas.” (*Id.* at 29.) Idaho Power also noted that it may avoid cleaning construction vehicles and equipment when moving from noxious weed-contaminated areas to other areas along the transmission line ROW if it “demonstrates, in consultation with ODOE and the relevant county weed department, that Idaho Power has sufficiently controlled the weed contamination or that seasonal limitations will be effective in avoiding the spread of the noxious weeds.” (*Id.*)

30. With regard to post-construction treatments, Idaho Power amended the Noxious Weed Plan to state that the Company will implement noxious weed control efforts “at least once annually” for the first five years and, with the concurrence of the Department, will “continue to monitor the sites as described below in Section 6.1, but will cease treatment unless determined to be necessary through subsequent monitoring.” (Taylor Rebuttal Ex. B at 35.) Finally, with regard to monitoring, Idaho Power added monitoring would be initiated during the first “growing season” following construction. (*Id.* at 36.) Idaho Power added that if control of noxious weeds is deemed unsuccessful after five years of monitoring and noxious weed control actions, the Company will coordinate with ODOE regarding appropriate steps forward and “will prepare a location-specific long-term monitoring plan based on the results of the initial five-year assessment period.” (*Id.* at 36.) Finally, Idaho Power added Appendix B to the Plan, addressing Noxious Weed Treatment Methods and Timing. (*Id.* at 43-53.)

31. The revised draft Noxious Weed Plan remains a draft. In accordance with Recommended Fish and Wildlife Condition 3, Idaho Power will update and finalize the Noxious Weed Plan based on the final facility design and agency review. (Taylor Rebuttal Test. at 40.)

32. Enforcement of the noxious weed statutes is outside the scope of the Council’s review. The Council’s Fish and Wildlife Habitat standard focuses on addressing impacts to habitats resulting from a proposed facility. A certificate holder may have additional noxious weed obligations under ORS Chapter 569, for example, a possible duty to address preexisting noxious weed infestations, but those obligations are enforced through the county courts outside of the Council review process. (Taylor Rebuttal Test. at 10.)

Riparian areas

33. The ODFW Fish and Wildlife Habitat Mitigation Policy provides a framework for assigning one of six category types to habitats based on the relative importance of these habitats to fish and wildlife species. In ASC Exhibit P1, Idaho Power assumed fish presence for all streams designated by ODFW as fish bearing streams. For streams not already designated as fish bearing by ODFW, Idaho Power used field data as the primary factor to determine potential fish presence. (ODOE - B2HAPPDoc3-25 ASC 16A_Exhibit P1_Wildlife_ASC_Part 1_Main thru Attach P1-6 rev 2018-09-28, page 25 of 940.)

34. In ASC Exhibit P1, Idaho Power also identified all fish and wildlife habitat in the analysis area, classified by habitat categories set forth in the ODFW Fish and Wildlife Habitat Mitigation rule, OAR 635-415-0025. In Table P1-3, Idaho Power listed the six habitat category types, by definition and mitigation goal. (ODOE - B2HAPPDoc3-25 ASC 16A_Exhibit P1_Wildlife_ASC_Part 1_Main thru Attach P1-6 rev 2018-09-28, page 32 of 940.) In table P1-

4, Idaho Power set out the acres of habitat types by ODFW Habitat Category within the project analysis area. Riparian vegetation was classified as either Category 2 or Category 3. This includes a total of 21.6 acres of Herbaceous Riparian (8.4 in Category 2 and 13.2 in Category 3), 5.5 total acres of Introduced Riparian (4.9 in Category 2 and .7 in Category 3), and 60.4 total acres of Riparian Woodland and Shrubland (59 in Category 2 and 1.4 in Category 3). (*Id.* at page 34 of 940.)

35. In the Proposed Order, the Department addressed and approved Idaho Power’s methodology for evaluating habitat quantity and quality within the analysis area, the habitat assessment in ASC Exhibit P1, and the identification of habitat within habitat categories set out in ASC Exhibit P1, Tables P1-3 and P1-4. The Department noted that ODFW staff thoroughly reviewed Idaho Power’s habitat categorization methodology during the ASC phase. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 316 of 10016.)

36. In the Proposed Order, at Table FW-1 (Estimated Temporary and Permanent Habitat Impacts and Proposed Mitigation – Proposed Route), the Department found that the Proposed Route would temporarily or permanently impact less than 1 acre of Category 2 Riparian Vegetation, and would temporarily impact 5.5 acres of Category 3 Riparian Vegetation. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 318 of 10016.) At Table FW-2 (Estimated Temporary and Permanent Habitat Impacts and Proposed Mitigation – Alternate Route Segments), the Department further found that the Alternate Route Segments would not have any temporary or permanent impacts on Riparian Vegetation. (*Id.* at page 319 of 10016.)

Fish passage

37. There is no Council standard that specifically addresses fish passage. However, under the Council’s General Standard of Review, the Council must determine whether the proposed facility complies with all other applicable Oregon statutes and rules identified in the project order. OAR 345-022-0000(1)(b). The Second Amended Project Order directed that Idaho Power address compliance with ODFW’s Fish Passage laws, ORS 509.585 and OAR Chapter 635, Division 412. (ODOE - B2HAPPDoc15 ApASC Second Amended Project Order 2018-07-26, page 24 of 29.)

38. In the Second Amended Project Order, the Department ordered as follows with regard to ASC Exhibit BB:³¹

Include information in Exhibit BB related to the following: Compliance with the ODFW Fish Passage rules will be included in and governed by the site certificate. Provide evidence in this exhibit of the facility’s compliance with the applicable Fish Passage rules OAR Chapter 635, Division 412.

(ODOE - B2HAPPDoc15 ApASC Second Amended Project Order 2018-07-26, page 24 of 29.)

³¹ OAR 345-021-0010(1)(bb) requires the applicant to provide “[a]ny other information that the Department requests in the project order or in a notification regarding expedited review.”

39. In ASC Exhibit BB, Idaho Power included its Fish Passage Plan as Attachment BB-2. In Attachment BB-2, Idaho Power explained that the project will include development of new access roads and improvement of certain existing roads and that some of the roadwork will require crossings of fish-bearing streams. Idaho Power added that, based on OAR 635-412-0020, new road construction affecting fish-bearing streams in Oregon will trigger fish passage rules and require review by the ODFW. (ODOE - B2HAPPDoc3-45 ASC 28_Exhibit BB_Other_Info_ASC 2018-09-28, page 57 of 209.)

40. In the Introduction to the Fish Passage Plan (Attachment BB-2), Idaho Power explained its methodology compliance with the ODFW's Fish Passage rules. Idaho Power stated, in pertinent part:

The determination of fish-bearing streams was originally reported in the Fish Habitat and Stream Crossing Assessment Summary Report (Tetra Tech 2014). The report identified a total of 18 fish-bearing streams that would be crossed by roads, which included 1 new and 17 existing road-stream crossings. The report was submitted to the ODFW and the Oregon Department of Energy (ODOE) in October 2014 for agency review and approval.

Following the submittal of the Tetra Tech (2014) report, crossing types (and alternatives) for each of the 18 fish-bearing road-stream crossings were identified. These determinations were based on existing structure condition, crossing risk analysis, field data, and analyses that utilized site hydrology, stream characteristics, crossing size, and road ingress/egress. * * *.

* * * * *

After the approval of the Tetra Tech (2014) report and Tetra Tech (2015) Fish Passage Plans and design drawings, major route modifications were identified in 2016. As a result, additional surveys were conducted in the summer of 2016 to evaluate the new road crossings established by the route modifications.

* * * * *

The Tetra Tech (2016) report identified a total of 58 fish-bearing streams that would be crossed by access routes within the states of Oregon and Idaho. All routes are on existing roads and all but 4 have existing crossing structures (bridge, culvert, or established ford). Crossing Type 1 or 2 was identified as the proposed alternative for 50 of the 58 sites (see Table 1). Based on OAR Chapter 635, Division 412, Fish Passage, these crossing sites are not expected to trigger ODFW fish passage requirements because they are existing structures that do not require any new construction or major replacement. * * *.

Crossing Types 3A and 3B were selected as proposed alternatives for the remaining seven crossing sites; these crossings were deemed likely to trigger ODFW review because they would require some new construction (see crossings

highlighted in green on Table 1). This document describes the types of crossings associated with the seven fish-bearing stream crossings and provides ODFW Fish Passage Plans and designs for those crossings.

(ODOE - B2HAPPDoc3-45 ASC 28_Exhibit BB_Other_Info_ASC 2018-09-28, pages 57-61 of 209.)

41. In the Fish Passage Plan, Idaho Power used the term “fish-bearing” to describe any stream inhabited by “native migratory fish.” For purposes of evaluating the applicability of the ODFW’s Fish Passage rules to a particular crossing, Idaho Power did not distinguish between the types of native fish (anadromous or resident) in labeling a stream as “fish-bearing.” Rather, Idaho Power considered all streams labeled “fish bearing” in the Fish Passage Plan to be inhabited by “native migratory fish” for purposes of the Fish Passage rules. (James Rebuttal Test. at 10.)

42. Idaho Power identified the fish bearing status of streams by using a combination of desktop and field survey analysis. The desktop analysis included GIS mapping of fish bearing streams along the project route, incorporating data from existing GIS data layers and sources (e.g., StreamNet, ODFW, and the Oregon Department of Forestry) into one GIS layer. Idaho Power created maps of fish bearing streams along the project route and distributed the maps to biologists at the ODFW, USFS, and the BLM for review and comment. (James Rebuttal Test. at 12.) Based on comments received from agency review and other local biologists and further evaluation of GIS information, Idaho Power updated the GIS layer to identify the extent of fish distribution and locations for which the ODFW had already made a fish presence determination, as well as additional upstream extents identified as potentially fish bearing. (*Id.* at 12-13.)

43. Following methods reviewed and approved by the ODFW, Idaho Power conducted fisheries habitat and presence surveys to collect data to determine whether streams not already designated as fish bearing by the ODFW did or could support fish use. Idaho Power also collected habitat data to help describe riparian and instream condition as important components of fish habitat quality. Idaho Power also collected habitat data to provide additional information about project-related risks to assist with the crossing assessments associated with avoidance and minimization measures at each crossing location. (James Rebuttal Test. at 13.)

44. Idaho Power assumed that streams designated as fish bearing by ODFW had fish, so the Company did not evaluate these streams for fish presence during field surveys. Idaho Power evaluated other streams identified as potentially fish bearing primarily based on habitat conditions at or near the crossing. (James Rebuttal Test. at 14.) In 2014 and 2016, Idaho Power surveyed streams and crossing sites in the upper Ladd Creek watershed for the presence of fish. (*Id.* at 15-16.)

45. In ASC Exhibit BB, Attachment BB-2 (Fish Passage Plans and Designs), at Table 1 Idaho Power listed the stream name; the crossing identification number; the nearest proposed route milepost; the ownership (public or private); the fish use; the risk ratings; the existing crossing type (culvert, bridge or ford); the potential crossing types (proposed type and potential alternatives); a description of the crossing type; considerations, if any; and the ODFW Fish

Passage trigger, if any. (ODOE - B2HAPPDoc3-45 ASC 28_Exhibit BB_Other_Info_ASC 2018-09-28, pages 63-66 of 209.)

46. ASC Exhibit BB, Attachment BB-2 (Fish Passage Plans and Designs) includes design descriptions for seven individual crossings: (1) Little Rock Creek, Site R-33010; (2) Rock Creek, Site R-33011; (3) Rock Creek, Site R-33033; (4) Rock Creek, Site R-33147; (5) Goodman Creek, Site R-65725; (6) Cavanaugh Creek, Site R-66818; and (7) Benson Creek, Site R-68790. (ODOE - B2HAPPDoc3-45 ASC 28_Exhibit BB_Other_Info_ASC 2018-09-28, pages 75-89 of 209; *see also* James Rebuttal Test. at 18.)

47. None of the road crossings covered in the Fish Passage Plan are located in the upper Ladd Creek watershed. (James Rebuttal Test. at 18.) None of the crossings in the upper Ladd Creek watershed trigger the Fish Passage Approval requirements because Idaho Power is not proposing any new construction or major replacements at any of the road-stream crossings in the upper Ladd Creek watershed. (*Id.*) Regardless of whether the streams in the upper Ladd Creek watershed were identified as fish bearing or non-fish bearing, the Fish Passage Plan and Fish Passage Approval requirements are not triggered because Idaho Power is not proposing construction of any new, or major replacement of existing, artificial obstructions on any of the road-stream crossings in that watershed. (*Id.* at 18-19.)

48. Assuming the presence of Snake River Basin steelhead in the upper Ladd Creek watershed does not change the fact that Idaho Power is not proposing any new, or replacements of, any artificial obstructions in the upper Ladd Creek watershed. Idaho Power included information on the streams in the upper Ladd Creek watershed only as background and context in ASC Exhibit BB, Attachment BB-2. (James Rebuttal Test. at 19.) Moreover, the Fish Passage Rules apply to projects proposed for streams that are inhabited, or were historically inhabited, by native migratory fish; that category includes many different species of trout, including redband, rainbow, and steelhead. Idaho Power's Fish Passage Plan did identify streams in the upper Ladd Creek watershed as containing native migratory fish. Therefore, the fact that there might be an additional species of native migratory fish present (the Snake River Basin steelhead) would not change the outcome of Idaho Power's analysis. (*Id.* at 19-20.)

49. In ASC Exhibit P1, Idaho Power analyzed fish and wildlife habitat across the entirety of the project, including those portions of the project affecting the upper Ladd Creek watershed. In that exhibit, Idaho Power discussed the protocols it used to obtain information on the types of habitat in the project area, and categorize the habitats under ODFW's Fish and Wildlife Habitat Mitigation Policy (OAR 635-415-0025). (*See generally* ODOE – B2HAPPDoc3-25 ASC 16A_Exhibit P1_Wildlife_ASC_Part 1_Main thru Attach P1-6 rev 2018-09-28, pages 12-36 of 940). Idaho Power also explained the mitigation measures it would employ for each habitat category. (*Id.* at pages 773-940).

50. ASC Exhibit P1-7B, the Fish Habitat and Stream Crossing Assessment Summary Report, summarizes the results of field surveys conducted in 2014 and 2016 of potential transmission line or access road crossings of fish-bearing streams along the proposed and alternative routes of the project. The surveys assessed fish habitat conditions, stream crossing characteristics, and the crossing risks. The report also describes the steps Idaho Power Company

(IPC) will take to avoid, minimize, and mitigate the potential stream crossing impacts. (ODOE - B2HAPPDoc3-28 ASC 16A_Exhibit P1_Wildlife_ASC_Part 3_Attach P1-7B 2018-09-28, page 5 of 164.) In ASC Exhibit P1-7B, Idaho Power discussed the assessment methods for the fisheries habitat and crossing surveys. Idaho Power noted that:

The intent was to survey all 128 potential fish-bearing stream crossings (road and transmission line), regardless of perennial, intermittent, or ephemeral designation. However, landowner permission was not granted for all crossing sites. For sites with no access, habitat data were collected, if possible, on the same stream as close to the crossing as access allowed. Some sites had no or only indirect surveys, including 22 sites with no field surveys and another 15 sites that were surveyed at a nearby location other than the direct crossing site.

(*Id.* at page 10 of 164.)

51. In ASC Exhibit P1, Idaho Power described the potential impacts of the project on fish and wildlife species and showed how the project will be consistent with the ODFW's fish and wildlife habitat mitigation goals and standards. Idaho Power included, as ASC Exhibit P1 Attachment P1-6, a draft Fish and Wildlife Habitat Mitigation Plan setting forth the mitigation measures the Company will implement to achieve the goals and standards set out in OAR 635-415-0025. (ODOE - B2HAPPDoc3-25 ASC 16A_Exhibit P1_Wildlife_ASC_Part 1_Main thru Attach P1-6 rev 2018-09-28, pages 778-815 of 940.) Idaho Power considered all fish bearing streams to be Habitat Category 2, including the streams affected by the seven crossings approved in the Fish Passage Plan. In addition, Idaho Power categorized as Habitat Category 2 each of the fish bearing streams in the upper Ladd Creek watershed above the Interstate 84 culvert within the project site boundary. Therefore, Idaho Power will employ the avoidance, minimization, and compensatory mitigation measures applicable to Habitat Category 2 for those streams in the upper Ladd Creek watershed. (James Rebuttal at 24-25.)

52. Habitat categorization depends on the functions and values of the stream course, and whether or not the habitat meets the definitions for irreplaceable, essential, limited, or important as described in OAR 635-415-0005. The presence of a listed fish does not automatically make a stream Habitat Category 1 or 2. (Reif Rebuttal Test. at 7.) Habitat categorization in ODFW's mitigation policy is based on the functions and values of the habitat, regardless of the presence of a migratory fish or a special status species. Therefore, the mere presence of a special status species does not automatically elevate the habitat categorization of a given area. (Reif Cross-Exam. Test., Tr. Day 5 at 84-85.)

53. In the Proposed Order, the Department noted that fish species can exist within degraded habitat and, even with the presence of a state-listed threatened and endangered species, the habitat does not meet ODFW's definition of Category 1 habitat under OAR 635-415-0025(1) because it is replaceable (*i.e.* waterways could be rehabilitated). (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 316 of 10016, n. 321.)

54. In the Proposed Order, the Department imposed Recommended Fish and Wildlife Condition 4 to ensure that the Fish and Wildlife Habitat Mitigation Plan is consistent with the

ODFW habitat mitigation goals and standards described in OAR 635-415-0025. Recommended Fish and Wildlife Condition 4 requires, among other things, that prior to construction of any phase or segment of the facility, Idaho Power finalize, and submit to the Department for its approval, a final Fish and Wildlife Habitat Mitigation Plan, based on the plan provided as ASC Attachment P-6. The Department specified the information to be included in the final Fish and Wildlife Habitat Mitigation Plan and required that the plan address the potential habitat impacts through mitigation banking, an in-lieu fee program, development of mitigation projects by the certificate holder, or a combination of the same. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 328 of 10016.)

55. In the Proposed Order Section IV.H., Fish and Wildlife Habitat: OAR 345-022-0060, the Department found, in pertinent part, as follows

As depicted in ASC Exhibit P1, Table P1-18, the proposed transmission line would span 47 fish bearing streams and 18 roads would require road or crossing modifications involving fish bearing streams. All of these crossings could potentially include Columbia Basin rainbow trout. The fish passage plans and designs for the seven temporary road crossing structures that would require review by the ODFW are included in Exhibit BB, Attachment BB-3. The Department's evaluation of compliance with ODFW Fish Passage rules is found at Section IV.Q.4., Fish Passage. There, the Department recommends Council find that the applicant's proposed fish passage compliance plan is sufficient to demonstrate compliance with the ODFW Fish Passage rule, that the plan should be finalized prior to construction based on final facility design, and that the plan should be implemented during construction.

* * * * *

Based on the applicant's designs to minimize the number of fish-bearing crossings, and subject to compliance with these fish passage plans and designs, the proposed transmission line is unlikely to adversely affect fish passage. See Section IV.Q.4., Fish Passage, for the Department's assessment of compliance with the ODFW Fish Passage rules and requirements.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 351-53 of 10016.)

56. In the Proposed Order Section IV.Q.4, Fish Passage: OAR 635-412-0035, the Department found, in pertinent part, as follows:

A Report titled, Fish Habitat and Stream Crossing Assessment Summary Report, was submitted to the Department and ODFW in 2014. The report was updated in 2016 and identified a total of 58 fish-bearing streams that would be crossed by access routes within the states of Oregon and Idaho, of which seven crossing sites were identified as potentially triggering ODFW fish passage. Table 1 in ASC Exhibit BB, provides the stream name, proposed crossing type, and fish passage

information. Crossing Types 3A and 3B were the crossing designs selected for the seven crossing sites; these crossings were deemed likely to trigger ODFW review because they would require some new construction.

* * * * *

If any future route modifications require road crossing improvement or modifications beyond those identified in the fish passage plans, as explained in the Fish Passage Plan, the applicant proposes to install all culverts or other stream crossing structures in accordance with ODFW fish passage rules and approvals. Furthermore, comments received by the public suggest that certain culverts on Ladd Creek, which was not identified in the application as supporting anadromous fish, were recently modified and as a result Ladd Creek now contains anadromous fish. To ensure any such new information about stream status and related fish passage is addressed prior to construction, the applicant proposes to request any new information about stream status from ODFW and seek ODFW concurrence on stream status prior to finalizing the Fish Passage Plan.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 693-94.)

57. In the Proposed Order, the Department also recommended Fish Passage Condition 1, which, among other things, requires Idaho Power to “finalize, and submit to the Department for its approval in consultation with ODFW, a final Fish Passage Plan.” (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 694.) Furthermore, the Department required that, as part of finalizing the Fish Passage Plan, “the certificate holder shall request from ODFW any new information on the status of the streams within the site boundary and shall address the information in the final Fish Passage Plan.” (*Id.*) The Department recommended that Council conclude that the proposed facility, including the proposed and alternative routes, complies with the Fish Passage Requirements of OAR Chapter 635, Division 412. (*Id.* at 695-96.)

58. ASC Exhibit P1-7B, Table 3 identifies five road-stream crossing locations in the Ladd Creek watershed with “non-fish” stream designations (R-37018, R-37117, R-37121, R-37124, R-35660). (ODOE - B2HAPPDoc3-28 ASC 16A_Exhibit P1_Wildlife_ASC_Part 3_Attach P1-7B 2018-09-28, page 24 of 164.) While ODFW found that Idaho Power’s methods for evaluating fish presence generally supports the “non-fish” designations for these five crossings, ODFW was not able to definitively identify the exact location of these five crossings in the maps provided in the ASC and therefore could not confirm the non-fish determinations at these crossing locations. (Apke Rebuttal Test. at 2-3.) If Idaho Power provided better maps, ODFW may be able to affirm the non-fish designation for these locations or require that the designation be changed to fish bearing. If the fish use determinations for any of these stream crossings changed from non-fish to fish bearing, then Idaho Power would need to coordinate with ODFW and conduct new crossing evaluations to inform whether the Fish Passage rules apply to these crossings. (*Id.* at 2-4.)

59. To address the concern that ODFW was unable to confirm the non-fish designations at these five unnamed stream crossings, the Department recommended revisions to Recommended Fish Passage Condition 1, paragraph (a). The Department recommended including a requirement that, as part of Idaho Power finalizing the Fish Passage Plan, Idaho Power further confer with ODFW about these crossings:

In addition, the certificate holder shall seek concurrence from ODFW on the fish-presence determinations for non-fish bearing streams within the Ladd Creek watershed, as presented in ASC Exhibit P1-7B Table 3. If the certificate holder in consultation with ODFW, determines any of the previously identified non-fish bearing streams within the Ladd Creek Watershed to be fish bearing, the certificate holder shall complete a crossing risk evaluation and obtain concurrence from ODFW on applicability of fish passage requirements. If fish passage requirements apply, certificate holder shall seek approval from the Energy Facility Siting Council of a site certificate amendment to incorporate ODFW approval of new crossings and fish passage design/plans and conditions.

(ODOE Rebuttal to Direct Testimony, Evidence and Response to Proposed Site Certificate Conditions at 43; *see also* Apke Rebuttal Test.)

Findings related the Historic, Cultural and Archaeological Resources (HCA) standard

60. ASC Exhibit S must include information about historic and cultural resources within the analysis area that have been listed, or would likely be eligible for listing, on the National Register of Historic Places (NRHP) and archaeological resources within the analysis area. ASC Exhibit S must also include information about the significant potential impacts, if any, of the construction, operation and retirement of the proposed facility on these resources and a plan for protection of those resources. The protection plan must include the applicant's proposed monitoring program, if any, for impacts to historic, cultural and archaeological resources during construction and operation of the proposed facility. OAR 345-021-0010(1)(s).

61. In the Second Amended Project Order, the Department directed Idaho Power to include the survey methodology, survey areas, and the results of all surveys conducted for historic, cultural, and archaeological resources, and an analysis of any significant adverse impacts anticipated and proposed mitigation measures. In addition, the Department directed Idaho Power to include maps showing important historic trails located within the Historic, Cultural, and Archaeological Resources analysis area,³² including the segments of the Oregon Trail that are listed or eligible for listing on the NRHP, and discuss measures to avoid or mitigate for impacts to historic trails. (ODOE - B2HAPPDoc15 ApASC Second Amended Project Order 2018-07-26, page 21 of 29.)

³² For purposes of the HCA Standard, the analysis area includes all areas within the project site boundary (the Direct Analysis Area) and the area that extends five miles or to the visual horizon, whichever is closer, on either side of the centerline of the Proposed Route and alternative segments. The Direct Analysis Area plus this five-mile radius make up the Visual Assessment Analysis Area, also known as the Area of Potential Effects (APE). (ODOE - B2HAPPDoc3-36 ASC 19_Exhibit S_Cultural_ASC_Public 2018-09-28, page 21 of 783.)

62. In the Second Amended Project Order, the Department recognized that, due to restricted access to some portions of the site boundary, Idaho Power would be unable to demonstrate compliance for the entirety of the analysis area prior to obtaining a site certificate. To address this limitation, on April 24, 2018, the Department issued a memorandum titled “Energy Facility Siting Council Decisions for Linear Facilities with Restricted Access within a Site Boundary: Boardman to Hemingway Transmission Line.” This memo outlined how the Department will review applications and make recommendations to Council for historic, cultural and archaeological resources that were evaluated in the pASC and ASC. In the Second Amended Project Order, the Department also explained that once Idaho Power gains access to previously restricted areas, the Company shall include that information via a site certificate amendment process. The Department directed Idaho Power to include in ASC Exhibit S as much information as possible about the field surveys conducted to date for cultural resources on state, private, and federal lands, and the schedule for future surveys. (ODOE - B2HAPPDoc15 ApASC Second Amended Project Order 2018-07-26, page 21 of 29; Ranzetta Rebuttal Test. at 10.)

63. As discussed previously, because the proposed facility crosses stretches of land managed by the BLM, the project is also subject to federal permitting processes. The BLM is the lead federal agency responsible for completing the NEPA environmental impact analysis, which addresses, among other things, the potential cultural, historic, and archaeological impacts caused by the project and compliance with the National Historic Preservation Act (NHPA), Section 106. The BLM issued its final Environmental Impact Statement (FEIS) in November 2016 and its Record of Decision (ROD) in November 2017. The FEIS and ROD included the results of the BLM’s government-to-government tribal consultations and consultations with other parties with interest in the project’s cultural resources impacts. (Ranzetta Rebuttal Test. at 12-13; ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 440 of 10016).

64. The BLM’s NHPA Section 106 process for the B2H project resulted in a Programmatic Agreement (PA). The PA outlined the process for identifying and evaluating historic and cultural properties, assessed the effects of the project on historic and cultural properties, and set out measures to avoid, minimize and mitigate adverse effects that may be caused by the project on federal public land. The PA included provisions requiring the BLM, in consultation with the parties to the PA, to draft a Historic Properties Management Plan (BLM HPMP) that characterizes the historic properties identified within the project area. The BLM HPMP will be used as a guide to address measures to avoid, minimize, and mitigate adverse effects to historic properties located on federal land. Idaho Power included the PA as ASC Exhibit S, Attachment S-5.³³ (Ranzetta Rebuttal Test. at 15-16; ODOE - B2HAPPDoc3-36 ASC

³³ The following agencies and entities were required signatories to the PA: BLM, USFS, Bonneville Power Administration, US Army Corps of Engineers, BOR, Oregon State Historic Preservation Officer, Idaho State Historic Preservation Officer, Washington Dept. of Archaeology and Historic Preservation, the Confederated Tribes of the Umatilla Indian Reservation Tribal Historic Preservation Officer, and the Advisory Council on Historic Preservation. The following entities were invited and/or concurring signatories to the PA: Idaho Power, the Department, US Fish and Wildlife Service, National Park Service, Oregon-California Trails Association, Oregon Historic Trails Advisory Council, Lewis and Clark

19_Exhibit S_Cultural_ASC_Public 2018-09-28, pages 325-54 of 783.)

65. In ASC Exhibit S, Idaho Power set out its cultural resources inventory methodology aimed at ensuring compliance with the Council's HCA standard. Idaho Power described the studies that were, and will be, conducted to locate, identify, and assess the significance of historic and cultural resources and archaeological sites within the analysis area. (ODOE - B2HAPPDoc3-36 ASC 19_Exhibit S_Cultural_ASC_Public 2018-09-28, pages 27-29 of 783.)

66. Idaho Power identified cultural resources within the analysis area that are listed, or have been determined or recommended eligible for listing, on the NRHP. Idaho Power also included resources that have not been evaluated for NRHP eligibility (*i.e.*, unevaluated) as potentially NRHP-eligible resources. Idaho Power completed its evaluation of cultural resources in accordance with the PA. Idaho Power's inventory and analysis involved a records search, literature review, and multiple field studies. Idaho Power will continue to perform additional inventorying and evaluating of cultural resources in accordance with the PA and Council standards. (Ranzetta Rebuttal Test. at 21-22.)

67. Idaho Power conducted its field surveys consistent with applicable survey protocol plans discussed in the PA. The field surveys include a Cultural Resources Pedestrian Survey of the Direct Analysis Area and surveys in support of the Visual Assessment of Historic Properties Study Plan (VAHP Study Plan) within the Visual Assessment Analysis Area. (Ranzetta Rebuttal Test. at 27; ODOE - B2HAPPDoc3-36 ASC 19_Exhibit S_Cultural_ASC_Public 2018-09-28, page 30 of 783; *see also* ASC, Exhibit S, Attachment S-2: Visual Assessment of Historic Properties Study Plan, ODOE - B2HAPPDoc3-36 ASC 19_Exhibit S_Cultural_ASC_Public 2018-09-28, page 196 of 783.)

68. Idaho Power prepared its methodology for assessing indirect impacts to historic properties (the VAHP Study Plan) in consultation with the Section 106 Cultural Resources Working Group. The VAHP Study Plan, ASC Exhibit S, Attachment S-2,³⁴ guided the Visual Assessment of aboveground resources potentially affected by the construction and operation of the proposed facility. (Ranzetta Rebuttal Test. at 27.) Idaho Power conducted its visual assessment of above-ground resources in accordance with the VAHP Study Plan, and in two phases, the reconnaissance level survey (RLS), Phase 1, and the intensive level survey (ILS), Phase 2. (*Id.* at 37-39.) The ultimate goal of the visual assessment was to identify those adverse indirect visual effects on historic properties and trails that might diminish the integrity and the characteristics that make the historic property or trail eligible for the NRHP. (Ranzetta Rebuttal Test. at 43-44; *see also* ODOE - B2HAPPDoc3-36 ASC 19_Exhibit S_Cultural_ASC_Public 2018-09-28, page 217 of 783.)

The pre-construction finalization of the HPMP will be based on a final visual assessment of historic properties (Phase 7), conducted in accordance with the Visual Assessment of Historic Properties Study Plan (ASC Exhibit S Attachment S-2), which will be reviewed and commented on by federal and state agencies, and consulting parties through the BLM's Programmatic Agreement (ODOE - B2HAPPDoc3-36 ASC 19 Exhibit S Cultural ASC Public 2018-09-28. Page 224 of 783).

OCTA, a non-governmental agency focused on protection and preservation of ONHT resources is a-concurring party to the Programmatic Agreement and therefore will, prior to construction of the transmission line, review and comment on the impacts and mitigation resulting from the final visual

assessment of historic properties, including ONHT resources (ODOE - B2HAPPDoc3-36 ASC 19 Exhibit S Cultural ASC Public 2018-09-28. Page 327 of 783, lines 17-20).

69. Idaho Power completed cultural resources field surveys for the project consistent with applicable survey protocol plans. Idaho Power has not yet completed the Enhanced

Heritage Trail Foundation, Burns Paiute Tribe, and the Fort McDermott Paiute and Shoshone Tribe. (ODOE - B2HAPPDoc3-36 ASC 19_Exhibit S_Cultural_ASC_Public 2018-09-28, pages 353-72 of 783.)

³⁴ ODOE - B2HAPPDoc3-36 ASC 19_Exhibit S_Cultural_ASC_Public 2018-09-28, pages 196-234 of 783.

Archaeological Survey (EAS), but will do so following issuance of the site certificate and prior to construction. This future survey will address archaeologically sensitive areas, parcels that were not accessible during the pedestrian survey and impacted, unavoidable resources in the final design of the project. (ODOE - B2HAPPDoc3-36 ASC 19_Exhibit S_Cultural_ASC_Public 2018-09-28, page 30 of 783; Ranzetta Rebuttal Test. at 33-34.)

70. In ASC Exhibit S, Idaho Power noted that the project will cross areas that include state and national historic trails (NHT). The Company explained:

The Oregon NHT is the only NHT within the direct analysis area and is crossed 17 times by the direct analysis area Project in four counties. Separate from the NHT, the direct analysis area crosses a total of 12 segments of the Oregon Trail identified by Project surveys documented in confidential Attachments S-6 and S-10. Seven of these crossings are within the construction footprint. A total of 24 segments of the Oregon Trail documented by Project surveys are within the Visual Assessment analysis area. Three of the Oregon Trail segments documented by Project surveys are NRHP-listed: 35MW00224 (Well Spring, Oregon Trail Site), 35MW00227, 35MW00230 (Emigrant Cemetery), and Oregon Trail - Well Spring Segment. All three sites are within the Visual Assessment analysis area. No NRHP-listed segments of the Oregon Trail are within the direct analysis area.

(ODOE - B2HAPPDoc3-36 ASC 19_Exhibit S_Cultural_ASC_Public 2018-09-28, page 131 of 783.)

71. In the VAHP Study Plan, Idaho Power employed a visual assessment methodology specific to NHTs and associated resources (*e.g.*, stage stations and/or gravesites), providing methods to identify and record historic trail segments during the assessment phases. Idaho Power's consultants assessed indirect effects by using GIS modeling and mapping overlays, analyzing aerial photographs, determining whether the resource has potential views of the proposed facility, and whether those potential views would diminish the characteristics that make the trail-related resource eligible for the NRHP. (Ranzetta Rebuttal Test. at 40; *see also* ODOE - B2HAPPDoc3-36 ASC 19_Exhibit S_Cultural_ASC_Public 2018-09-28, pages 211-218 of 783.)

72. As ASC Exhibit S, Attachment S-9, Idaho Power submitted a draft Historic Properties Management Plan (EFSC HPMP), prepared specifically for the Department to demonstrate compliance with the Council's siting standards and certification process.³⁵ The

³⁵ The Introduction to the EFSC HPMP explains:

Although the PA can support the EFSC process, the PA does not supersede the EFSC site certificate process and cannot be fully relied upon to determine compliance with EFSC's standards. Therefore, this HPMP was prepared specifically for ODOE and to comply with the EFSC certification process. It may be modified as necessary following completion of the BLM's HPMP or incorporated as appropriate into the BLM's HPMP through BLM's consultation with ODOE as a party to the PA.

(Proposed Order, Attachment S-9, page 1; ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 9597 of 10016.)

ESFC HPMP describes the methods for determining NRHP eligibility and effects and provides a general overview of the measures Idaho Power will implement to avoid, minimize and mitigate adverse effects to cultural resources that may result from the project. The cultural resources addressed in the EFSC HPMP include properties listed on, or likely to be listed on, the NRHP (NRHP-eligible and including sites determined significant in writing by a Native American tribe), archaeological sites on public or private land, and archaeological objects on private land within the project site boundary. (ODOE - B2HAPPDoc3-36 ASC 19_Exhibit S_Cultural_ASC_Public 2018-09-28, pages 699-747 of 783; *see also* ODOE - B2HAPPDoc3-54 ASC Exhibit S_Att. S-9_HPMP Errata Info 2019-03-06, pages 1-8.)³⁶

73. The EFSC HPMP includes an avoidance and mitigation plan, describing the measures that Idaho Power has taken or will take to avoid, minimize, and/or otherwise resolve impacts to cultural resources under the Council's standards. The EFSC HPMP also includes a monitoring plan to document the effectiveness of the avoidance and mitigation measures and the circumstances under which cultural resource monitors will be present. In addition, the EFSC HPMP includes an inadvertent discovery plan that specifies the procedures to follow if Idaho Power discovers a cultural resource during construction, reclamation, and operation and maintenance that was not detected during surveys conducted prior to ground-disturbing activities. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 9597-98 of 10016; Ranzetta Rebuttal Test. at 17.)

74. As set out in the ESFC HPMP, Idaho Power's fieldwork during the RLS phase of the visual assessment identified 764 built environment resources in the Visual Assessment Analysis Area, including multiple crossings of historic trails and pre-contact resources, such as quarries and cairns. The ILS (Phase 2) of the Visual Assessment addressed 231 of these resources, including: NRHP-listed resources, resources that were recommended for additional study or NRHP evaluation, or unevaluated resources; archaeological sites with aboveground features; or newly identified resources following an updated literature search and data gap analysis to cover portions of the project that were not previously identified. Of the 231 resources addressed in the ILS study, 130 were evaluated for project effects and 101 were eliminated. (ODOE - B2HAPPDoc3-36 ASC 19_Exhibit S_Cultural_ASC_Public 2018-09-28, page 778 of 783). As a result of the project effects analysis, Idaho Power anticipated potential adverse effects for 39 resources. (Ranzetta Rebuttal Test. at 45-46; ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 9615 of 10016.)

75. The ESFC HPMP further states:

Fourteen of the 39 resources require further consultation and research before making a recommendation on Project effect avoidance, minimization, and/or mitigation strategies. The Project will cross three historic properties with the potential for direct adverse effects. A list of sites with potential adverse effects is

³⁶ The February 2019 Errata Sheet provides requested additional information and documents associated changes to the HPMP. (ODOE - B2HAPPDoc3-54 ASC Exhibit S_Att. S-9_HPMP Errata Info 2019-03-06, page 1 of 8.)

provided in Table 4-1. The majority of potential adverse effects could occur to stacked rock features/cairns. Due to the difficulty in dating and attributing cultural origin, additional consultation with ODOE, SHPO, and tribes will be conducted as an interim step towards determining if mitigation would be appropriate. Resource-specific management and/or treatment plans will be developed as needed as a result of consultations.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 9615 of 10016.)

76. In addition to considering the potential for site-specific impacts, Idaho Power performed an analysis that considered the potential cumulative impacts of the proposed facility on Oregon Trail resources. In Idaho Power's cumulative impacts analysis, the Company considered several variables that would bear on the magnitude of the cumulative impacts to the Oregon Trail, including distance, intervening topography, vegetation, atmospheric conditions, and the built environment. In many instances, previous introduction of roads, interstate highways, pipeline rights-of-way, electrical distribution and transmission lines, fence lines, and other forms of development already diminished the physical setting and/or landscape surrounding the Oregon Trail. Idaho Power also considered the trail segment's historical integrity, as over time, development has either diminished or stripped parts of the Oregon Trail of attributes contributing to the segments' historical importance, creating a disconnected historic district with contributing and non-contributing sections and sites. (Ranzetta Rebuttal Test. at 48-51; ODOE - B2HAPPDoc3-36 ASC 19_Exhibit S_Cultural_ASC_Public 2018-09-28, page 98 of 783.)

77. As a result of the cumulative impacts analysis, Idaho Power found that 43.89 miles of the Oregon NHT would have a potential view that is within 0.5 mile of the project's site boundary. For "Contributing Trail Segments" or segments of the Oregon Trail that have been previously identified by surveys or listed on the NRHP, Idaho Power reported that approximately 89.35 miles of these segments fall within the Visual Assessment Analysis Area and about 27.43 of those miles would have a potential view of the facility. As noted in the EFSC HPMP, although the cumulative effect data provides a general indication of the magnitude for indirect impacts, the resource-specific analysis performed during the ILS is more precise in its assessment of impacts to contributing resources associated with the Oregon Trail and informs Project planning in an effort to avoid, reduce, or mitigate impacts. (Ranzetta Rebuttal Test. at 51-52; ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 9618 of 10016.)

78. In the Proposed Order, the Department noted that it is a concurring party to the executed PA and that the provisions of the PA may be used to assist the Council in its review of the HCA Standard. In describing the interplay between the PA, the BLM HPMP, and the EFSC HPMP, the Department explained:

[W]hile the PA is not a binding document upon the Department and EFSC, as is described in this section, the Department is recommending use of the PA process, including the HPMP, to align to the maximum extent feasible, the EFSC review

with the federal government review as directed, by ORS 469.370(13). The PA allows for the final determinations of the potential impacts from the proposed facility to historic and cultural properties (including NRHP-listed, -eligible, and unevaluated resources) and the mitigation of adverse impacts that will be outlined in a Historic Properties Management Plan (HPMP). A HPMP required by the PA will be submitted to the BLM and will be reviewed by all PA parties, it is anticipated to be specific to compliance with Section 106 of the National Historic Preservation Act.

In order to address resources that are also protected under the EFSC standard (archaeological resources and objects on private lands, regardless of NRHP-eligibility status), an EFSC-specific HPMP for private and state lands is included as Attachment S-9 to Exhibit S and this order. The EFSC-specific HPMP is intended to maintain compliance with the EFSC standard as well as align with the evaluation, determinations, and mitigation that would be included in the HPMP required by the PA. The HPMP includes an Inadvertent Discovery Plan (IDP), which specifies steps to be taken if a previously unidentified cultural resource is discovered during construction, including stopping construction in the resource vicinity, agency and Tribal government notification and consultation, and data recovery or other mitigation and protection measures.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 440-41 of 10016.)

79. The Department further explained:

The applicant provides an impact assessment to satisfy OAR 345-022-0090(1)(a) which considers the likely NRHP-eligible Oregon Trail/NHT resources as a linear resource, consistent with [the SHPO's] Linear Resources Guidelines, and by individual trail segment, as summarized in Table HCA-3, NRHP-Eligible Oregon Trail/NHT Inventory in Analysis Area with Potential Indirect Impacts. The BLM, in consultation with SHPO, would determine appropriate mitigation for impacts based on a cumulative impact analysis from treating trail segments as a linear resource. Because BLM and SHPO review, during the Section 106 process, would evaluate cumulative impacts to the Oregon Trail/NHT as a linear resource and not necessarily the impacts of the proposed facility to individual trail segments within the affected area (i.e. location or county), Council must evaluate potential impacts and appropriate mitigation in this order, consistent with OAR 345-001-0010(33), based on potential impacts to listed or likely NRHP-eligible individual trail segments within the affected area.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 448 of 10016.)

80. With regard to appropriate mitigation for potential adverse impacts to Oregon Trail resources, the Department recommended as follows:

Based on the extent of potential adverse visual impacts to the NRHP-eligible Oregon Trail/NHT resources and within the 5-mile viewshed of the resource identified in Table HCA-3, presented in ASC Exhibit S Attachment S-10, the Department recommends Council require that mitigation include at least one minimization measure (design modification) and one measure resulting in restoration; preservation and maintenance; or compensation (OAR 345-001-0010(33)(b) and (c), (d) or (e)) directly benefiting the affected area – which the Department recommends be defined as the county within which the impacted resource is located. The Department notes that mitigation established through the federal Section 106 compliance review may be used to satisfy the EFSC mitigation requirement for listed or likely NRHP-eligible Oregon Trail/NHT trail segments if applicant can demonstrate that it addresses both the design modifications and the restoration; preservation and maintenance; or compensation mitigation within affected area (county), as included in the below Table HCA-4b (included in the HPMP). If not duplicated through the federal Section 106 process, the applicant shall establish the scope and scale of Table HCA-4b mitigation, prior to construction, subject to Department review and approval, in consultation with SHPO, its consultants, or other entities with expertise with historic trails.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 471 of 10016.)

81. In Table HCA-5b, the Department recommended that the EFSC HPMP establish the following mitigation for each impacted NHRP-Eligible Oregon Trail/NHT Segment: Design modification and at least one of the following, in order of priority:

- Purchase of conservation easement or other land protection where trail traces exist;
- Historic trails restoration within and outside the facility area;
- Land acquisition;
- Public signage, publication/print/media, and/or interpretive plans;
- Trail segment management plans;
- Additional literature or archival review (e.g. historic maps, local papers);
- Remote sensing;
- National Register nomination; Recording—
including HABS/HAER/HALS; [or]
- Funding for public interpretation, archeological resource, or other program benefiting Oregon Trail resources.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 471 of 10016.)

82. In the Proposed Order, the Department noted that some resources, including resources evaluated under the HCA standard, require field studies either during the preparation

of the ASC, or prior to construction of the facility that incorporates the final design and placement of facility components. The Department recommended that the certificate holder submit additional survey information as preconstruction conditions of approval included in the site certificate based upon the extensive and long-term, multi-year, comprehensive field-surveys, database reviews, and technical evaluations Idaho Power completed to inform certain ASC exhibits, including Exhibit S. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 53 of 10016.) The Department also noted that this approach for submitting additional survey information “provides an alternative to the recommendations outlined in the Department’s Energy Facility Siting Council Decisions for Linear Facilities with Restricted Access within a Site Boundary: Boardman to Hemingway Transmission Line memo (April 2018).” (*Id.* at page 54 of 10016, n. 54.)

83. In the Proposed Order, the Department found that the proposed facility would not result in a direct physical disturbance to any listed or likely NRHP-eligible Oregon Trail segments, but would “indirectly (crossing/visibility) impact some Oregon Trail segments.”³⁷ (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 449 of 10016.) The Department agreed with Idaho Power’s visual impact assessment, including visual impacts directly above the resource (crossing) and within a five-mile viewshed. The Department also found that, without mitigation, the proposed facility would result in adverse indirect impacts to nine NRHP-listed or eligible Oregon Trail/National Historic Trail segments (identified in the Proposed Order at Table HCA-3). (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 460-69 of 10016.)

84. In the Proposed Order, the Department included Recommended HCA Condition 1 requiring Idaho Power to “design and locate facility components to avoid direct impacts to Oregon Trail/National Historic Trail resources” consistent with the EFSC HPMP. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 474 of 10016.)

85. The Department also included Recommended HCA Condition 2, which requires Idaho Power to submit to the Department, SHPO, and applicable tribal governments for review to the Department for approval a final EFSC HPMP, based on new survey data from previously unsurveyed areas and the final design of the facility. Recommended HCA Condition 2 also requires that Idaho Power conduct all construction activities in compliance with the final Department-approved EFSC HPMP. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 514 of 10016.)

86. Proposed Order Table HCA-7 lists all the resources inventoried in the site boundary/Direct Analysis area and within the Visual Assessment Analysis Area that may experience a direct or indirect impact, including resources that may potentially be protected

³⁷ The Department explained that a direct impact is ground disturbing construction activity or permanent infrastructure placement, whereas indirect impacts include being able to see the proposed transmission line, towers, or a proposed access road from a resource or trail location. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 449 of 10016.)

under OAR 345-022-0090(1)(a) and OAR 345-022-0090(1)(b) of the ESFC standard.³⁸ Based on information provided by limited party John Williams, the Department added “Site 6B2H-MC-10,” located on property owned by Mr. Williams in Union County, to Table HCA-7 as a potentially impacted historic property or archaeological site on private land. Site 6B2H-MC-10 is described as a hunting blind, an unevaluated resource within the Visual Assessment Analysis Area (5.14 meters south of the Direct Analysis area southern boundary) on the Morgan Lake Alternative Route. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 499 of 10016.)

87. Based on the findings in the Proposed Order, and subject to compliance with the recommended conditions of approval, the Department concluded that, taking into account mitigation, the construction and operation of the proposed facility, including proposed and alternative routes, is not likely to result in significant adverse impacts to any historic, cultural, or archaeological resources, in compliance with the Council’s Historic, Cultural, and Archaeological Resources standard. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 515 of 10016.)

88. On June 28, 2021, based on a nomination by the Oregon State Advisory Committee on Historic Preservation and the Oregon SHPO, the La Grande to Hilgard Segment of the Oregon Trail (linear district) was officially listed in the National Register of Historic Places. (Williams Direct Test., Ex. 13.)

Findings related to the Land Use standard

89. In the Second Amended Project Order, the Department stated, in pertinent part, as follows with regard to ASC Exhibit K, Land Use:

Although local comprehensive plans and land use ordinances may have been amended since local comments were provided, ORS 469.504(1)(b)(A) and OAR 345-021-0050(6)(b)(A) require that the applicable local land use criteria are those in effect on the date the preliminary application for site certificate was submitted, February 27, 2013, for the local jurisdictions identified in the preliminary application. This includes Morrow, Union, Umatilla, Baker, and Malheur counties, and the City of North Powder.

* * * * *

Exhibit K shall include information necessary to demonstrate compliance with the applicable substantive criteria from each county and city code and comprehensive plan that are applicable to issuance of the required permits and approvals.

Exhibit K shall also provide evidence that the proposed facility would comply with the applicable statutory requirements related to the proposed facility, including ORS 215.283, and 215.275 and specifically including all requirements

³⁸ See ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 481-92 of 10016.

regarding the location of the proposed facility within EFU zones.

(ODOE - B2HAPPDoc15 ApASC Second Amended Project Order 2018-07-26, pages 15-16 of 29.)

90. The proposed transmission line crosses forest-related land use zones in Umatilla and Union Counties. In Union County, the proposed facility crosses land in the Timber-Grazing Zone, a hybrid farm-forest zone that includes farmland, rangeland, and forestland. (ODOE - B2HAPPDoc3-19 ASC 11_Exhibit K_Land Use_ASC 2018-09-28, pages 42, 238 of 614.)

91. The Union County Zoning, Partition and Subdivision Ordinance (UCZPSO) requires land in the Timber-Grazing Zone to be evaluated based on its “predominant use” to determine whether it is Goal 3 farmland or Goal 4 forestland.³⁹ Idaho Power worked with Union County planning staff to determine the predominant use of each of the 61 Union County parcels within the project site boundary located in the Timber-Grazing Zone. (ODOE - B2HAPPDoc3-19 ASC 11_Exhibit K_Land Use_ASC 2018-09-28, page 238 of 614.)

92. To determine the predominant use on each Union County hybrid-zoned parcel, Idaho Power used data from the National Resources Conservation Service Soil Survey Geographic Database (SSURGO), Union County tax lot data, and GIS mapping software. Based on a table provided by Union County planning staff listing each SSURGO soil type and the corresponding predominant use value for each soil type, Idaho Power assigned each parcel an initial predominant use value. Idaho Power then had Union County review each parcel’s initial predominant use value against 2011 aerial photography and tax lot records to adjust the predominant use to reflect current land use. (ODOE - B2HAPPDoc3-19 ASC 11_Exhibit K_Land Use_ASC 2018-09-28, page 239 of 614).

93. Union County’s review of Idaho Power’s predominant use analysis did not result in any adjustments to the predominant use value Idaho Power initially assigned to parcels in the Timber-Grazing Zone. For 18 of the 61 parcels in the Timber-Grazing Zone located near the National Forest, there was no SSURGO data available. Therefore, for these 18 parcels, in the

³⁹ In this context, Union County defines “predominant use” as “the most common use of a parcel when differentiating between farmland and forest land.” UCZPSO 1.08. The Union County Zoning Ordinance further states:

In determining predominant use NRCS Soil Conservation Service soil maps will be used to determine soil designations and capabilities. The results of this process will be the most important method in determining the predominant use of the parcel. Other factors which may contribute to determining predominant use include parcel characteristics such as a commercial stand of timber, and the current use of the property. Removing a commercial stand of timber from a property will not result in a conversion of predominant use unless the property is disqualified as forest land by the Oregon Department of Forestry.

(UCZPSO 1.08.)

absence of soil data, Idaho Power conservatively determined that the land had a predominant use of forestland. (ODOE - B2HAPPDoc3-19 ASC 11_Exhibit K_Land Use_ASC 2018-09-28, page 239 at 614.)

94. Idaho Power's predominant use analysis for the 61 parcels crossed by the proposed project in Union County's Timber-Grazing Zone showed that the predominant uses within the site boundary are split between forest and range land, with a negligible amount of high value crop land. (ODOE - B2HAPPDoc3-19 ASC 11_Exhibit K_Land Use_ASC 2018-09-28, page 239 of 614.) Idaho Power determined that, for the Proposed Route in Union County, approximately 53 percent of Timber-Grazing zoned land has a predominant use of rangeland and about 47 percent had a predominant use of forestland. For the hybrid-zoned land along the Morgan Lake Alternative Route, Idaho Power determined that about 60 percent had a predominant use of rangeland and about 40 percent was forestland. (*Id.*)

95. In ASC Exhibit K, Attachment K-2, the Right-of-Way Clearing Assessment, Idaho Power addressed existing forestry practices adjacent to the project and impacts to those practices that may occur as a result of the construction and operation of the project. Idaho Power described the county costs of the project within the forested lands analysis area. Idaho Power explained that Union County has 899,000 acres (69%) of forestland out of a total land area of 1,303,000 acres.⁴⁰ Idaho Power explained that the "economic impact to forest sector jobs in Union County is approximately \$97,000, which will be partially offset by agriculture or range land uses after the conversion." (ODOE - B2HAPPDoc3-19 ASC 11_Exhibit K_Land Use_ASC 2018-09-28, page 613 of 614.)

96. In ASC Exhibit K, Attachment K-2, Idaho Power also represented as follows:

The Forested Lands Analysis Area includes approximately 1,249 acres of forest and range lands; however, the forested acreage subject to permanent impact by conversion is substantially less (approximately 776 acres). Based on the results of the forested lands survey and analysis of the potential impacts and efforts to minimize and mitigate for project impacts, the Project will not cause (1) a substantial change in accepted forest or farm practices; or (2) a significant increase in the cost of accepted forest or farm practices on either lands to be directly impacted by the Project or on surrounding lands devoted to farm use.

(ODOE - B2HAPPDoc3-19 ASC 11_Exhibit K_Land Use_ASC 2018-09-28, pages 613-14 of 614.)

⁴⁰ As addressed in the *Ruling on Issues LU-2, LU-3, LU-5 and LU-6*, in ASC Exhibit K, Attachment 2, Idaho Power erred in calculating the percentage loss to the forestland base in Umatilla and Union Counties. However, the math errors were not material to Idaho Power's Goal 4 analysis and/or the proposed facility's compliance with the Land Use Standard. As pertinent here, in Union County, the percentage of land that would be converted from forestland to agricultural or range use is actually .059 percent (and not .00059 percent, as erroneously stated in ASC Exhibit K). *See Ruling on Issues LU-2, LU-3, LU-5 and LU-6* at 6, 15-16.

97. In ASC Exhibit K, Attachment K-1 (the Agricultural Lands Assessment), Idaho Power analyzed in detail the accepted farm practices in the area surrounding the project and the project's potential impacts on such practices. Idaho Power explained that the agricultural practices within the Agricultural Assessment Area in Union County included rangeland, rangeland/timber, and pasture and that potential impacts of the project include temporary (construction) and permanent (operational) disturbances, as well as the indirect impacts associated with these disturbances and the type of agricultural use disturbed.⁴¹ Idaho Power noted that indirect impacts may include growth-inducing effects caused by the project but occur later in time or farther removed in distance. Indirect impacts may also include changes in the pattern of land use, population density or growth rate, and the related effects of those changes on agriculture. Idaho Power reported that it will take minimization and mitigation actions to address potential impacts to agriculture, including but not limited to the following: restoring land to its former condition; compensating landowners for damages and/or impacts to agricultural operations caused as a result of project construction; micro-siting the towers to avoid agricultural areas, instituting weed control measures; preventing soil erosion; and other measures.⁴² (ODOE - B2HAPPDoc3-19 ASC 11_Exhibit K_Land Use_ASC 2018-09-28, pages 389-443 of 614.)

98. In ASC Exhibit K, Attachment K-1, Idaho Power also included an Agricultural Mitigation Plan identifying the measures that Idaho Power will take to avoid, mitigate, repair, and or provide compensation for impacts that may result from the construction or operation of the Project on privately owned agricultural land. Idaho Power committed to working with impacted landowners regarding mitigation measures and compensation for impacts on privately owned agricultural land. Idaho Power explained that the project, taking into account measures to minimize or mitigate impacts, will not force a significant change in, or significantly increase the cost of, accepted farming practices in the areas surrounding the project in Union County. (ODOE - B2HAPPDoc3-19 ASC 11_Exhibit K_Land Use_ASC 2018-09-28, pages 247, 389-443 of 614.)

99. In the Proposed Order, the Department reviewed ASC Exhibit K, Attachment K-1, Idaho Power's analysis of the proposed facility's impacts on Goal 3 agricultural lands. The

⁴¹ In his rebuttal testimony, Kurtis Funke summarized these impacts as follows:

[T]emporary impacts to field crops from the transmission line construction; permanent impacts to field crops from transmission line construction; impacts to use of aircraft for farming activities; impacts to field burning; impacts to crop production and irrigation; impacts to livestock operations; impacts to pasture/rangeland; impacts to fencing; impacts to organic farming; impacts to agricultural works; impacts from helicopter operations related to transmission line construction; and impacts to future development, crops, and practices.

(Funke Rebuttal Test. at 14.)

⁴² Of the 1,461 transmission towers along the proposed route, only 26 are proposed to be located within an irrigated portion of an agricultural field, and Idaho Power may be able to further reduce this total number through micrositing. (Funke Rebuttal Test. at 18; ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 8907 of 10016.)

Department noted that ORS 215.275(5) requires that the reviewing body impose clear and objective conditions of approval on the application to mitigate the impacts of the proposed facility on surrounding lands devoted to farm use to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands. The Department then reviewed and analyzed Idaho Power's draft Agriculture Assessment and the Agricultural Mitigation Plan (ASC Exhibit K, Attachment K-1).⁴³ To ensure compliance with the Agricultural Lands Assessment, the Department recommended that the Council impose Recommended Land Use Condition 14, as follows:

Recommended Land Use Condition 14: The certificate holder shall:

- a. Prior to construction of any phase or segment of the facility, the certificate holder in accordance with the OAR 345-025-0016 agency consultation process outlined in the draft Agriculture Assessment and Mitigation Plan (Attachment K-1 of the Final Order on the ASC), submit to the Department a final Agricultural Assessment and Mitigation Plan.
- b. During construction and operation of any phase or segment of the facility, implement the Agricultural Mitigation Plan as finalized per sub (a) of this condition.
- c. During operation, implement a post-construction monitoring plan to identify any remaining soil and agricultural impacts associated with construction that require additional restoration or mitigation, in accordance with Section 7.0 of the Agricultural Mitigation Plan, Attachment K-1 of the Final Order on the ASC.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 232 of 10016.)

100. With regard to ASC Exhibit K, Attachment K-2, the Department expressly approved of Idaho Power's methods for assessing potential impacts to forest practices.⁴⁴ The

⁴³ The Department also added provisions to the Agricultural Mitigation Plan, requiring Idaho Power to provide notification to the record owner of any agricultural lands containing high-value farmland, as defined in ORS 195.300(10), of the opportunity to consult with IPC for the purpose of locating and constructing the transmission line in a manner that minimizes impacts to high-value farmland farming operations. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 8917 of 10016.)

⁴⁴ The Department noted:

Based on the above-described approach, and record of consultation with Union and Umatilla Planning Departments to accurately identify and account for forest-zoned lands within the analysis area, the Department recommends Council find that the methods are valid for assessing potential impacts to forest practices.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 237 of 10016.)

Department found, in pertinent part, as follows:

Based on the removal of approximately 776 acres of land from timber harvest production, the applicant quantifies the estimated harvest value to then assess potential economic impacts from the proposed facility. Potential impacts to the cost of accepted forest practices is then based on the economic impact of the proposed facility.

* * * * *

[P]otential impacts to the cost of accepted forest practices from the proposed facility include an annual economic revenue loss of \$212,530 and \$94,710 in Union and Umatilla counties, respectively; and, based on the 100 year (or more) estimated useful life of the proposed facility, a long-term loss of \$21.3 million and \$9.5 million in Union and Umatilla counties, respectively. The applicant notes that the actual value of a particular landowner's timber would be valued based on a timber appraisal completed at the time of land acquisition. As further described below, in addition to the land acquisition process, which would provide compensation for the economic loss of timber harvest area, the applicant proposes mitigation measures to minimize potential impacts to, and the cost of, accepted forest practices. To evaluate the significance of the removal of land from timber harvest potential, the applicant assesses the quantity of forest land lost compared to total forest land available (in acres), per county, resulting in approximately 0.07 and 0.4 percent loss in Union and Umatilla counties, respectively.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 238-40 of 10016.)

101. The Department also noted:

In addition, the applicant would compensate underlying landowners for the loss of land and timber production opportunity, for the life of the facility, based on a certified appraisal of the land value. Compensation would be implemented via private easement agreement or through negotiated settlement. Because this would occur during landowner negotiation or condemnation proceedings under the Oregon Public Utilities Commission, it is not specifically imposed as a site certificate condition or mitigation plan requirement. The Department recommends, however, that Council consider these processes, which would be outside of EFSC jurisdiction, to also provide mitigation consistent with OAR 345-010-0010(33) and would reduce potential impacts to accepted forest practices.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 242 of 10016.)

102. The Department addressed the proposed mitigation for potential impacts to

accepted forest practices. The Department recommended that the Council impose Recommended Land Use Condition 16, requiring implementation of the draft Right-of-Way Clearing Assessment:

Recommended Land Use Condition 16: The certificate holder shall:

- a. Prior to construction, in accordance with the OAR 345-025-0016 agency consultation process outlined in the draft Right-of-Way Clearing Assessment (Attachment K-2 of the Final Order on the ASC), submit to the Department for its approval, a final Right-of-Way Clearing Assessment. The protective measures described in the draft Right-of-Way Clearing Assessment in Attachment K-2 of the Final Order on ASC shall be included and implemented as part of the final Right-of-Way Clearing Assessment, unless otherwise approved by the Department.
- b. During construction, the certificate holder shall conduct all work in compliance with the final Right-of-Way Clearing Assessment.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 242 of 10016.)

103. The Department further found:

In addition, the applicant would compensate underlying landowners for the loss of land and timber production opportunity, for the life of the facility, based on a certified appraisal of the land value. Compensation would be implemented via private easement agreement or through negotiated settlement. Because this would occur during landowner negotiation or condemnation proceedings under the Oregon Public Utilities Commission, it is not specifically imposed as a site certificate condition or mitigation plan requirement. The Department recommends, however, that Council consider these processes, which would be outside of EFSC jurisdiction, to also provide mitigation consistent with OAR 345-010-0010(33) and would reduce potential impacts to accepted forest practices.

Based on the evaluation presented in ASC Exhibit K and reasoning and analysis presented in this order, and compliance with recommended Land Use Condition 16, the Department recommends Council find that the proposed facility would not result in significant adverse impacts to accepted forest practices nor result in a significant increase in the cost of accepted forest practices within the surrounding area and therefore would satisfy the requirements of OAR 660-006-0025(5)(a).

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 242 of 10016.)

104. With regard to the project's compliance with Statewide Planning Goal 3, Agricultural Lands, the Department found:

Goal 3 is implemented through applicable provisions of ORS Chapter 215 and each county's comprehensive plan and land use ordinances. As demonstrated above the proposed transmission line is allowed as a 'utility necessary for public service' on EFU-zoned lands under ORS 215.283(1)(c)(A) and ORS 215.275. As discussed above, and in compliance with ORS 215.275, the applicant's Agricultural Lands Assessment (ASC Exhibit K, Attachment K-1) demonstrates that the certificate holder would minimize impacts to accepted farming practices, and mitigate temporary and permanent impacts where necessary, in order to preserve and maintain agricultural lands consistent with the statutory framework developed to comply with Goal 3.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 246-47 of 10016.)

105. With regard to the project's compliance with Statewide Planning Goal 4, Forest Lands, the Department found:

[M]ost of the forest lands impacted by the proposed transmission line are in Umatilla and Union counties, where it would be conditionally permitted as a "new electric transmission line." As discussed above, the department recommends that the Council accept the applicant's interpretation that the term "new electric transmission line" includes all related and supporting facilities, including access roads. Based on that interpretation, the proposed transmission line and each of its related and supporting facilities are conditionally permitted in Goal 4 forest lands under OAR 660-006-0025(4)(q).

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 247 of 10016.)

106. With regard to the economic consequences of the proposed facility on Land Use concerns, the Department found:

Under the Council's Land Use standard, in order for the Council to grant a Goal 4 exception, the Council must find that the applicant has demonstrated that economic consequences of the proposed facility have been identified and mitigated in accordance with Council standards. The applicant indicates that construction and operation of the transmission line would result in the conversion of approximately 245.6 acre of forestland in Umatilla County and approximately 530.1 acres of forestland in Union County. These losses correspond to approximately [0.034] percent and [0.059] percent of total forestland within the counties, respectively. Additionally, the applicant estimates that the conversion of the above-described forestland would result in an "economic impact to forest sector jobs" in the amount of \$120,000 in Umatilla County and \$97,000 in Union County. The Department interprets "economic impacts" as "opportunity costs" to forestry industry due to land loss; the ASC does not appear to provide a specific

dollar estimate of the value of the land itself. The applicant also indicates that the project would provide economic benefits to the greater Pacific Northwest region, and would create direct economic benefits to the local communities through job creation, increased ad valorem taxes, and local spending stimulus.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 257-58 of 10016.)

107. With regard to Statewide Planning Goal 8 (Recreation Needs), the Department noted that while the proposed facility is not intended to satisfy recreational needs, compliance with the Council's Recreation standard ensures that the proposed facility will not adversely impact the state's recreational needs. As pertaining specifically to Morgan Lake Park (an important recreational opportunity in the project's analysis area under the Recreation standard), the Department referenced Idaho Power's Memorandum of Agreement (MOA) with the City of La Grande to distribute \$100,000 for recreational improvements to the park if Idaho Power selects the Morgan Lake Alternative route. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 250 of 10016.) The MOA contemplates that the funds would be used for upgrades to the park access road, a new entry gate, new toilets, day use area improvements, and signage. (*Id.*) The Proposed Order further states as follows:

Because the applicant's commitments described MOA, if executed, with the City of La Grande is part of the evidence Council could rely on to determine that the proposed facility would be consistent with Goal 8, the Department recommends Council impose the following condition:

Recommended Land Use Condition 17: Within 90-days of construction within Union County, if the Morgan Lake alternative route segment is selected at final facility design, the certificate holder shall provide the Department a copy of the Memorandum of Agreement, if executed, between the City of La Grande and certificate holder for improvements at Morgan Lake Park.

(*Id.* page 251 of 10016.)

108. With regard to compliance with the Land Use standard, the Department concluded:

Based on the foregoing findings and the evidence in the record, and subject to compliance with the recommended conditions, the Department recommends the Council find that the proposed facility, including the proposed and alternative routes, complies with the identified applicable substantive criteria and the directly applicable state statutes and rules and, therefore, complies with the Council's Land Use standard.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 260 of 10016.)

109. Limited party Gilbert raised concerns that Idaho Power did not provide sufficient

objective information on impacts the proposed facility may have on accepted farm practices, such as impacts from permanent project components, potential interference with pivotal irrigation systems, potential impacts from induced current, limiting the ability to use aircraft for farming activities, and impacts to soil and soil erosion. However, Idaho Power addressed these concerns and potential impacts in the Agricultural Lands Assessment and explained the actions the Company will take to avoid, minimize, mitigate, or compensate for these impacts. (Funke Rebuttal Test. at .52-66; ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 8897-8925 of 10016.)

110. Limited party Sam Myers is a farmer with a lifetime lease on dryland farm ground in Morrow County, Oregon. The proposed facility crosses Mr. Myers' farmland. Mr. Myers raised concerns about the risks of project-related fires and the impacts a wildfire would have on his cropland. Mr. Myers also raised concerns about the project's impacts on his ability to use aerial chemical applications. (Myers Direct Test. at 1-5.) Idaho Power has addressed the risks of project-related wildfire through its Fire Prevention and Suppression Plan, Wildfire Mitigation Plan, its Public Safety Power Shutoff Plan, and Recommended Public Services Conditions 6 and 7. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 590 of 10016; Dockter Test., Cross-Exam. Hearing Day 3 (Tr. Day 3) at 21-23.) Idaho Power also addressed impacts to a landowner's ability to use aerial applications and the proposed mitigation for those impacts in its Agricultural Lands Assessment, Section 7.0. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 8916 of 10016.)

111. If a fire occurred near Mr. Myers' agricultural operations, the fuel source would be mostly herbaceous, grass and grain vegetation. The timing of the fire will determine the fire conditions. The most likely time of year for a fire to move through this property is later in the growing season, when fuel sources are quite dry. This may result in a high intensity fire, but the fire would likely move quickly through the fields due to the presence of higher winds in that area. A fast-moving fire would not cause significant damage to soils. Moreover, a fast-moving fire may have other benefits to the burned area including reduction of viable weed seeds and reduction of disease and insect and rodent incidence. Burning also releases nitrogen, potassium, phosphorus and other nutrients from undecomposed organic matter to the soil. (Madison Rebuttal Test. at 91-92; Madison Rebuttal Exs. M and N.)

Findings related to the Noise Control Rules

112. The DEQ's Noise Control rules were first promulgated in 1974 to implement the provisions of ORS Chapter 467. The DEQ's rules, OAR Chapter 340, Division 35, established standards, provided for exceptions and variances to those standards, and provided for enforcement of the standards. In July 1991, upon legislative approval, the DEQ terminated the Noise Control Program as an agency cost savings measure due to reductions in General Fund support. (Rowe Decl., Attachment 1.) Although the DEQ terminated its Noise Control Program, the statutes and administrative rules remain in force. Now, enforcement of the noise standards falls under the responsibility of local governments and, in some cases, other agencies. The Department and Council must ensure that proposed energy facilities meet the DEQ's noise control regulations. (*Id.*)

113. No Council standard specifically addresses facility-related noise, although as noted above, the Council must ensure that the proposed facility meets the DEQ's rules. Accordingly, OAR 345-021-0010(1)(x) requires that, in the ASC, the applicant provide information about noise generated by facility construction and operation and evidence to support a finding by the Council that the facility complies with the noise control standards in OAR 340-035-0035.

114. In the Second Amended Project Order, the Department modified the requirements of OAR 345-021-0010(1)(x)(E) to accommodate the linear nature of the proposed facility. The Department ordered as follows: "Instead of one mile, to comply with paragraph E, the applicant must develop a list of all owners of noise sensitive property, as defined in OAR 340-035-0015, within one-half mile of the proposed site boundary." (ODOE - B2HAPPD0c15 ApASC Second Amended Project Order 2018-07-26, page 23 of 29.) The Department directed Idaho Power to provide a noise analysis and information to support a finding that the proposed facility "will comply with the requirements of OAR 340-035-0035, or that an exception or variance may be issued by Council." (*Id.*)

115. In ASC Exhibit X, Idaho Power set out its analysis of the potential noise impacts from the B2H Project. ASC Exhibit X identified the noise sensitive receptors (NSRs)⁴⁵ within one-half mile of the project's site boundary from noise-generating features such as the transmission line and provided information to demonstrate that the relevant proposed facility noise sources will not exceed the DEQ's maximum permissible sound levels.⁴⁶ Idaho Power also provided information to show that, for the majority of NSRs within the analysis area, the project will not exceed the DEQ's ambient antidegradation standard.⁴⁷ Idaho Power noted that infrequently, during foul weather conditions, the transmission line might exceed the ambient antidegradation standard. Consequently, in ASC Exhibit X, Idaho Power requested that the Council authorize an exception to the proposed facility's compliance with the ambient antidegradation standard because such exceedances would be infrequent events.⁴⁸ (ODOE - B2HAPPD0c3-41 ASC 24_ Exhibit X_Noise_ASC 2018-09-28, pages 5-65 of 371.)

⁴⁵ A NSR is the same thing as a "Noise Sensitive Property." (Bastach Rebuttal Test. at 7.) The DEQ rules define "Noise Sensitive Property" as "real property normally used for sleeping, or normally used as schools, churches, hospitals or public libraries. Property used in industrial or agricultural activities is not Noise Sensitive Property unless it meets the above criteria in more than an incidental manner." OAR 340-045-0015(38).

⁴⁶ The maximum level for new industry and commerce sources located on a previously unused site is L₅₀ – 50 dBA. OAR 340-035-0035, Table 8.

⁴⁷ The ambient antidegradation standard is set out in OAR 340-035-0035(1)(b)(B)(i). The standard limits the amount by which a new facility can increase sound levels from a baseline ambient level by more than 10 dBA in any one hour.

⁴⁸ OAR 340-035-0035 (Noise Control Regulations for Industry and Commerce) states in part:

(6) Exceptions: Upon written request from the owner or controller of an industrial or commercial noise source, the Department may authorize exceptions to section (1) of this rule, pursuant to rule 340-035-0010, for:

116. In ASC Exhibit X, Idaho Power also described its multi-step methodology for conducting its acoustic analysis of the project. Idaho Power used the methodology to measure the operational noise from the proposed facility, the ambient baseline sound levels at the NSRs, and the frequency of foul weather conditions likely to cause noise exceedances at the NSRs:

In Step 1, Idaho Power identified the NSRs within the analysis area.

In Step 2, Idaho Power determined sound source characteristics for noise modeling of the transmission line during foul weather conditions.

In Step 3, Idaho Power calculated initial screening-level modeling results based on the foul weather conditions, and assessed the likely maximum received sound at the NSRs within the modeling analysis area.

In Step 4, for those NSRs that showed a potential exceedance condition of the 30dBA threshold, Idaho Power conducted baseline sound measurements at or near those locations.

In Step 5, from these baseline measurements, Idaho Power calculated the representative existing L_{50} sound levels and defined new compliance thresholds to assess conformance with the ambient antidegradation standard. Idaho Power calculated the representative existing L_{50} sound levels (baseline ambient noise levels) by taking the average of the measured L_{50} sound levels for the late night time period (12:00 a.m. to 5:00 a.m.).

In Step 6, Idaho Power assigned the L_{50} sound level for each NSR based on measurements performed in Step 5 for monitoring positions in a similar acoustic environment. Then, Idaho Power assessed the ambient antidegradation standard for each NSR. Idaho Power compared the assigned ambient baseline sound level to the modeled future level to assess compliance with the ambient degradation standard.

(ODOE - B2HAPPDoc3-41 ASC 24_Exhibit X_Noise_ASC 2018-09-28, pages 9-10 of 371; *see also* Bastasch Rebuttal Test. at 16-18.)

117. As set out in ASC Exhibit X, to determine the frequency of foul weather conditions that may cause corona noise⁴⁹ exceedances at the NSRs, Idaho Power relied on historic weather data to predict the frequency of foul weather events at the NSR location. Idaho Power considered the variability of meteorological conditions on an hourly basis throughout the entire

(a) Unusual and/or infrequent events[.]

⁴⁹ Corona sound is usually heard as a hissing or crackling sound accompanied by a low hum and is a function of transmission line voltage, altitude, conductor and weather. (Bastasch Rebuttal Test. at 13.)

year.⁵⁰ (ODOE - B2HAPPDoc3-41 ASC 24_Exhibit X_Noise_ASC 2018-09-28, page 12 of 371.) Based on this meteorological data, Idaho Power determined that foul weather conditions expected to cause noise exceedances would occur approximately 1.3 percent of the time throughout the year.⁵¹ (*Id.* at page 28 of 371.) In the ASC, Idaho Power asserted that because the potential exceedances are anticipated to occur only approximately 1 percent of the time, the exceedances should be considered infrequent events for purposes of the exception to the standard. (*Id.* at page 31 of 371.).

118. For Step 4 of the acoustical analysis, Idaho Power designed and implemented its own sound monitoring program instead of using what it considered to be the outdated measurement procedures set out in DEQ Manual.⁵² Idaho Power adopted a methodology that is more sophisticated and more conservative than the DEQ Manual in terms of establishing the project's sound impact. The Company developed its sound monitoring protocol in consultation with the Department. Both the Department and its consultants vetted and approved of the protocol. (Bastash Rebuttal Test. at 20-21.) In the ASC, Idaho Power's sound analysis relies on data from 17 monitoring positions. When multiple monitoring positions were in proximity to NSRs, the Company selected the monitoring position with the lower ambient sound level to provide more conservative representative ambient sound levels. The Company also selected monitoring positions that were generally located further from existing ambient sound sources

⁵⁰ ASC Exhibit X, Section 3.2.4, Evaluating Frequency of Foul Weather Conditions, states in pertinent part:

To determine the frequency of foul weather conditions in the analysis area, an analysis of the historical meteorological data (2008-12) was conducted at four discrete data collection stations found in proximity to the Project: Flagstaff Hill, La Grande, Owyhee Ridge, and Umatilla National Wildlife Refuge (NWR). Verified meteorological data were obtained for these stations from the Western Regional Climate Center (WRCC). The WRCC is one of six regional climate centers in the United States and provides meteorological monitoring data for the Pacific Northwest region. * * * .

The hourly meteorological data included parameters such as precipitation, wind speed (mph), wind direction (degree), average air temperature (degrees Fahrenheit), relative humidity (percent), and solar radiation (watts per square meter). The data were analyzed to effectively determine the frequency of relevant foul weather conditions in the vicinity of potentially impacted NSRs.

(ODOE - B2HAPPDoc3-41 ASC 24_Exhibit X_Noise_ASC 2018-09-28, page 12 of 371.)

⁵¹ ASC Exhibit X, Table X-6 shows meteorological data analyses in terms of frequency. Table X-7 lists the seasonal and diurnal (day, night, and late night) variability in foul weather for the project area. Table X-8 shows the daily and hourly frequency of foul weather and Table X-9 shows the late night frequency of foul weather. (ODOE - B2HAPPDoc3-41 ASC 24_Exhibit X_Noise_ASC 2018-09-28, pages 28-31 of 371.)

⁵² OAR 340-035-0035(3)(a) requires that sound measurement procedures conform to "the procedures which are adopted in the Sound Measurement Procedures Manual (NPCS-1), or to such other procedures as are approved in writing by the Department."

than the NSRs, further contributing to the conservative nature of the baseline ambient sound measurements. (*Id.* at 22.)

119. Idaho Power collected sound measurements at each monitoring position continuously over a two to four-week duration. The initial measurement period began on March 6, 2012 and ended on May 10, 2012. A supplemental measurement period began on March 11, 2013 and ended on June 12, 2013. Idaho Power extended the duration of the measurement period to obtain a statistically significant dataset and to obtain data during a range of meteorological conditions. (Bastasch Rebuttal Test. at 24.)

120. The results of Idaho Power's noise analysis demonstrated that the project complies with the noise rules' upper limits on sound levels ($L_{50} - 50$ dBA), but that in some instances, the corona sound caused by foul weather will result in an exceedance of the ambient antidegradation standard set out in OAR 340-035-0035 (more than 10 dBA in any one hour). (OAR 340-035-0035(1)(b)(B)(i); Bastasch Rebuttal Test. at 4.)

121. In the Proposed Order, Section IV.Q.1, Noise Control Regulation, the Department found that the project would be a new industrial noise source and therefore the requirements established in OAR 340-035-0035(1)(b)(B)(i) are applicable. The Department addressed construction noise and predicted noise levels from general construction activities and operational noise, including the potential corona noise generated from the proposed transmission line and operations and maintenance activities. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 626 of 10016.)

122. The Department expressly approved Idaho Power's sound measurement procedure, stating in part as follows:

Sound measurements at each monitoring position were collected continuously over a 2- to 4- week duration. The initial measurement period commenced March 6, 2012, and ended on May 10, 2012, and the supplemental measurement period commenced March 11, 2013 and ended on June 12, 2013.

The Department relied upon its third-party consultant, Golder Associates, to review the protocol. Based on review, Golder Associates confirmed that the sound measurement procedures and baseline noise measurements were technically accurate. Based on the Department's third-party consultant recommendations and review, and review of facts represented in ASC Exhibit X, the Department recommends Council approve the applicant's sound monitoring points and measurement procedures, as allowed under OAR 340-035-9 0035(3)(a) and (b).

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 634-635 of 10016.)

123. In the Proposed Order, the Department also addressed Idaho Power's request for an exception to the ambient antidegradation standard based on the expected infrequency of potential

exceedances.⁵³ (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 649-52 of 10016.) In doing so, the Department reviewed Idaho Power’s methodology for predicting the frequency of foul weather conditions and the analysis of foul weather frequency. The Department noted:

To predict the frequency of foul weather conditions in the analysis area, the applicant evaluated hourly meteorological data, from 2008-2012, including precipitation, wind speed, wind direction, average air temperature, relative humidity, and solar radiation from the following four Western Regional Climate Center (WRCC) meteorological stations - Flagstaff Hill, La Grande, Owyhee Ridge, and Umatilla Northwest Wildlife Refuge. In ASC Exhibit X, the applicant utilized the meteorological datasets for each WRCC station to ascertain diurnal and seasonal variations in weather conditions. Additionally, the applicant identified periods of rainfall events over the course of consecutive days and consecutive hours to inform their definition of infrequent. The applicant averaged the data from the meteorological stations and found that foul weather (i.e. weather conditions comprised of a rain rate of 0.8 to five millimeters per hour [mm/hr]) occurred for at least one hour during 13 percent of the days (or approximately 48 days per year).

The applicant conducted a sensitivity analysis during the late night time period and provided the results in ASC Exhibit X, Table X-9. Based on historic average rainfall conditions measured at the 4 WRCC meteorological stations, the frequency of foul weather conditions lasting one hour or more ranges from 22 to 80 days per year, with foul weather occurring in the late night hours (for a period of one hour or more), between two and seven percent of the time.

The Department utilized a third-party consultant, Golder Associates, to support technical review of the exception request, specifically the accuracy of weather data relied upon and applicant’s evaluation of foul weather frequency. The Department’s consultant utilized a trained meteorologist for the evaluation and determined the meteorological data to be complete and accurate, and the assumed rain rate of 0.8 to 55 mm/hr used in the acoustic modeling, based on the meteorological data, to be conservative for a predominately arid region. Based on its review, the consultant recommended the Department consider that, because the

⁵³ OAR 340-035-0010, titled “Exceptions” states as follows:

(1) Upon written request from the owner or controller of a noise source, the Department may authorize exceptions as specifically listed in these rules.

(2) In establishing exceptions, the Department shall consider the protection of health, safety, and welfare of Oregon citizens as well as the feasibility and cost of noise abatement; the past, present, and future patterns of land use; the relative timing of land use changes; and other legal constraints. For those exceptions which it authorizes the Department shall specify the times during which the noise rules can be exceeded and the quantity and quality of the noise generated, and when appropriate shall specify the increments of progress of the noise source toward meeting the noise rules.

applicant applied a higher than average rain rate, the likelihood of ambient antidegradation standard exceedance could reasonably be limited to infrequent or unusual events.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 651 of 10016.)

124. Next, the Department addressed the meaning of the phrase “infrequent or unusual” for purposes of the Noise Control rules:

The phrase “infrequent or unusual” is not defined in DEQ’s statutes (ORS 467.030) or noise rules. Therefore, to resolve ambiguity, the Department considers it necessary to interpret the phrase based on the regulatory interpretation methodology described in *PGE v. Bureau of Labor 28 and Industries*, 317 Or 606, 610-12 (1993) and modified in *State v. Gaines*, 346 Or 160 (2009) (“*Gaines*”). Consistent with the methodology, the Department considers the text and context of the phrase within the rule, and applies the general maxims of regulatory language construction to support its interpretation. The relevant dictionary definition of “infrequent” and “unusual” is: “occurring at wide intervals in time,” and “uncommon” or “rare.” The definition includes the concept that the circumstances are not constant, not continuous, and not representative of normal operating conditions.

Having considered the text of the rule, the Department considers the contextual rule provisions under OAR 340-035-0005 which states that the underlying policy of the noise rules is to protect the health, safety and welfare of Oregon citizens from the hazards and deterioration of the quality of life imposed by excessive noise emissions. Given that the -0005 policy is to protect citizens from excessive noise emissions which, under typical meteorological conditions for the region, is not expected from the proposed facility, it appears contrary not to consider foul weather events – the contributing factors of excessive noise emissions – unusual or infrequent under OAR 340-035-0035(6)(a). Therefore, based on the Department’s review, technical review and recommendations of its third-party consultant, Golder Associates, and the analysis presented above, the Department recommends Council find that exceedances of the ambient antidegradation standard during foul weather events would be infrequent or unusual under OAR 340-035-0035(6)(a) and that Council grant an exception to the proposed facility.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 651-52 of 10016.)

125. As further evidence to support the conclusion that corona sound caused by foul weather would be an infrequent occurrence along the proposed facility, Idaho Power presented an internal Bonneville Power Administration (BPA) memorandum dated May 26, 1982 that discusses sound level limits for BPA facilities. The BPA memorandum (Proposed Order Attachment 5) notes that BPA consulted with the Oregon DEQ and the Washington State

Department of Ecology regarding state and local noise control regulations. The memorandum explains that, based on BPA's meteorological assessment of weather east of the Cascades, corona sound caused by foul weather conditions east of the Cascades would be, by definition, "infrequent" and therefore the transmission line would be eligible for an exception to the states' noise rules.⁵⁴ (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 7879 of 10016.)

126. Idaho Power also presented evidence of BPA's transmission line noise studies for other transmission line projects where BPA focused on the infrequent occurrence of foul weather in the project vicinity. BPA's meteorological analysis showed that foul weather would occur between one and seven percent of the year, depending on the project location. (Bastasch Rebuttal Test. at 33-34; *see also* ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 7904-05 of 10016.)

127. Idaho Power's approach to estimating potential exceedances of the ambient antidegradation standard is intentionally conservative and, for that reason, likely overestimates the frequency of actual exceedances. For example, Idaho Power estimated the level of corona sound modeling that would be produced if the facility were operating at the maximum operational voltage of 500 kV. However, during typical operations the line will be operating at a substantially lower voltage. Moreover, the Company's modeling assumed that exceedances would occur during any foul weather event, day or night, but the actual exceedances are anticipated to occur only during periods where ambient sound levels are lowest, typically during the late night hours. Additionally, Idaho Power's modeling did not consider the masking phenomenon, *i.e.*, the sound of heavy rain hitting foliage, which tends to increase the actual ambient sound levels during foul weather. Finally, Idaho Power's modeling removed from the calculation any hour in which wind was greater than 10 mph. Because wind can increase ambient sound levels, removing the hours in which the wind was more than 10 mph also tends to result in a lower assumed ambient sound level than actual conditions. (Bastasch Rebuttal Test. at 29-36.)

128. In essence, exceedances of the ambient antidegradation standard due to facility-related noise would be infrequent because three conditions need to coincide to result in an exceedance: (1) a low ambient noise environment (generally late night or early morning hours and low wind); (2) foul weather (rain or high humidity); and (3) the transmission line operating at or near maximum voltage. (Miller Cross-Exam. Test, Tr. Day 1 at 30-31; *see also* Bastasch Rebuttal Test. at 31.)

⁵⁴ The memorandum explains:

It is BPA's interpretation that a frequency of occurrence of less than 1 percent will qualify as an exception to the regulations. For [alternating current] transmission lines located in areas where a rain rate from 0.8 to 5mm/hr will occur less than one percent of the time during the year, audible noise from the line will be an infrequent event and thus be considered as an exception from noise regulations. Based on a meteorological analysis of the frequency of these rain rates (0.8 to 5mm/hr) [alternating current] transmission lines east of the Cascades will meet this criteria.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 7879 of 10016.)

129. At Idaho Power's request, the Department also considered whether granting an exception to the DEQ's ambient antidegradation standard would allow for the protection of health, safety, and welfare of Oregon citizens pursuant to OAR 340-035-0010(2). The Department found that potential exceedances of the ambient antidegradation standard along the proposed transmission line and at 41 NSR locations "would be infrequent, estimated under worse-case conditions anticipated to occur two to seven percent of the time." (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 652 of 10016.) The Department added:

[A]ctual noise-related impacts are anticipated to be minimal as residents are assumed to be indoors at the time of the exceedance during late night and very early mornings (12:00 a.m. to 5:00 a.m.) and during foul weather (*i.e.* when it is raining). Therefore, it is expected that NSRs would experience noise levels inside their houses 10 dBA 3 (with windows open) to 20 dBA (with windows closed) lower than modeled in ASC Exhibit X due to noise attenuation and absorption by residential structures.

As represented in ASC Exhibit X, the applicant also commits to working with impacted NSRs to attempt to resolve concerns, avoid, monitor, and mitigate noise at NSRs caused by audible corona noise and potential exceedances. The mitigation plan may include micrositing the relevant portions of the proposed transmission line within the site boundary; however, the applicant reiterates that the micrositing may not affect other landowners, unless agreed-to in writing by those other landowners. Other mitigation measures include, but are not limited to the installation of, or cash equivalent of, certain window treatments shown to be effective in reducing indoor sound pressure levels. Further, the applicant represents that it would establish a system to receive and respond to complaints associated with potential operational corona noise from landowners not identified in Attachment X-5 of this order. The complaint response plan includes a process for complaint filing, receipt, review and response for NSR exceedances evaluated in the ASC and NSRs that are not identified in the ASC.

(*Id.* at pages 652-53 of 10016.)

130. The Department recommended that the Council impose conditions related to Idaho Power's proposed noise exceedance mitigation plans and complaint response plan. The conditions are designed to ensure that granting an exception to the proposed facility would not preclude the protection of public health, safety, and welfare otherwise afforded through compliance with DEQ's noise control rules. Recommended Noise Control Condition 1 in the Proposed Order requires Idaho Power to work with the 41 NSR property owners identified in Attachment X-5 to develop mutually agreed upon Noise Exceedance Mitigation Plans, specific to each NSR location. The site-specific Noise Exceedance Mitigation Plans will include agreed upon measures to be implemented at the NSR location to minimize or mitigate the ambient antidegradation standard noise exceedance. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 653-54 of 10016.)

131. Recommended Noise Control Condition 2 in the Proposed Order requires Idaho Power to develop and implement a complaint response plan to address noise complaints and requires that the plan include certain provisions, including the process for complaint filing, receipt, review and response. The recommended condition also requires Idaho Power to notify the Department within three working days of receipt of a project-related noise complaint, describes the process for determining if corona noise exceeds the ambient antidegradation standard, and describes the process for developing a plan to minimize or mitigate project-related exceedances of the ambient antidegradation standard. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 655 of 10016.)

132. At Idaho Power's request, the Department also considered whether granting an exception to DEQ's ambient antidegradation standard is appropriate in light of the feasibility and cost of noise abatement.⁵⁵ The Department noted that typical noise abatement technologies, such as insulators, silencers, and shields, are not reasonable technologies for transmission lines due to the line's length as well as safety and operational limitations. To ensure that Idaho Power constructs the proposed transmission line using materials to reduce corona noise, the Department recommended that the Council impose Recommended Noise Control Condition 3, requiring Idaho Power to implement design measures and construction techniques to minimize potential corona noise during facility operation. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 656 of 10016.)

133. In its discussion of granting an exception to the noise rules, the Department explained that because foul weather conditions may occur at any point during the day or night, at any point along the proposed transmission line, and because the proposed transmission line would operate 24 hours a day, year-round, placing time limitations on the exception would not be appropriate. The Department recommended that the Council establish that the ambient antidegradation standard may be exceeded at any time during infrequent or unusual foul weather events, as authorized through the OAR 340-035-0035(6)(a) exception. The Department also recommended imposing the following condition, describing the exception:

Recommended Noise Control Condition 4: During operation:

- a. An exception to compliance with the ambient antidegradation standard at OAR 340-035-0035(1)(b)(B) (i.e. an increase of 10 dBA above ambient sound pressure levels) is granted for infrequent or unusual foul weather events during facility operation, pursuant to OAR 340-035-0035(6)(a).
- b. The ambient antidegradation standard at OAR 340-035-0035(1)(b)(B) may be exceeded by the transmission line any time of day or night during infrequent or unusual foul weather events. [OAR 340-035-0010(2)]
- c. The quantity and quality of noise generated in exceedance of the ambient

⁵⁵ As noted above, OAR 340-035-0010(2) identifies "the feasibility and cost of noise abatement; the past, present, and future patterns of land use; the relative timing of land use changes; and other legal constraints" as other factors to consider in establishing exceptions to the noise rules.

antidegradation standard (ambient plus 10 dBA) at OAR 340-035-0035(1)(b)(B), during infrequent or unusual foul weather events, shall not be more than 10 dBA (or ambient plus 20 dBA), as measured at any NSR location, and from corona noise consisting of a low hum and hissing, frying or crackling sound, respectively. [OAR 340-035-0010(2)]

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 662 of 10016.)

134. In the Proposed Order, the Department also addressed Idaho Power's request for a variance under OAR 340-035-0100.⁵⁶ The Department recommended that the Council evaluate the variance request for the entirety of the transmission line alignment based on its interpretation that the ambient antidegradation standard under OAR 340-035-0035(1)(b)(B)(i) applies to the transmission line. Based on its evaluation of the variance criteria, the Department recommended that the Council impose Recommended Noise Control Condition 5, granting a variance to compliance with the ambient antidegradation standard pursuant to OAR 340-035-0100(1) for the transmission line and allowing the project to exceed the ambient antidegradation standard at OAR 340-035-0035(1)(b)(B) at any time of day or night. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 666 of 10016.)

135. In the Proposed Order, the Department found as follows with regard to the proposed facility's compliance with the Noise Control Rules:

Based on the foregoing findings and conclusions of law, and subject to compliance with the recommended site certificate conditions, the Department recommends that the Council find that an OAR 340-035-0035(6)(a) exception (unusual or infrequent events) and variance to compliance with the ambient antidegradation standard (OAR 340-035-0035(1)(b)(B)(i)) be granted for the proposed facility and that the proposed facility, including the proposed and alternative routes, would otherwise comply with the Noise Control Regulations in OAR 340-035-0035(1)(b)(B).

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 666-67 of

⁵⁶ OAR 340-035-0100(1) states:

Conditions for Granting. The Commission may grant specific variances from the particular requirements of any rule, regulation, or order to such specific persons or class of persons or such specific noise source upon such conditions as it may deem necessary to protect the public health and welfare, if it finds that strict compliance with such rule, regulation, or order is inappropriate because of conditions beyond the control of the persons granted such variance or because of special circumstances which would render strict compliance unreasonable, or *impractical due to special physical conditions or cause*, or because strict compliance would result in substantial curtailment or closing down of a business, plant, or operation, or because no other alternative facility or method of handling is yet available. Such variances may be limited in time.

(Emphasis added.)

10016.)

136. In addition to minimizing corona sound through the construction design required by Recommended Noise Control Site Condition 1, Idaho Power proposes to mitigate exceedances in other ways. First, Idaho Power will microsite the project components within the site boundary to increase the distance between the NSR and the transmission line where feasible and agreed-to with the landowner. Second, the Company plans to offer to retrofit those residences where the exceedances are expected with new windows designed to improve the sound insulation. The Company commits to working with a qualified acoustical consultant and the affected NSR owner to implement acoustical upgrades. (Bastach Rebuttal Test. at 52-53.)

137. In ASC Exhibit X, Idaho Power used monitoring position (MP) 11 as representative of the NSRs along the proposed route in Union County. MP 11 was located at a cabin approximately 5 miles south of Meacham, Oregon, along Segment 3 (Union County). MP 11 was approximately 1.1 miles from Interstate 84, and approximately 207 feet from the Union Pacific Railroad line. The nearest existing transmission line is approximately one half mile, and is owned by BPA. In the ASC, Idaho Power provided the following description of conditions at MP 11:

Daytime field observations noted 8 to 10 heavy trucks (some with snowplows) that passed the meter within one hour. Snowplows passing by the meter were measured at approximately 80 dBA. Freight train traffic was present on the Union Pacific Railroad situated immediately adjacent to the property. Nighttime field observations noted generally quiet conditions with no traffic, sounds of water running in a creek, light snow/rain showers, and light winds.

(ODOE - B2HAPPDoc3-41 ASC 24_Exhibit X_Noise_ASC 2018-09-28, page 160 of 371.) Idaho Power's measurement of existing sound levels at MP 11 (for the period of March 7, 2012 to April 6, 2012) at late night and low wind conditions disclosed a baseline ambient noise level of 32 dBA (L₅₀ one hour). (*Id.* at 22 of 371.) Idaho Power used the 32 dBA baseline value to assess the potential for exceedances at identified NSRs near Morgan Lake in Union County. (*Id.*)

138. Limited parties raised concerns with Idaho Power's choice to use MP 11 to set the baseline ambient sound level for all NSRs along the Morgan Lake Alternative. In support of their challenge, limited parties presented evidence from acoustical engineer Kerrie Standlee who, over the course of several hours on the morning of September 12, 2021, measured the ambient noise level from a residence on Morgan Lake Road owned by limited party Greg Larkin. Mr. Standlee measured the hourly L₅₀ noise level between 12:25 a.m. and 4:00 a.m., in calm wind conditions, 48 to 50 degree temperature, and 73 percent relative humidity. On that date, during that three and a half hour period, the ambient sound measurements ranged from a high of 29 dBA (between 12:25 a.m. and 1:00 a.m.) to a low of 20 dBA (between 3:00 a.m. and 4:00 a.m.). Based on this sample, Mr. Standlee opined that: (1) the ambient noise at residences in the vicinity of Morgan Lake is likely 10 to 12 dB lower than the level used in Idaho Power's noise analysis; and (2) the ambient noise level measured at MP 11 (32 dBA) is not representative of the ambient noise levels at residences in the vicinity of Morgan Lake. (STOP B2H Ex. 5 at 4.)

139. In response to limited parties' concerns that Idaho Power did not adequately assess baseline noise levels at NSRs in the area of Morgan Lake, the Company's consultant performed supplemental sound monitoring at four additional locations near the NSRs (MPs 100, 101, 102 and 103) over 21 days, from October 10 to November 1, 2021. MP 100 was located on private property immediately adjacent to Morgan Lake Park; MP 101 was located off Wood Road, downslope from the residences; MP 102 was located along Morgan Lake Road, on a bluff overlooking La Grande; and MP 103 was established to represent the NSRs in the La Grande valley closer to I-84. (Bastasch Rebuttal Test. at 63-65.)

140. Measured when winds gusts were less than 10 miles per hour, with no rain and relative humidity less than 90 percent, the average L_{50} during the period of midnight to 5:00 a.m. at these four monitoring positions were as follows:⁵⁷

MP 100 – 31 dBA
MP 101 – 36 dBA
MP 102 – 32 dBA
MP 103 – 43 dBA

(Bastasch Sur-surrebuttal Test Ex. I; Bastasch Cross-Exam. Test., Tr. Day 1 at 58-60.)

141. Overall, the results of Idaho Power's supplemental monitoring confirmed that the Company's decision to use 32 dBA as the ambient baseline level for MP 11 (representing the ambient noise level at NSRs in the Morgan Lake area) was appropriate. (Bastasch Cross-Exam. Test., Tr. Day 1 at 64-65.) The one decibel difference (between the 31 dBA baseline level recorded at MP 100 and the 32 dBA at MP 11) is not perceivable to the human ear. (*Id.* at 65.)

Findings related to the Public Services standard – Traffic Safety

142. Pursuant to OAR 345-021-0010(1)(u), ASC Exhibit U must include information regarding potential adverse impacts on public services, including traffic safety, and evidence to support a finding by Council that the project complies with the Public Services Standard. In the Second Amended Project Order, the Department directed Idaho Power to provide estimated facility-related traffic during construction and operation and the potential impact on traffic safety. The Department also directed Idaho Power to describe the "proposed transportation routes for the transport of heavy equipment and shipments of facility components during construction, including proposed ground and air transportation routes within the analysis area."⁵⁸ (ODOE - B2HAPPDoc15 ApASC Second Amended Project Order 2018-07-26, page 22 of 29.)

⁵⁷ These are the corrected L_{50} values set out in Bastasch Sur-surrebuttal Exhibit I and not the erroneous calculations provided in Mr. Bastasch's November 12, 2021 Rebuttal Testimony. In his Sur-surrebuttal and Cross-Examination testimony, Mr. Bastasch acknowledged that he had erred in his initial calculations when classifying the weather. (Bastasch Cross-Exam. Test., Tr. Day 1, at 58-59.)

⁵⁸ In the context of the Public Services Standard, the "analysis area" means the area within the site boundary and 10 miles from the site boundary. (ODOE - B2HAPPDoc15 ApASC Second Amended Project Order 2018-07-26, pages 24-25 of 29; *See also* Grebe Rebuttal Test. at 6-7.)

143. As part of ASC Exhibit B,⁵⁹ Idaho Power included a “Road Classification Guide and Access Control Plan” to provide information about the access roads for the proposed facility. The purpose of the Road Classification Guide and Access Control Plan is “to define which Project roads are included within the Site Boundary” and “to classify each access road by the type and amount of disturbance” from the construction and operation of the proposed facility.⁶⁰ (ODOE - B2HAPPDoc3-3.2 ASC 02c_Exhibit B_Attachment B-5_ASC_PART 1 2018-09-28, page 5 of 114.)

144. In the ASC, Idaho Power defined the term “Access Road” as “[a] linear travel route designated to support construction, operation, and maintenance of the transmission line.” (ODOE - B2HAPPDoc3-3.2 ASC 02c_Exhibit B_Attachment B-5_ASC_PART 1 2018-09-28, page 8 of 114.) Idaho Power considered access roads to be “related or supporting facilities.”⁶¹ Idaho Power explained as follows:

Construction of the Project will require vehicle, truck, and crane access to all construction areas. Existing roads will be used as the main access road network. IPC assumes that existing paved roads and bridges were designed to meet Oregon Department of Transportation and Idaho Transportation Department and other applicable standards and will therefore not require improvements prior to Project construction. *Access to construction sites will require improvements to existing unpaved roads and construction of new access roads. Construction of new access roads will be required only as necessary to access structure sites lacking direct access from existing roads, or where topographic conditions such as steep terrain, rocky outcrops, and drainages prohibit safe overland access to the Project. Most construction areas will be accessed using low-standard roads including those owned by private parties, counties, and state and federal agencies.*

(*Id.*; emphasis added.)

145. Much of the heavy construction equipment necessary to construct the facility, such as large excavators, cranes, feller bunchers, and tracked equipment, generally will operate on the project right of way or private access roads, except when heavy equipment is moved from one isolated section of the line to another on public roads. (Grebe Rebuttal Test. at 9.)

⁵⁹ Pursuant to OAR 345-021-0010(1)(b), Exhibit B must include “information about the proposed facility, construction schedule and temporary disturbances of the site.”

⁶⁰ The Road Classification Guide and Access Control Plan is also included as Attachment B-5 to the Proposed Order. (See ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 8448 or 10016.)

⁶¹ The term “related or supporting facility” is defined in ORS 469.300(24) as “any structure, proposed by the applicant, to be constructed or substantially modified in connection with the construction of an energy facility * * *.”

146. Idaho Power used traffic consulting and engineering firms (Tetra Tech and HDR, Inc.) to develop and design the methodology and assumptions used to assess traffic safety impacts and determine mitigation measures. In ASC Exhibit U, Idaho Power included a traffic impact analysis and a Transportation and Traffic Plan that discusses proposed measures to mitigate construction impacts on traffic safety. (Grebe Rebuttal Test. at 11-12; ODOE - B2HAPPDoc3-38 ASC 21_Exhibit U_PublicServices_ASC 2018-09-28, pages 89-132 of 143.)

147. In ASC Exhibit U, Idaho Power also addressed whether existing roads would require improvements. Idaho Power also identified the minimum access-road requirements for the proposed transmission line and station construction and operation. Using the requirements for the passage of the largest piece of construction equipment (an aerial lift crane) as a baseline, Idaho Power's consultants determined that a 14-foot wide roadway and a 16 to 20-foot wide surface for turns are the minimum requirements for an access road. (ODOE - B2HAPPDoc3-38 ASC 21_Exhibit U_PublicServices_ASC 2018-09-28, page 116 of 143; ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 556 of 10016.)

148. In determining which existing roads would require improvements for the proposed facility's construction and operation, Idaho Power's consultants also considered the generally accepted industry standards for minimum access road requirements in terms of road grade and turns (horizontal curve radii). (Grebe Rebuttal Test., Exs. D and E; ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 557 of 10016.) The consulting firms conducted desktop reviews of existing roads based on aerial photos and, where practicable, field reconnaissance, to assess the width, grade, and condition of existing roads within the analysis area. (ODOE - B2HAPPDoc3-3.2 ASC 02c_Exhibit B_Attachment B-5_ASC_PART 1 2018-09-28, page 14 of 114; Grebe Rebuttal Test. at 2-3.)

149. As noted previously, in the ASC Idaho Power proposed a primary route and alternative routes. In Union County, Idaho Power proposed the Mill Creek Route and the Morgan Lake Alternative. The Proposed Route enters Union County at MP 88.3, and traverses the county for 39.9 miles. At MP 105.8, the Proposed Route/Mill Creek Route runs approximately 0.4 miles west of the La Grande city limits.⁶² The 18.5 mile Morgan Lake Alternative Route runs to the west of the Proposed Route. It leaves the Mill Creek Route at MP 98.8, approximately 1 mile west of Hilgard Junction State Park. The Morgan Lake Alternative Route proceeds south and then southeast, crossing the Grande Ronde River at MP 0.8. It then turns east and southeast. At MP 6.3, the alternative route passes about 0.2 mile southwest of Morgan Lake. (ODOE - B2HAPPDoc3-4 ASC 03_Exhibit C_Project_Location_ASC 2018-09-28, pages 15-16 and 24-25 of 193.)

⁶² ODOE - B2HAPPDoc3-4 ASC 03_Exhibit C_Project_Location_ASC 2018-09-28, pages 15-16 of 193 (describing the Proposed Route in Union County). *See* ASC Exhibit C, Attachment C-2, Map 51, which shows the La Grande city limit boundary line, the site boundary line, and the unimproved portion of Hawthorne Road within the site boundary as potentially needing substantial modification. (ODOE - B2HAPPDoc3-4 ASC 03_Exhibit C_Project_Location_ASC 2018-09-28, page 94 of 193.) *See also* ASC Exhibit B, Attachment B-5 (Road Classification Guide and Access Control Plan), Map 54, showing the same. (ODOE - B2HAPPDoc3-3.3 ASC 02d_Exhibit B_Attachment B-5_ASC_PART 2 2018-09-28. Page 1 of 85.)

150. In the Proposed Order, Section IV.M.6, Public Services/Traffic Safety, the Department stated as follows:

The applicant classified road segments for existing roads to determine the extent of improvements needed and whether or not the road would then be included in the site boundary as a related or supporting facility. Existing roads that would be used for construction and operation of the proposed facility but would not require substantial modification are not “related or supporting facilities” and, therefore, are not included in the site boundary.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 557 of 10016.)

151. With regard to traffic safety concerns under the Public Services Standard, the Department included Recommended Public Services Condition 2, requiring Idaho Power to, among other things, submit to the Department a final county-specific Transportation and Traffic Plan at least 90 days prior to construction of a facility phase or segment. To address concerns about potential impacts from construction on roads managed by public service providers, the Department recommended that Idaho Power provide a list of permits and agreements from local jurisdictions as part of its final county-specific Transportation and Traffic Plan. The Department also recommended that Idaho Power update its Road Classification Guide and Access Control Plan and provide it as part of the final Transportation and Traffic Plan. The final county-specific Transportation and Traffic Plan must be approved by the Department, in consultation with each county or jurisdiction, prior to construction. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 568-71 of 10016.)

152. In the Proposed Order, at footnote 562, the Department explained:

Commenters, including Union County and the City of La Grande, expressed concerns about impacts from traffic and to roads including but not limited to Morgan Lake Road, Glass Hill Road, Old Oregon Trail Road, Olsen Road, Modelaire-Hawthorne Loop, and Sunset Drive. The Department notes that the applicant identifies these existing public roads as potential connecting access roads assumed to be maintained to meet road maintenance standards of the owner (County, ODOT, etc.). *The applicant is not representing to substantially modify these roads; therefore, they are not included in the site boundary proposed by the applicant in the ASC, under EFSC review.* See Recommended Public Services Condition 2 which requires a county-specific Transportation and Traffic Plan that identifies final haul routes, documentation of existing road conditions, and the requirement that if the applicant must substantially modify roads not currently within the site boundary, it must submit an Amendment Determination Request or submit a Request for Amendment of the Site Certificate receive Council approval via an amendment, if necessary. *[The unpaved portion of Hawthorne Drive]⁶³ is included in the site boundary, requiring substantial modification, 21-70%*

⁶³ The Proposed Order erroneously identifies this road as “Hawthorne Lane.” (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 557 of 10016.)

improvements which may include reconstruction of portions of the road to improve road function. Possible road prism widening, profile adjustments, horizontal curve adjustments, or material placement. Final road improvements would be reviewed and approved by the Department, in consultation with each County as part of the county-specific Transportation and Traffic Plan.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 557 of 10016; emphasis added.)

153. In the Proposed Order, the Department concluded:

Based on the analysis presented here, and in compliance with recommended conditions, the Department recommends that the Council find that the construction and operation of the proposed facility is not likely to result in significant adverse impacts to the ability of public and private traffic safety providers within the analysis area. Additionally, the construction and operation of the proposed facility is not likely to result in significant adverse impacts to traffic volumes and congestion on proposed commuting and hauling routes proposed to be used by the applicant during construction.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 571 of 10016.)

154. On May 19, 2021, Idaho Power's traffic safety consultants traveled to La Grande to conduct a follow up site visit and field review of access roads for the proposed construction of the facility. The trip focused on reviewing access roads in the area between La Grande and Morgan Lake to determine whether the roads were adequate for construction and vehicle use or whether the roads may require modifications prior to use for construction vehicles. The site visit team also considered whether there were any safety measures that may be appropriate in connection with use of these roads in light of concerns raised by members of the public. (Grebe Rebuttal Test. at 13; Grebe Rebuttal Ex. B.)

155. On their May 19, 2021 field review, the site visit team drove Modelaire Drive and the paved portion of Hawthorne Drive (streets comprising the Hawthorne Loop) to survey the existing conditions. The site visit team analyzed the grade and curves of the roads in the Hawthorne Loop and again determined that construction vehicles should be able to ascend/descend the grades and navigate the curves without issue. (Grebe Rebuttal Test.; Grebe Rebuttal Ex. B at 6-7.) The consultants noted potential visibility concerns along the Hawthorne Loop. To address these concerns, Idaho Power proposes using traffic control measures such as pilot vehicles, traffic control flaggers, warning signs, lights, and barriers during construction to ensure safety, minimize localized traffic congestion, and avoid accidents due to limited visibility. These safety measures will be fully vetted by the Department, in consultation with Union County and the City of La Grande where applicable, in the Final Traffic Plan(s) for such road segments prior to construction. (Grebe Rebuttal Test. at 38.)

156. Because Idaho Power did not have an approved right of entry to the privately owned, gravel road portion of Hawthorne Drive, the site visit team was unable to perform site reconnaissance on that portion of the roadway.⁶⁴ (Grebe Rebuttal Test. at 26; Grebe Rebuttal Ex. B at 7.) However, based on observations from the paved portion of the Hawthorne Loop and Google Earth Imagery, Idaho Power's consultants determined that the unpaved portion of Hawthorne Drive is typically 15-23 feet wide with dirt/gravel surfacing and the existing width should be adequate to support construction vehicles while allowing them to pass oncoming traffic.⁶⁵ Horizontal curves appear to range from a 60 to 75 feet radius, and grades are approximately 15-17 percent when measured on Google Earth. Based on these observations, the measurements of the unpaved portion of Hawthorne Drive are within the minimum access road requirements stated in Idaho Power's application. (Grebe Rebuttal Test. at 40.)

157. Idaho Power's traffic safety consultants also determined that the unpaved, private access portion of Hawthorne Drive should be adequate to support construction traffic for the construction of the transmission line:

Construction vehicles used for rural transmission line construction are often all-wheel drive high clearance vehicles designed to traverse narrow and steep roads in rougher terrain. Interactions between construction vehicles and the traveling public should be minimal and limited to material/equipment delivery or morning and evening trips as crews access the work area. Construction traffic may need to use caution and reduced speeds, as well as implement additional traffic control measures, such as flashing beacons or brightly colored equipment, if there are reduced visibility situations. Barricades, fencing, or traffic delineators could also be set up to separate vehicles from pedestrians if a particular location of concern is noted.

(Grebe Rebuttal Ex. B at 8; *see also* Grebe Rebuttal Test. at 28.)

158. Based on the consultants' access road field reviews, Idaho Power determined that substantial modifications are unlikely, but may possibly be required for the unpaved, private access portion of Hawthorne Drive. To avoid tight turning conditions and possible traffic congestion issues on the gravel road, Idaho Power could and likely would air-lift materials and equipment by helicopter, coordinate with nearby property owners to implement one-way traffic for short periods of times (approximately half an hour), or use flaggers and pilot spotter vehicles. (Grebe Rebuttal Test. at 26-27.)

⁶⁴ A portion of this unpaved, privately owned road is located within the city limits (Tax Lot 4700) and the remainder is located within Union County. The road primarily serves as an access (the only ingress and egress) for property owners, residents and/or emergency and service vehicles. (Mammen Direct Test; Horst Direct Test.)

⁶⁵ According to Mr. Horst's measurements, the widest part of the road is 20 feet, with sections at 14 feet wide. (Horst Direct Test.)

159. Because Idaho Power has not yet been granted access to the unpaved, private access portion of Hawthorne Drive to perform a detailed reconnaissance review, the Company conservatively assumed that its construction contractor might need to make substantial modifications to the roadway by widening certain parts of the gravel roadway to mitigate tight turning conditions. Additionally, Idaho Power determined that this portion of roadway would likely need non-substantial maintenance activities such as blading⁶⁶ and watering for dust mitigation. (Grebe Rebuttal Test. at 27.)

160. The unpaved, private access portion of Hawthorne Drive is located in a geologic hazard zone that encompasses a large area of the west hills of La Grande. (Mammen Direct Test. at 5; Mammen Ex. 6.) Therefore, if it is later determined that the roadway needs substantial modification in connection with the proposed facility construction or operation, Idaho Power will, prior to construction or road modification, complete appropriate engineering due diligence and consult with a licensed civil engineer to assess the proposed construction or road design in relation to potential geologic hazards. (Grebe Rebuttal Test. at 42-43.)

161. Limited parties Horst and Cavinato reside in a home on the privately owned, unpaved portion of Hawthorne Drive that is within the city limits of La Grande. The La Grande to Hilgard segment of the Oregon Trail passes through Mr. Horst's property. This segment is listed on the National Registry. (Horst Direct Test.; Horst Ex. I.) There are visible ruts where the trail leaves the main road. (Horst Direct. Test.) There is also a deep water well on the property, located approximately 10 feet from the gravel road. (*Id.*; Horst Ex. H.)

162. Mr. Horst raised safety concerns about construction vehicle use of the Hawthorne Loop because there are no sidewalks in the neighborhood. Mr. Horst also raised concerns about construction vehicle use of the Hawthorne Loop and use of the unpaved, privately owned portion of Hawthorne Drive due to blind corners, narrow roads, and the "steep terrain." (Horst Direct Test. at 3-5.) In addition, Mr. Horst expressed concern that passing heavy construction equipment could cause damage to the well on his property. (*Id.* at 6.)

163. In the opinion of Idaho Power's geotechnical engineering expert, Mr. Horst's concern that vibrations from passing construction vehicles, including large construction haul trucks, excavators, cranes, or tracked equipment, are minimal and are unlikely to have a permanent impact on nearby structures unless there is significant cumulative fatigue. The proposed construction-related traffic on Hawthorne Drive adjacent to Mr. Horst's property, three or four daily one-way trips of large construction vehicles, is not enough to result in a cumulative fatigue effect or cause permanent damage. The vehicles will be traveling at a reduced speed as a mitigation measure and any turbidity in the well water that caused by the passing of construction vehicles will be temporary. (Cummings Rebuttal at. 46.)

⁶⁶ Blading entails the redistribution of surface material over the road surface using a mechanical grader. Bladed road features typically include cuts and/or fills to construct a smooth travel surface and manage surface water drainage and include the manipulation or creation of a road prism and profile. Bladed roads are used where side slope is over 8 percent or over rough and uneven terrain. (Grebe Rebuttal Test. at 33.)

164. Dale and Virginia Mammen reside in a home on Balsa Street, off of Modelaire Drive in the Hawthorne Loop. The Mammens also raised traffic safety concerns about construction vehicle use of the Hawthorne Loop and the unpaved, privately owned portion of Hawthorne Drive⁶⁷ due to blind corners, narrow roads, steepness, and slope instability. (Mammen Direct Testimony at 4-7.)

Findings related to the Public Services standard – Fire Protection

165. In the Second Amended Project Order, with regard to fire protection, the Department directed that the ASC include “an analysis of potential facility-related impacts to fire protection services, including fire protection on forestland and rangeland.” (ODOE - B2HAPPDoc15 ApASC Second Amended Project Order 2018-07-26, page 22 of 29.)

166. In ASC Exhibit U, Idaho Power explained that most of the land within the site boundary, approximately 72 percent, is privately owned. The BLM manages about 25 percent of the land in the Site Boundary, with the remaining 3 percent managed by other federal (USFS and U.S. Bureau of Reclamation) or State agencies. Idaho Power also explained that, for private lands within the analysis area, fire protection and response falls to fire departments, rural fire protection districts, and rangeland fire protection associations. (ODOE - B2HAPPDoc3-38 ASC 21_Exhibit U_PublicServices_ASC 2018-09-28, pages 18-21 of 143.)

167. In preparing ASC Exhibit U, Idaho Power contacted federal, state, and local fire response organizations within the analysis area. Each organization provided information regarding the number of paid and volunteer firefighters in the organization, the firefighting equipment, and the estimated response times to reach the project site. (ODOE - B2HAPPDoc3-38 ASC 21_Exhibit U_PublicServices_ASC 2018-09-28, pages 20-21, 58 of 143.) Idaho Power incorporated the information received into ASC Exhibit U, Table U-10, which summarizes staffing levels, equipment, and response times that responded to the requests for information.⁶⁸ (*Id.* at pages 20-21 of 143.) Idaho Power also explained as follows:

Not all lands in the analysis area fall within a designated fire district. In those cases, the closest or best situated fire district responds to fires. Mutual aid agreements have been established between local fire districts and adjacent counties to pool resources, ensure cooperation between these entities, and prevent fires on a county and state level instead of isolating efforts to local districts (Martin 2016; Hessel 2016; Morgan 2016; Weitz 2016). As a result of these mutual aid agreements, the fire district that responds to a fire may not be the district that the fire occurs in, or even the closest district; instead, response is based on the district that is best situated and suited to respond. In addition, fire

⁶⁷ The Mammens refer to this portion of Hawthorne Drive as a “private easement access (PEA)” because it is privately owned, and not a county road or city street. (Mammen Direct Test. at 3.)

⁶⁸ At the time the La Grande Rural Fire Protection District provided information to Idaho Power (in 2017), the Morgan Lake area was not under the district’s protection. (Deposition of Kretschmer at 6-8. Cooper Direct Ex. 6.) In 2019, the district annexed 21 or 22 properties in the general vicinity of Morgan Lake to its protection area, but not Morgan Lake Park. (*Id.* at 40, 45, 50.) Morgan Lake Park is dual protected by the Oregon Department of Forestry and the City of La Grande. (*Id.* at 8.)

protection agencies in Idaho may be the best positioned to respond to a fire along portions of the Project in Malheur County, Oregon.

Response times to fires in the analysis area vary depending on the time of day, the priority of the emergency/call and the location of the emergency and the type of available access. Most of the fire districts within the analysis area comprise volunteers, and in some cases, it takes considerable time to collect and mobilize an entire fire crew. In addition, much of the analysis area includes open remote lands where access is limited. A fire in one of these areas may not be immediately identified. However, once a fire has been identified, the fire districts responding to requests for information have indicated that average response times range from about 8 to 40 minutes, depending on the location[.]

(*Id.* page 20 of 143.)

168. Idaho Power also addressed the project-related impacts on fire protection services, and stated that considering the Company's Fire Prevention and Suppression Plan (Attachment U-3), the project was not expected to have significant adverse impacts. Idaho Power explained that it developed the draft Fire Prevention and Suppression (FPS) Plan to ensure that fire prevention and suppression measures are carried out in accordance with federal, state, and local regulations. Idaho Power added that:

By implementing these measures, the Project will not increase fire ignitions, and therefore will not impact sagebrush steppe and native grasslands. The final plan will incorporate input from the construction contractor to ensure coordination with local fire fighters and emergency responders for effective emergency response.

(ODOE - B2HAPPDoc3-38 ASC 21_Exhibit U_PublicServices_ASC 2018-09-28, page 28 of 143.)

169. In ASC Exhibit U, Idaho Power further explained the following:

Wildfires are a concern in the general Site Boundary area. IPC believes that during facility construction and operation the abilities of the rural fire districts and the BLM and USFS to provide fire protection services within the Site Boundary will be enhanced for the following reasons:

- Establishment of Project roads that will reduce response time, serve as potential fuelbreaks and point of attack for firefighting personnel;
- Presence of earthmoving equipment within the Site Boundary during construction; and
- Presence of water trucks within the Site Boundary during construction.

The concerns of these local fire protection agencies include traffic, access, and safety issues, and mitigation for each are included in Attachment U-2, Section 4.2.1.

(ODOE - B2HAPPDoc3-38 ASC 21_Exhibit U_PublicServices_ASC 2018-09-28, page 29 of 143.)

170. ASC Exhibit U, Attachment U-3, the FPS Plan describes the fire prevention measures to be taken during construction, operation and maintenance of the facility. Idaho Power explained that prior to and during construction, measures would be taken to minimize the risk of fire including: training personnel, prohibiting smoking, using spark arresters, clearing parking areas, vehicles and storage areas of flammable material, providing fire extinguishing equipment, prohibiting burning, and maintaining communications with fire control agencies. Idaho Power acknowledged its responsibilities for fire suppression on lands protected by the Oregon Department of Forestry, and agreed to restrict or cease construction operations in specified locations during periods of high fire danger at the direction of the land-management agency's closure order. (ODOE - B2HAPPDoc3-38 ASC 21_Exhibit U_PublicServices_ASC 2018-09-28, pages 137-143 of 143.)

171. In the draft FPS Plan, Idaho Power explained Oregon's wildfire protection system, fire suppression responsibilities and coordination between agencies and organizations. The draft FPS Plan states:

The prevention and suppression of wildfires in eastern Oregon is carried out by the BLM, USFS, Oregon Department of Forestry (ODF) in conjunction with the Rangeland Fire Protection Associations (RFPA) and Rural Fire Protection Districts (RFPD), and local fire districts and agencies (Table 1). The agencies' activities are closely coordinated, primarily through the Pacific Northwest Wildfire Coordinating Group. Coordination of firefighting resources also occurs under Oregon's Emergency Conflagration Act that allows the state fire marshal to mobilize and dispatch structural firefighting personnel and equipment when a significant number of structures are threatened by fire and local structural fire-suppression capability is exhausted.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 9777 of 10016.)

172. With regard to facility operation, the draft FPS Plan states:

During transmission line operation, the risk of fire danger is minimal. The primary causes of fire on the ROW result from unauthorized entry by individuals for recreational purposes and from fires started outside the ROW. In the latter case, authorities can use the ROW as a potential firebreak or point of attack. During transmission line operation, access to the ROW will be restricted in accordance with jurisdictional agency or landowner requirements to minimize recreational use of the ROW.

(ODOE - B2HAPPDoc3-38 ASC 21_Exhibit U_PublicServices_ASC 2018-09-28, page 142 of 143.)

173. In the Proposed Order, the Department addressed the provisions of the draft FPS Plan. In discussing the fire protection districts service territory and the proposed facility, the Department noted that the vast majority of the proposed facility would be located either within the boundaries of a local fire response organization or on federal land where fire response is managed by BLM or the Forest Service. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 581 of 10016.) The Department also found as follows:

During construction, in those areas covered by a fire response organization or located on federal land, the certificate holder would attempt to negotiate an agreement with the relevant fire response organization or federal agencies as presented in Table PS-10 above, outlining communication and response procedures for potential fires within their boundaries. In those areas not covered by a fire response organization and not located on federal land, the certificate holder would attempt to negotiate an agreement with nearby fire response organizations or the federal agencies to provide fire response. If no such agreements can be reached, the certificate holder would propose alternatives such as contracting with a private fire response company or providing additional firefighting equipment at those sites. These commitments are represented in Section 1.4 Fire Response Agreements of the draft Fire Prevention and Suppression Plan (see Attachment U-3 of this order), referenced in recommended Public Services Condition 6 below.

In accordance with OAR 345-025-0016, the Department incorporated an agency review process, inclusive of a dispute resolution component, into the draft Fire Prevention and Suppression Plan, to allow appropriate federal, state and local agencies an opportunity to review and comment on the plan, including identification of appropriate fire district contacts and agreement components.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 583-84 of 10016.)

174. The Department proposed amending the draft FPS Plan to include the following:

1.4 Fire Response Agreements

In areas not covered by a fire response organization or located on federal land, the certificate holder will attempt to negotiate an agreement with the relevant fire response organization or federal agencies as presented in Table 2 above, outlining communication and response procedures for potential fires within their boundaries during facility construction and operation. In those areas not covered by a fire response organization and not located on federal land, the certificate holder will attempt to negotiate an agreement with nearby fire response organizations or the federal agencies to provide fire response. If no such agreements can be reached, the certificate holder will propose alternatives such as contracting with a private fire response company or providing additional

firefighting equipment at those sites. The certificate shall provide documentation to the Oregon Department of Energy, demonstrating the final agreements or alternative contract agreements for fire response.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 9780 of 10016.)

175. To ensure Idaho Power’s compliance with the FPS Plan and reduce potential impacts to fire protection providers during construction, the Department recommended the Council impose the following:

Recommended Public Services Condition 6: Prior to construction of a facility phase or segment, in accordance with the OAR 345-025-0016 agency consultation process outlined in the plan (Attachment U-3 of the Final Order on the ASC), the certificate holder shall submit final Fire Prevention and Suppression Plan(s) to the Department. The final Fire Prevention and Suppression Plan shall include the following, unless otherwise approved by the Department:

- a) The protective measures as described in the draft Fire Prevention and Suppression Plan as provided in Attachment U-3 of the Final Order on the ASC. The final plan shall establish that wildfire training for onsite workers and facility personnel be conducted by individuals that are National Wildfire Coordination Group and Federal Emergency Management Agency certified.
- b) A description of the fire districts and rural fire protection districts that will provide emergency response services during construction and copies of any agreements between the certificate holder and the districts related to that coverage.
- c) All work must be conducted in compliance with the approved plan during construction of the facility.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 587 of 10016.)

176. In the Proposed Order, the Department also addressed operational fire protection management. The Department noted that in the ASC, Idaho Power “describes and provides practices, protocols and management plans to manage wildfire risk, all of which would apply to the proposed facility.”⁶⁹ (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 588 of 10016.) The Department further found as follows:

The applicant describes its intent to develop and implement a Wildfire Mitigation

⁶⁹ Idaho Power included measures to reduce the risk of fire in its draft FPS Plan, the Right of Way Clearing Assessment and the Vegetation Management Plan. (Lautenberger Direct Test. at 55.) In addition, the Company’s Wildfire Mitigation Plan includes actions that will address the risk of wildfires during operation of the project. (*Id.*; *see also* Lautenberger Rebuttal Test. at 55.)

Plan that identifies strategies to further mitigate fire-related risks associated with its transmission operations and how the company prevents and responds to fire events. The Wildfire Mitigation Plan would utilize a risk-based approach that focuses on assessing wildfire risk and then taking actions to prevent wildfires and damage to infrastructure from wildfires. Operations and maintenance practices, programs, and activities would have specific targeted actions in those high wildfire threat areas. The Wildfire Mitigation Plan would also identify performance metrics and monitoring to ensure actual actions are consistent with those set forth in the plan.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02. Page 590 of 10016.)

177. The Department recommended the Council impose Recommended Public Services Condition 7, as follows:

Recommended Public Services Condition 7: The certificate holder shall:

- a. Prior to operation, provide a copy of its Wildfire Mitigation Plan to the Department and each affected county which provides a wildfire risk assessment and establishes action and preventative measures based on the assessed operational risk from and of wildfire in each county affected by the facility. The plan shall address facility and emergency contacts, agency coordination and responsibilities, necessary fire-fighting equipment, and long-term agreements with service providers, as needed.
- b. During operation, the certificate holder shall update the Wildfire Mitigation Plan on an annual basis, or frequency determined acceptable by the Department in consultation with the Oregon Public Utilities Commission.
- c. During operation, for the service territories the facility would be located within, the certificate holder shall provide to each of the fire districts and rural fire protection a contact phone number to call in the event a district needs to request an outage as part of a fire response.
- d. Any Wildfire Mitigation Plan required by the Oregon Public Utilities Commission shall be considered by EFSC as meeting the requirements of this condition.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 590 of 10016.)

178. The Department concluded that based on the analysis presented in the Proposed Order, and in compliance with recommended conditions:

[T]he Department recommends that the Council find that the construction and operation of the proposed facility is not likely to result in significant adverse

impacts to the ability of public and private fire protection providers to provide fire response services within the analysis area.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 590 of 10016.)

179. The risk of project-related wildfires is assessed by considering both the probability of fire and the potential consequence of the fire. (Lautenberger Rebuttal Test. at 61.)

180. In 2020, Idaho Power prepared its 2021 Wildfire Mitigation Plan and submitted the plan to the Oregon PUC (OPUC) and the Idaho PUC (IPUC) for approval. The primary objectives of the Wildfire Mitigation Plan are to identify and implement strategies that reduce wildfire risk associated with Idaho Power's transmission and distribution facilities and improve Idaho Power's transmission and distribution system's resiliency to any wildfire event, independent of the fire's ignition source. (Dockter Direct Test. at 3-4; Dockter Direct Ex. A at 11.) In December 2021, Idaho Power issued its 2022 Wildfire Mitigation Plan, which it submitted to the OPUC on December 30, 2021 in preparation for the 2022 fire season. (Dockter Cross-Exam. Test., Tr. Day 3 at 22; Dockter Sur-surrebuttal Ex. B.) Aside from the inclusion of a Public Safety Power Shutoff Plan (PSPS Plan) in the 2022 version, the differences in the two Wildfire Mitigation Plans are minor. (Dockter Cross-Exam. Test, Day 3, Tr. 3 at 22.)

181. The 2022 Wildfire Mitigation Plan includes measures to address weather-related wildfire risks. The Wildfire Mitigation Plan includes a specific fire potential index (FPI) tool that incorporates fire weather into the decision-making tool to reduce fire threats and risks. The FPI reflects key variables, such as the state of native vegetation across the service territory (also known as a "green-up"), fuels (ratio of dead fuel moisture component to live fuel moisture component), and weather (sustained wind speed and dew point depression). (Docker Rebuttal, Exhibit A, at 18; Lautenberger Rebuttal Test. at 44.) Each variable is assigned a numeric value, and those individual numeric values are summed to generate an FPI score from zero to 16, which expresses the degree of fire threat expected for each of the 7 days included in the forecast. The Company then characterizes the risk as Green, Yellow, or Red based on the FPI score. A Green FPI score indicates low potential for a large fire to develop and spread, a Yellow score indicates an elevated potential, and a Red score indicates a higher potential for fire based on below normal vegetation and fuel moisture content, combined with strong winds and low relative humidity. (*Id.*; Lautenberger Rebuttal Test. at 45.)

182. In the 2022 Wildfire Mitigation Plan, Idaho Power specifically considered the route of the proposed facility. Idaho Power identified two locations along the route as having an increased wildfire risk (Yellow risk zone) and no areas of higher risk (Red risk zone). Although the proposed facility has not yet been built, Idaho Power stated its intention to apply its annually-reviewed Wildfire Mitigation Plan to the construction and operation of the facility. (Dockter Sur-surrebuttal Test., Ex. B, at 19.)

183. The PSPS Plan included in the 2022 Wildfire Mitigation Plan addresses Idaho Power's ability to proactively de-energize its electrical facilities in identified areas of extreme wildfire risk to reduce the potential of those electrical facilities becoming a wildfire ignition

source or contributing to the spread of wildfires. (Dockter Sur-surrebuttal Test., Ex. B at 65-95.) As set out in the PSPS Plan, Idaho Power will initiate a power shutoff plan if the Company determines a combination of critical conditions indicate the transmission and distribution system at certain locations is at an extreme risk of being an ignition source and wildfire conditions are severe enough for the rapid growth and spread of wildfire. Idaho Power will evaluate as a whole (not relying on one single factor but a combination of all factors), without limitation, the criteria set forth in the plan. (*Id.* at 75.)

184. The 2022 Wildfire Mitigation Plan specifically addresses Red Flag Warnings as a consideration in implementing the PSPS Plan. The Plan states:

A Red Flag Warning (RFW) is a forecast warning issued by the National Weather Service (NWS) to inform the public, firefighters and land management agencies that conditions are ideal for wildland fire combustion and rapid spread. RFWs are often preceded by a Fire Weather Watch (FWW), which indicates weather conditions that could occur in the next 12–72 hours. The NWS has developed different zones across the nation for providing weather alerts (such as RFWs) to more discrete areas. These zones are shown on this NWS webpage: [] RFWs for Idaho Power’s service territory include Idaho Zones (IDZ) 401, 402, 403, 413, 420 and 422; and Oregon Zones (OR) 636, 637, 642, 634, 644, 645 and 646; and are monitored and are factored into Idaho Power’s determination of whether to initiate a PSPS. Boise and Pocatello NWS offices will not issue RFWs if fuels are moist and fire risk is low. The following thresholds are used by most NWS offices:

- Daytime:
 - Relative humidity of 25% or less
 - Sustained winds greater than or equal to 10 miles per hour (mph) with gusts greater than or equal to 20 mph over a four-hour time period
- Nighttime:
 - Relative humidity of 35% or less
 - Sustained winds greater than or equal to 15 mph with gusts greater than or equal to 25 mph over a three-hour time period
- Lightning:
 - The NWS rarely issues RFWs for lightning in the western United States. For this to occur, the Lightning Activity Level—a measure of lightning potential specifically as it relates to wildfire risk—needs to be at 3 or higher.

(Dockter Sur-surrebuttal Test., Ex. B, at 76; *see also* Lautenberger Rebuttal Test. at 38.)

185. High voltage transmission lines are less likely to ignite fires than lower voltage lines because, as the voltage increases: (1) taller and more resilient support structures (poles/towers) are used to keep conductors at greater distances from ground level; (2) the requirements for right-of-way clearance become stricter as line voltage increases and create a

broader right-of-way; and (3) vegetation is less likely to contact energized lines because conductors are more likely to be sited above tree canopy and vegetation management practices become more aggressive. (Lautenberger Direct Test. at 41.)

186. Distribution and transmission lines are classified by voltage. Generally speaking, distribution lines carry less than 34 kV; subtransmission lines carry 34, 46, and 69 kV; high voltage transmission lines carry between 115 kV and 230 kV; extra high voltage lines (EHV) carry 345, 500 and 765 kV; and ultra-high voltage lines carry more than 765 kV. (Lautenberger Direct Test. at 42.) EHV and ultra-high voltage lines have stricter requirements on minimum tower height, right-of-way width, and vegetation encroachment than high voltage transmission lines. (*Id.* at 46.)

187. 500 kV towers have construction requirements that are much more robust than those for lower voltages. Tower heights are increased and rights-of-way, usually between 150 feet and 250 feet, are wider relative even to high voltage transmission lines. These requirements reduce the potential for tree line contact or conductor clashing to cause fires, because aluminum particles are likely to burn to completion before contacting the ground. Furthermore, 500 kV lines are typically mounted on steel lattice towers that are stronger than the single-pole steel or wooden poles used for lower voltages. The stricter engineering requirements, higher tower heights, and wider rights-of-way make extra high voltage transmission lines, including 500 kV lines such as the proposed facility, less likely to cause fires than high voltage transmission lines. (Lautenberger Direct Test. at 46-47.)

188. Idaho Power's fire protection expert, Dr. Christopher Lautenberger, conducted an analysis of fire ignitions associated, or allegedly associated, with electrical transmission lines. He analyzed the most current data from the California Public Utilities Commission (as no analogous data exist for Oregon or Idaho) and found that of nearly 3,200 total ignitions, only two were associated with 500 kV transmission lines. (Lautenberger Direct Test. at 52.) Based on his research, Dr. Lautenberger concluded, "only an extremely small percentage of fire ignitions have been caused by high voltage transmission lines, with an even smaller percentage of fires associated with extra high voltage transmission lines such as B2H." (*Id.* at 54.) Dr. Lautenberger further noted that the proposed route for the project parallels or closely follows the Quartz to La Grande 230 kV transmission line for approximately 43 miles. That transmission line has been in operation nearly 70 years and Idaho Power has found no evidence of the line causing a fire. (*Id.* at 55; *see also* Dockter Direct Test. at 5.)

189. Dr. Lautenberger also analyzed data from the Fire Occurrence Database to determine historical fire ignitions within 50 miles of the project site. He found that approximately 16,000 fires had ignited within 50 miles of the project site between 1992 and 2018. The vast majority of these fires were small and quickly contained. Since 2000, eight fires exceeding 10,000 acres have burned within one mile of the project site. These large fires were caused by lightning, and not power lines. Dr. Lautenberger concluded that given the frequency of ignitions in the area, the fire ignition rates potentially associated with the project route are insignificant in comparison to the background ignition rates from natural and human-caused fires. He also considered the frequency of ignitions juxtaposed with the historic perimeters of fires and determined that fires that ignite in the area are often contained while they are still small.

(Lautenberger Rebuttal Test. at 25-27.)

190. In Dr. Lautenberger's opinion, the occurrence of severe fire weather near the proposed facility site is less frequent than in places like Northern California, where the largest wildfires have occurred. Offshore winds that have driven many of the large-loss fires in California are not a concern in Idaho or Eastern Oregon. Historically, wildfires near the project site have been relatively small and quickly contained. (Lautenberger Rebuttal Test. at 53.) Moreover, although Red Flag Warnings occur in Eastern Oregon, it is still unlikely that the project would start a fire in Red Flag Warning weather conditions because fires caused by 500 kV transmission lines are exceedingly rare. (Lautenberger Rebuttal Test. at 54.)

191. Limited parties raised the concern that transmission lines can exacerbate existing fires through arcing or flashovers. Arcing or flashovers can occur when there is a fire burning adjacent to or underneath transmission lines. According to Dr. Lautenberger, research literature on fire-induced flashovers of transmission lines has found that "it is the flame that has a high ion and electron concentration, making it conductive, which causes flashover when extended from the ground into the proximity of the conductor." (Lautenberger Rebuttal Test. at 59.) Because the proposed facility will have a minimum ground clearance of 34.5 feet and because flame heights of approximately 35 feet are not likely to occur in the right-of-way, it is unlikely that a fire would cause a flashover on the proposed facility. (*Id.*) In addition, the risk of flashovers does not result in a significant adverse impact to fire response providers' ability to provide fire protection in the area because the line would be de-energized in the event of fire. (*Id.* at 60.)

192. Limited parties also raised the concern that, in ASC Exhibit U, Table U-10, Idaho Power understated the response times of local fire protection organizations to respond to a fire in the project site area, and in particular, understated the time in which the La Grande Rural Fire Protection District (LGRFPD) could respond to a fire in the area of Morgan Lake.⁷⁰ (Cooper Direct Test. at 7, 12-13; Cooper Surrebuttal Test.) However, the LGRFPD is not the primary agency responsible for responding to a fire in the vicinity of Morgan Lake. There are two other fire response agencies, the La Grande Fire Department and the Oregon Department of Forestry (ODF), that share primary responsibility for fire protection in the Morgan Lake area.⁷¹ Both agencies are located closer to Morgan Lake than the LGRFPD and are therefore likely able to respond more rapidly to a fire at or near Morgan Lake. (Dockter Cross-Exam. Test., Tr. Day 3 at 17; Dockter Sur-surrebuttal Ex. C.) Furthermore, if there was a wildland fire in that area, the ODF would likely take the lead on the fire. (Dockter Cross-Exam. Test., Tr. Day 3 at 17.) In addition, in the event of such a fire, the Blue Mountain Interagency Dispatch Center would be able to deploy aerial resources from the La Grande Airport, which is located approximately four

⁷⁰ Table U-10 sets out the LGRFPD's response time to the analysis area generally (4 to 8 minutes), and not specifically to the Morgan Lake Area. (ODOE - B2HAPPDoc3-38 ASC 21_Exhibit U_Public Services_ASC 2018-09-28, page 21 of 143.) However, for a fire near Morgan Lake Park, it would take the LGRFPD several minutes longer (between 12 to 16 minutes) to respond to the top of Morgan Lake Road in a brush tender. (Deposition of Craig Kretschmer, May 13, 2021, at 9-11, Cooper Direct Ex. 6; *see also* Cooper Direct. Test. at 13.)

⁷¹ (Deposition of Craig Kretschmer, May 13, 2021, at 8, 12-1; Cooper Direct Ex. 6.)

miles from La Grande and about six miles from Morgan Lake. (*Id.* at 17-18.)

193. The risk of fire in the area in proximity to Mr. Myers' agricultural operations in Morrow County is also low, given the irrigation, fallow fields, and discontinuous fuels. In addition, the slopes adjacent to the property are predominantly less than 15 degrees. The lack of fires occurring in the area historically indicates the area is of lower fire risk than areas that have burned previously.⁷² (Lautenberger Rebuttal Test. at 54; Lautenberger Cross-Exam. Test, Day 3, Tr. 3 at 43-44.) Consequently, considering the distance between phases on the project's structures, the height of the structures, and the soil type along the site boundary, the probability that a whirlwind or dust devil would ignite a fire along the transmission line is very small. (Lautenberger Rebuttal Test. at 55.)

Findings related to the visual impact assessment under the Scenic Resources, Protected Areas, and Recreation standards.

Visual impact assessment methodology

194. In the Second Amended Project order, the Department ordered as follows with regard to Idaho Power's methodology for assessing the visual impacts of the proposed facility on scenic resources:

A visual impact assessment is required as part of Exhibit R; while no specific methodology is required by EFSC rule, the applicant must demonstrate why the proposed facility is [in] compliance with the Scenic Resources standard. Visual simulations or other visual representations are not required, but can provide important evidence for use by the Department and Council in understanding the potential visual impact of the proposed facility to Scenic Resources.

It is recommended the application include visual depictions (photo-simulations) of the project's impact on scenic resources within the analysis area and that the visual simulations include depictions from select viewpoints in protected areas identified in Exhibit L that may be affected by the proposed facility. It is also recommended that any photo-simulations and visual impacts assessments of permanent structures include all facility components, as applicable. For the purposes of Exhibit R, "local" land use plans include state, county, and city planning documents or inventories. The applicant shall also describe the measures it will take to minimize significant adverse impacts to important scenic resources.

(ODOE - B2HAPPDoc15 ApASC Second Amended Project Order 2018-07-26, page 20 of 29.)

⁷² In his cross-examination testimony, Dr. Lautenberger explained that Idaho Power has no record of dust devils causing outages or fires anywhere in its service territory. He also testified that he analyzed Morrow County data from the Homeland Infrastructure Foundation Level Dataset, which showed there are 400 miles of transmission lines in Morrow County, including about 90 miles of 500 kV lines. He cross-referenced that data with ignition locations from the fire-occurrence database and determined that "if dust devils do occur in Morrow County in the vicinity of transmission lines, they have not led to any fire ignitions." (Lautenberger Cross-Exam. Test., Tr. Day 3 at 44.)

195. The Second Amended Project Order provided similar direction with regard to Exhibit T and the Recreation standard:

A visual impact assessment is required as part of Exhibit T; while no specific methodology is required by EFSC rule, the applicant must demonstrate why the proposed facility is [in] compliance with the Recreation standard. Visual simulations or other visual representations are not required, but can provide important evidence for use by the Department and Council in understanding the potential visual impact of the proposed facility to important Recreation sites.

(ODOE - B2HAPPDoc15 ApASC Second Amended Project Order 2018-07-26, page 22 of 29.)

196. The Second Amended Project Order also provided the same direction with regard to Exhibit L and the Protected Area standard: “A visual impact assessment is required as part of Exhibit L; while no specific methodology are required by EFSC rule, the applicant must demonstrate why the proposed facility is [in] compliance with the Protected Areas standard.” (ODOE - B2HAPPDoc15 ApASC Second Amended Project Order 2018-07-26, page 16 of 29.)

197. As required by the Second Amended Project Order, Idaho Power included visual impact assessments as part of ASC Exhibits L, R, and T. In Exhibit L Attachment L-3, Exhibit R Attachment R-1, and Exhibit T Attachment T-4, Idaho Power described its methodology for assessing the proposed facility’s impact to visual resources. ASC Exhibit R Attachment R-1, states as follows:

The methodology described in Attachment R-1 of this document was applied to the impact assessment and significance determination presented in Exhibits L, R, and T. This methodology, though rooted in impact assessment procedures established by the Bureau of Land Management (BLM) and United States Department of Agriculture Forest Service (USFS), addresses feedback from the Oregon Department of Energy (ODOE) received via Request for Additional Information (RAI) R-24, asking that the definition of “significance” provided in the Energy Facility Siting Council’s (EFSC or Council) rules at OAR 345-001-0010(52) be considered in the analysis.

(ODOE - B2HAPPDoc3-35 ASC 18_Exhibit R_Scenic Resources_ASC 2018-09-28, page 140 of 570.)

198. As the Company explained in ASC Exhibit R, Attachment R-1 Idaho Power performed a three-part analysis for each identified resource: (1) establish baseline conditions; (2) assess potential impacts of the project; and (3) determine potential significance of project impacts. Consistent with OAR 345-001-0010(52), the Company based its determination of whether an impact may be significant by considering the “context of the action or impact, its intensity and the degree to which the possible impacts are caused by the proposed action.” (ODOE - B2HAPPDoc3-35 ASC 18_Exhibit R_Scenic Resources_ASC 2018-09-28, page 157 of 570.)

199. Idaho Power’s methodology for assessing impact to visual resources incorporated the BLM visual “sensitivity level” criterion and the USFS visual “concern” criterion, both of which measure the degree to which viewers subjectively value a visual resource. Scenic resources that viewers value highly are considered “highly sensitive” (under the BLM Visual Resource Management (VRM) or of “high concern” (under the USFS Scenery Management System (SMS)). (See ODOE - B2HAPPDoc3-35 ASC 18_Exhibit R_Scenic Resources_ASC 2018-09-28, page 147 of 570.)

200. In the ASC, Idaho Power explained its visual impact assessment methodology for establishing baseline conditions as follows:

Baseline conditions were established by assessing indicators of *scenic quality/attractiveness* and *landscape character* for each resource. The assessment was completed using a combination of general observations made during field visits, baseline data collected at representative KOPs [key observation points], and review of landscape features relative to Project components using Google Earth. These data were used to identify baseline landscape character and scenic quality for each scenic resource. Viewer groups were also identified as part of establishing baseline conditions. KOPs were identified through review of applicable land use and resource plans, consultation with agencies and organizations, and viewshed analysis. The KOPs used in the analysis are indicated on the maps included as Attachment R-2.

The analysis area includes scenic resources administered by the BLM and USFS. Both agencies have established baseline scenic resources inventory procedures:

- The BLM manages visual resources through the Visual Resource Management System (BLM 1986). Visual values are established through the visual resource inventory (VRI) process, which classifies scenery based on the assessment of three components: scenic quality, visual sensitivity, and distance.
- The USFS manages scenic resources through the Visual Management System established in The National Forest Management, Volume 2, Agricultural Handbook 462 (1974) to inventory, classify, and manage lands for visual resource values. In 1995, the USFS visual resource management guidelines and monitoring techniques evolved into the Scenery Management System (SMS) as described in *Landscape Aesthetics: A Handbook for Scenic Management, Agricultural Handbook* (USFS 1995). The USFS describes baseline condition in a similar manner; however baseline components include measures of scenic attractiveness and integrity, landscape visibility (i.e., distance zones), and concern level (i.e., sensitivity).

Because analogous concepts to scenic quality are found in the USFS SMS as scenic attractiveness and in the BLM Visual Resource Management system as scenic quality, the approach and terminology used by these land management

agencies was used to assess baseline conditions on lands administered by these agencies. In other words, the BLM system was used on BLM lands and USFS system was used on USFS lands. To address scenic resources on non-BLM or non-USFS lands, the method that most closely matched the prevailing geographic location and physiography of the resource were used according to the following conventions:

- BLM methods were applied to scenic resources in non-forested areas.
- USFS methods were applied to scenic resources in forested areas.

(ODOE - B2HAPPDoc3-35 ASC 18_Exhibit R_Scenic Resources_ASC 2018-09-28, page 147 of 570.)

201. In its visual assessment analyses, Idaho Power conservatively assumed the highest possible degree of sensitivity and subjective value for each resource evaluated. In ASC Exhibit R Attachment R-1, Idaho Power explained:

Viewer groups associated with each resource were evaluated to understand certain characteristics that inform the extent to which potential changes in landscape character and quality would be perceived (perception of change). *This assessment assumes a high sensitivity exists among all viewer groups based on the identification of the resource as important in a planning document. Therefore, this assessment instead focuses on understanding characteristics that describe the relationship of the observer to the potential impact, and the landscape context of that relationship.* Viewer characteristics assessed included viewer location (distance), viewer geometry (superior, inferior, or at grade), and viewer duration or exposure (BLM 1986). The landscape context included consideration of landscape type – i.e., focal or panoramic.

(ODOE - B2HAPPDoc3-35 ASC 18_Exhibit R_Scenic Resources_ASC 2018-09-28, page 150 of 570; emphasis added.)

202. In the Proposed Order, the Department outlined Idaho Power’s three-part process for implementing its visual impact methodology and assessing impacts to resources as follows:

- (1) Evaluation of baseline conditions, which involved collecting information related to:
 - a. Scenic Quality and Attractiveness. The characteristic is assigned a score or ranking, based on the BLM and USFS methods.
 - b. Landscape Character. This is a USFS system. The BLM does not use a “landscape character” classification, so this information was assessed for all protected areas based on the USFS system.

c. Viewer groups and characteristics.

(2) Impact likelihood and assessment, which involved the following assessment criteria:

a. Likelihood of impact;⁷³

b. Magnitude of impact – duration;

c. Magnitude of impact – visual contrast and scale domination;⁷⁴ and

d. Magnitude of impact – resource change and viewer perception.⁷⁵

(3) Consideration of intensity, causation, and context (based upon Council’s definition of “significant” OAR 345-001-0010(52)).

a. Impact intensity⁷⁶

b. Degree to which the possible impacts are caused by the proposed action

c. Context⁷⁷

⁷³ The Council’s definition of “significant” requires that the applicant consider both the magnitude and likelihood of a potential impact. For purposes of its analysis, Idaho Power assumed that any identified potential impact was likely to occur. (Kling Rebuttal Test. at 38.)

⁷⁴ Visual contrast is the extent to which an object appears different from the surrounding environment. Idaho Power measured visual contrast objectively by considering form, line, color, and texture. (Kling Rebuttal Test. at 40.) Scale dominance is the scale of an object relative to elements of the landscape that form its setting. Idaho Power assessed scale dominance based on whether the project feature was dominant, co-dominant, or subordinate in relation to the landscape. (*Id.* at 41-42.)

⁷⁵ Idaho Power used the magnitude determination to evaluate the level of resource change. Idaho Power assessed viewer perception as low, medium or high based on the location of the viewer relative to the potential medium to high magnitude impact. (Kling Rebuttal Test. at 45.)

⁷⁶ Idaho Power relied on resource change and viewer perception to determine the intensity of the potential visual impact. (Kling Rebuttal Test. at 46.) If a potential impact would result in low resource change, then Idaho Power concluded the potential impact was low. Similarly, if the potential impact would result in a high degree of resource change, then Idaho Power determined the impact high intensity. However, if the potential impact would result in a medium resource change, but viewers’ perception of that change would be high, then Idaho Power considered it to be a high-intensity potential impact. For other impacts causing medium resource change with either a low or medium degree of viewer perception, Idaho Power considered the impact as of medium intensity. (*Id.* at 47.)

⁷⁷ The context of an impact refers to the role of scenery as a valued attribute of the resource in question and the extent to which expected impacts are consistent with the standards and guidelines of relevant land management objectives. Idaho Power considered a potential medium or high-intensity impact significant

d. Potential significance. “Significance” was determined based on if the valued scenic attributes of the protected area could persist, or not, based on the proposed facility’s potential impact.⁷⁸

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 279 of 10016.) Idaho Power found a high-intensity impact to be potentially significant for purposes of its visual impact analysis if the affected resource no longer provided the valued scenic attributes for which it was deemed important. In short, to be considered significant, a potential impact had to: (1) be high intensity; (2) preclude the impacted resource’s ability to provide the scenic value for which the resource was designated or recognized in the applicable land management plan; and (3) last for a duration of at least 10 years. (Kling Rebuttal Test. at 49.)

203. In the Proposed Order, the Department concurred with Idaho Power’s methodology for assessing visual impacts and recommended that Council, in its review, concur with the methodology. The Department identified the following reasons for its concurrence:

- The proposed facility would cross both BLM and USFS land, and on those lands, the applicant is required to utilize those agency’s respective visual resource impact assessment methods;
- Both the BLM and USFS approved the proposed facility location in its ROD(s), indicating compliance with the respective visual impact methodologies and standards;
- The applicant adapted each of the methodologies to use evaluative criteria based upon the Council’s definition of “significant” under OAR 345-001-0010(53);
- The BLM and USFS visual impact methodologies provide an objective system to evaluate visual impacts;
- Using the BLM and USFS methods to assess visual impacts to EFSC protected areas is consistent with the statutory direction at ORS 469.370(13) to conduct a site certificate review in a “manner that is consistent with and does not duplicate the federal agency review.”

if scenic values were a valued aspect of the affected resource and the project’s impacts would preclude the resource from continuing to provide those values. (Kling Rebuttal Test. at 47.)

⁷⁸ For its scenic resources analysis, Idaho Power considered all identified resources to include scenery as a valued asset. (Kling Rebuttal Test. at 49.) For resources analyzed under either the Protected Areas or Recreation Standards, Idaho Power reviewed whether scenery was included as a perceived amenity of those sites. For example, the Ladd Marsh Wildlife Area was determined not to include scenery as a valued attribute, because that resource was designated as a protected area to provide habitat benefits for various species and none of Ladd Marsh’s management goals included protections for scenery. Because the potential visual impacts from the Project would not preclude Ladd Marsh from providing the wildlife-oriented benefits identified in its management plan, Idaho Power found those potential impacts to be less than significant. (*Id.* at 49.)

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 279-280 of 10016.)

Visual impacts in the vicinity of the NHOTIC

204. The National Historic Oregon Trail Interpretive Center (NHOTIC) is located on top of Flagstaff Hill and has extensive background views to the west across Baker Valley to the Blue Mountains and to the southeast across Virtue Flat. The NHOTIC facility includes a visitor center, a theater, and a gift shop. There are also outdoor exhibits. There is a trail network within the NHOTIC parcel that provides visitor access to areas within the Area of Critical Environmental Concern (ACEC). Panorama Point is a lookout established outside of the NHOTIC parcel but included as a recreational opportunity within the NHOTIC. This lookout directs view to the west, which would be towards the proposed facility. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 423 of 10016.)

205. The NHOTIC ACEC parcel is both a scenic resource as described in OAR 345-022-0080 and a protected area as described in OAR 345-022-0040. In the ASC, Idaho Power assessed the NHOTIC ACEC parcel under the Scenic Resources standard, the Protected Area standard, and the Recreation standard. In the Proposed Order, the Department noted that the NHOTIC ACEC parcel is 507 acres, managed by the BLM for the preservation of its unique historic resource and visual qualities, and characterized by high recreational use. The Proposed Order found as follows:

The proposed facility would be located within one mile of the NHOTIC main building and within 130 feet of the western boundary of the NHOTIC Parcel. Potential visual impacts of the proposed facility within the NHOTIC parcel would include visual impacts from intermittent views of transmission structures, typically from elevated vantage points. Taking into account the mitigation discussed below and in this order, the applicant states that the proposed facility would introduce low to medium magnitude impacts depending on tower and viewer location within the NHOTIC parcel. The highest magnitude impacts, evaluated as medium, would be experienced from the western portion of the parcel near Panorama Point and level 2 and 3 trails, as presented in ASC Exhibit L Attachment L-4, photo simulations 5-25C, and 5-25D. Views of the proposed facility would be experienced from an elevated vantage point and would be predominantly peripheral or intermittent such that viewer perception would be up to medium. *Impacts would slightly reduce the scenery adjacent to the NHOTIC parcel but would not alter the overall scenic quality of the NHOTIC parcel such that resource change would be medium.* As described above, based on descriptions in the ASC Exhibits S and L and based upon staff familiarity of the site, the Department concurs with the applicant's conclusion that the proposed facility would be one of several developments contributing to the overall landscape character and quality, therefore the existing landscape character would be retained within the boundary of the ACEC and resource change would be medium.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 283 of 10016; emphasis added.)

206. The Department further found as follows:

[T]he NHOTIC parcel was designated to preserve the unique historic resource and visual qualities. The Oregon Trail ACECs, including NHOTIC, were specifically designated to preserve the unique historic resource, the Oregon Trail, and visual qualities within this geographic area. Because no development is proposed within a half mile corridor centered on the Oregon Trail within the ACEC, the resource values for which the NHOTIC parcel was designated to protect would not be impacted by the proposed transmission line. Additionally, recommended Historic, Cultural, and Archaeological Resources Condition 1 would require that the proposed facility avoid direct impacts to Oregon Trail and National Historic Trail resources. The number of towers visible would also vary depending on viewer position within the ACEC. As discussed in detail in ASC Exhibit L, to mitigate for potential visual impacts, the applicant proposes to use a modified tower structure, consisting of H-frame structure type with a natina (brown-weathered coloring) for towers proposed to be located directly west of the NHOTIC. There is an existing H-frame 230 kV transmission line in this area, visible from NHOTIC, and the proposed modified tower structure in this location would reduce visual impacts of the proposed facility by mimicking the existing H-frame 230 kV transmission line, though the proposed facility would have larger structures and would be made of steel, not wood.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 284 of 10016.)

207. As to the proposed facility's visual impacts to the NHOTIC, the Department concluded as follows:

[T]he Department notes that in its Record of Decision (ROD), the BLM has authorized the proposed facility in this area, which is an important consideration because the BLM is the landowner and manager of NHOTIC. The EFSC Protected Areas standard adopts as protected areas those areas that are designated by other government agencies, including BLM ACECs. As such, by authorizing the route in ROD, the federal agency (BLM) that administers the Management Plan for NHOTIC is authorizing the placement of the proposed facility in this location, and above-ground as permissible within the scenic designations in the Management Plan. Considering that the agency that manages the NHOTIC land and has identified the NHOTIC as having significant or important scenic value has authorized the proposed facility in the location proposed in the ASC, the Department considers this relevant information with regard to the EFSC Protected Areas standard. Based on this analysis, and considering the recommended mitigation, the Department recommends that the Council find that visual impacts

to the protected area would be less than significant.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, age 287 of 10016.)

208. To reduce potential impacts to the Oregon Trail ACEC – NHOTIC Parcel, NHOTIC recreation site, and VRM II area, and to incorporate the proposed mitigation measures, the Department recommended that the Council include the following condition:

Recommended Scenic Resources Condition 3: At final facility design, the certificate holder shall select transmission structures, to be constructed in the vicinity of the National Historic Oregon Trail Interpretive Center between approximately Milepost 145.1 and Milepost 146.6, with the following design modifications:

- a. H-frames;
- b. Tower height no greater than 130 feet; and
- c. Weathered steel (or an equivalent coating).

Additionally, the certificate holder shall construct the facility using tower structures that meet the following criteria between approximately Milepost 146.6 and Milepost 146.7:

- a. H-frames;
- b. Tower height no greater than 154 feet; and
- c. Weathered steel (or an equivalent coating).

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 424 of 10016.)

209. In the ASC, Idaho Power assessed potential impacts from the viewpoint KOPs 5-25d at NHOTIC. Idaho Power also assessed potential impacts from KOP 5-25c, located outside the NHOTIC. Idaho Power identified an additional KOP, 5-25e, near the visitor center. Idaho Power assessed potential impacts of the Flagstaff Hill Alternatives from this KOP using a photo simulation in preparation for the ASC. In the ASC, Idaho Power assessed potential impacts from this KOP, but did not prepare a separate photo simulation of the potential impacts. In response to concerns raised by limited parties, Idaho Power also developed a video animation to better assess potential project visibility from level 3 trails located in the western portion of the ACEC. These animations confirmed Idaho Power's conclusions presented in the ASC that impacts would be greater in this portion of this ACEC, but also illustrated the limited visibility of the project from areas around the visitor center and level 1 and 2 trails. Idaho Power selected these KOPs to demonstrate how the visual impacts from the project will vary at different sites throughout the NHOTIC. Idaho Power selected KOPs near the main NHOTIC building, where visitor traffic is heavy, to represent recreational visitors to the NHOTIC. KOP 5-25c is located at the Panorama Point viewing platform near the westernmost boundary of the NHOTIC—which is the area closest to the project. (Kling Rebuttal Test at 55-56; Kling Rebuttal Exhibits J and J3.)

210. For the contested case record, Idaho Power's environmental research and planning

expert, Louise Kling, prepared a photo simulation depicting the visual impacts to NHOTIC based on Idaho Power's proposed mitigation via design changes. Kling Exhibit D shows the visual impacts resulting from lattice structures and H-frame structures with a comparison of the visual simulations of the transmission line with and without mitigation. (Kling Rebuttal Test. at 63-64; Kling Rebuttal Ex. D.)

211. Limited party Carbiener's land use and environmental planning expert, Isobel Lingenfelter, created a 3-dimension model of the NHOTIC and surrounding area and used photogrammetry software to create a representation of the proposed project in the area, using 129.37 feet-high H-frame towers at regular intervals 900 feet apart. (Lingenfelter Test., Exhibits 1-35.)

Visual impacts at Morgan Lake Park

212. Morgan Lake Park is a regional park provided by the City of La Grande Parks and Recreation Department. The park is approximately 204.5 acres and located outside the city limits, approximately three miles southwest of La Grande. The park includes two lakes, Morgan Lake and Little Morgan Lake (also known as Twin Lake). (Kling Rebuttal Test. at 76.) Park facilities include 12 campsites, 5 barbeque pits, 4 fishing piers, a restroom, a boat launch, and a floating dock. There is no fee for camping and no motors are allowed on the lake. (ODOE - B2HAPPDoc3-37 ASC 20_Exhibit T_Recreation_ASC 2018-09-28, page 18 of 291.) Recreational activities at the park include camping, fishing, hiking, wildlife study, bird watching, and stargazing. (McAllister Direct. Test. at 3-5.)

213. With regard to the Recreation standard, in the Second Amended Project Order, the Department ordered, in pertinent part, as follows:

The application shall analyze the importance of recreational opportunities in the analysis area using the factors listed in OAR 345-022-0100(1), discuss any significant potential adverse impacts to important recreational opportunities, and describe measures proposed to avoid, minimize or mitigate those impacts. Please list all recreational opportunities in the analysis area and the applicant's analysis of whether those recreational opportunities are considered "important" or not.

* * * A visual impact assessment is required as part of Exhibit T; while no specific methodology is required by EFSC rule, the applicant must demonstrate why the proposed facility is [in] compliance with the Recreation standard. Visual simulations or other visual representations are not required, but can provide important evidence for use by the Department and Council in understanding the potential visual impact of the proposed facility to important Recreation sites.

(ODOE - B2HAPPDoc15 ApASC Second Amended Project Order 2018-07-26, page 22 of 29.)

214. The proposed project will not cross any portion of Morgan Lake Park and therefore will not result in any permanent displacement of any recreational uses associated with the park. Both the Proposed Route and the Morgan Lake Alternative are near Morgan Lake Park. The Proposed Route is located 0.6 mile to the north of the park at its closest point. The Morgan Lake

Alternative passes approximately 0.2 miles from Morgan Lake Park at its closest point. (Kling Rebuttal Test. at 79.)

215. In ASC Exhibit T, as required by OAR 345-021-0010(1)(t),⁷⁹ Idaho Power evaluated potential impacts to Morgan Lake Park as an important recreational opportunity in the project area.⁸⁰ (ODOE - B2HAPPDoc3-37 ASC 20_Exhibit T_Recreation_ASC 2018-09-28, page 32 of 291.) In summarizing the visual impacts to Morgan Lake Park, Table T-1 notes: “Vegetation will block views of the towers from most locations in the park. The cleared right-of-way will not be visible. Viewers could experience weak contrast from the Project while engaging in transient or stationary activities.” (*Id.*)

216. In Exhibit T, Attachment T-4, Visual Impact Methodology and Analysis, Idaho Power stated as follows:

The Proposed Project will result in long-term visual impacts to Morgan Lake Park. Impacts will be medium intensity as measured by visual contrast and scale dominance, resource change, and viewer perception. Visual impacts will not preclude visitors from enjoying the day use and overnight facilities offered at the Morgan Lake Park. Therefore, visual impacts to Morgan Lake Park will be **less than significant**.

(ODOE - B2HAPPDoc3-37 ASC 20_Exhibit T_Recreation_ASC 2018-09-28, page 155 of 291; emphasis in original.)

217. On August 20, 2019, Idaho Power executed the MOA with the City of La Grande to provide further mitigation of potential impacts to Morgan Lake Park resulting from the proposed facility along the Morgan Lake Alternative. As found above, Idaho Power agreed to provide \$100,000 to the City of La Grande if the Company constructs the Morgan Lake Alternative. The City of La Grande and Idaho Power agreed that the funds are primarily intended for recreational improvements at Morgan Lake Park (*e.g.*, day use area improvements, toilet upgrades, a new entry gate).⁸¹ The funds are not specifically intended to mitigate for visual impacts. To mitigate for the visual impacts to Morgan Lake Park, the Proposed Order includes Recommended Recreation Condition 1, set out above. (Kling Rebuttal Test. at 82.)

⁷⁹ OAR 345-021-0010(1)(t) requires that the ASC include as Exhibit T, “[i]nformation about the impacts the proposed facility would have on important recreational opportunities in the analysis area, providing evidence to support a finding by the Council as required by OAR 345-022-0100[.]”

⁸⁰ Idaho Power did not assess Morgan Lake Park under the Scenic Resources standard or the Protected Areas standard because the Park is not identified as a significant or important scenic resource in any local land use plan as required by the Scenic Resources standard (OAR 345-022-0080) and does not fall within any of the categories listed in the Protected Areas standard (OAR 345-022-0040(1)). (Kling Rebuttal Test. at 77-78.)

⁸¹ (*See* ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 250-51 of 10016, discussing the MOA and Recommended Land Use Condition 17.)

218. In November 2019, in response to comments received on the Draft Proposed Order (DPO), Idaho Power performed a supplemental analysis of Morgan Lake Park under the Recreation standard, including an updated visual impacts analysis. In the supplemental analysis, Idaho Power addressed the following impacts: (1) Direct or indirect loss of a recreational opportunity as a result of facility construction or operation; (2) Noise resulting from facility construction or operation; (3) Increased traffic resulting from construction or operation; and (4) Visual impacts of facility structures. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 7698 of 10016.)

219. With regard to loss of recreational opportunities, the supplemental analysis states:

The Project will not cross any portion of Morgan Lake Park and therefore will not result in any permanent displacement of any recreational uses associated with the park. During construction, there could be temporary, intermittent access delays when Morgan Lake Road or other access roads are controlled for safety purposes to accommodate construction vehicles and equipment. However, any delays getting to the park are expected to be only intermittent and short in duration (i.e., not lasting longer than 30 minutes), and access within the park will not be affected at all. Therefore, the project will result in any direct or indirect loss of recreational opportunity.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 7698 of 10016.)

220. With regard to noise resulting from facility construction or operation, the supplemental analysis notes that the park would experience some level of short-term noise impacts during construction. During operation, potential sources of noise would be maintenance activities and corona noise. Idaho Power explained its methodology for estimating increase in sound levels and frequency of exceedances. The supplemental report notes that, “during typical operating conditions, corona noise is estimated at 27 dBA at the edge of the transmission line right of way, and this level of sound (or lower) would be representative of sound levels at the park during fair weather conditions. Twenty-seven dBA is a low level and would not cause a significant noise impact to any recreation opportunity.” (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 7699 of 10016.) Idaho Power further concluded that “the low-level of corona noise, during infrequent weather conditions, is unlikely to cause a significant noise impact at Morgan Lake Park.” (*Id.* at 7701 of 10016.)

221. As for traffic impacts, Idaho Power concluded that any traffic impacts will be temporary in nature and not result in a significant adverse impact to recreation resources, including Morgan Lake Park. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 7702 of 10016.)

222. In addressing visual impacts in the supplemental analysis, Idaho Power explained as follows:

Idaho Power first notes that Morgan Lake Park is considered in the EFSC process as *an important recreation opportunity and evaluated for compliance with the Council's Recreation Standard*, but is not separately evaluated as a Scenic Resource because the applicable management plan for Morgan Lake Park, the Morgan Lake Recreational Use and Development Plan, did not identify Morgan Lake Park as an important scenic resource. Accordingly, while Idaho Power did evaluate potential visual impacts associated with the project, it is important to also note that, per the Morgan Lake Recreational Use and Development Plan, there are no specific scenic views or values associated with the Morgan Lake Park that are regarded as particularly important for purposes of compliance with the Recreation Standard. Idaho Power's analysis of visual impacts focused on the elements of Morgan Lake Park that are most important for the recreation activities at the park, which include camping, picnicking, fishing, and boating.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 7702 of 10016; emphasis added.)

223. Idaho Power further explained:

Views of the Project will be experienced from a neutral position and will be peripheral and head-on, intermittent and continuous depending on viewer position and activity. As mentioned above, vegetation will block views of the towers from most locations in the park (including Morgan Lake), so viewer perception would be intermittent and peripheral while viewers are moving through the park. However; popular park activities (picnicking, fishing, and camping) are stationary and views experienced during those activities would be continuous and/or head-on, depending on the location of the particular activity. The only recreational facility at Little Morgan Lake is a short foot trail between Morgan Lake and Little Morgan Lake, thereby limiting viewers to areas primarily located east of Little Morgan Lake near the foot trail. Therefore, viewer perception from Little Morgan Lake would be medium due to location of viewers. The cleared ROW of the Morgan Lake Alternative will not be visible from Morgan Lake Park. Visual contrast will vary from weak to strong throughout the park, depending on the level of vegetation screening provided at each location. Resource change would be high and viewer perception would be moderate. There will be no Project facilities within the boundary of Morgan Lake Park. Scenic attractiveness and landscape character would be reduced and scenic integrity will be reduced to moderate such that resource change would be high. Although high intensity visual impacts could occur to Morgan Lake Park, they would not occur in primary recreation areas concentrated around the shore of and on Morgan Lake.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 7703 of 10016.) With regard to the proposed facility's long-term visual impacts to Morgan Lake Park, Idaho Power concluded:

Impacts will be high intensity in some areas of the park as measured by visual contrast and scale dominance, resource change, and viewer perception. Visual impacts will not preclude visitors from enjoying the day use and overnight facilities offered at the Morgan Lake Park as high intensity impacts will occur in areas of the park managed for wildlife habitat not recreation. Therefore, visual impacts to Morgan Lake Park will be less than significant.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 7710-11 of 10016.)

224. In section IV.L of the Proposed Order, the Department recognized Morgan Lake Park as an important recreation opportunity and evaluated Idaho Power's impact assessment of the park and 20 other identified important recreational opportunities. The Department noted that Idaho Power assessed visual impacts to important recreational opportunities using the methodology described in Exhibit L (Protected Areas) and Exhibit R (Scenic Resources). (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 520 of 10016.)

225. In its discussion of Morgan Lake Park as an important recreational opportunity, the Department stated as follows:

Both the applicant and the City of La Grande provided comments on the DPO identifying that, in light of the City's continued opposition to the proposed facility in Union County, the City and applicant executed a Memorandum of Agreement (MOA) outside the EFSC process. Part of the MOA addresses the City's concerns about potential impacts at Morgan Lake Park, if the Morgan Lake alternative is selected for construction. The City and applicant agreed that, if this route is selected, the applicant would provide the City with \$100,000 for recreational improvements at Morgan Lake Park. The improvements include upgrades to the access road to the Park as well as a new entry gate, the installation of new vault toilets at the campground, day use improvements, signage, and other improvements to the recreational opportunities within the Park.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 528 of 10016.)

226. In addressing the visual impacts of the proposed facility at Morgan Lake Park, the Department found as follows:

[B]ased on the applicant-modeled H-frame towers in specific locations and to reduce the overall potential visual impacts to the affected human population of user of the Morgan Lake Park recreational opportunity, the Department recommends that Council include the following condition as Recreation Condition 1:

Recommended Recreation Condition 1: If the Morgan Lake alternative facility route is selected, the certificate holder shall construct the facility using tower structures that meet the following criteria for the transmission line that would be visible from Morgan Lake Park, specifically between milepost (MP) 6.0 to MP 6.9 miles 5-7 of the Morgan Lake alternative, as shown on ASC Exhibit C, Attachment C-3, Map 8.

- a. H-frames;
- b. Tower height no greater than 130 feet; and
- c. Weathered steel (or an equivalent coating).

Based on the analysis presented here, the Department recommends that the Council find that the proposed Morgan Lake alternative facility with recommended mitigation would not cause a significant adverse impact to the recreational opportunities at Morgan Lake Park.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 531-32 of 10016.)

227. The Policy Statement in the Morgan Lake Plan provides, in pertinent part:

Morgan Lake Park shall be managed and improved in a manner consistent with the objective of providing a quality outdoor recreational experience harmonious with a natural forest and lake area (as opposed to typical city park activities). Example activities consistent with this objective include fishing, bird watching, nature study, boating, but do not include baseball, motor bike trails, hunting, shooting, or playground activities using swings, merry-go-rounds, slides, etc.

A goal of minimum development of Morgan Lake Park should be maintained to preserve the maximum of natural setting and to encourage solitude, isolation, and limited visibility of users while at the same time providing safe and sanitary condition for users.

(McAllister Ex. 4 at 6.)

228. For the contested case record, Idaho Power's expert Ms. Kling revisited Idaho Power's supplemental analysis of Morgan Lake Park to address the limited parties' concerns that Idaho Power did not assess undeveloped areas within the park that support recreation activities such as birdwatching and nature study. (Kling Rebuttal Ex. E.) The Revised Supplemental Analysis provides an assessment of both developed and undeveloped areas,⁸² with consideration

⁸² The Revised Supplemental Analysis states, in part:

The project will be visible from approximately 16 percent of the Park, and primarily from the access road and day-use parking areas located to the south of Morgan Lake, and undeveloped areas west and south of Little Morgan Lake. * * * .

of additional mitigation that expands the use of H-frames between milepost 5 and 8. Idaho Power applied this additional mitigation to provide more continuity in tower type with the viewshed of Morgan Lake Park, and to reduce tower heights such that they would not be visible from the majority of campsites and the boat launch. (Kling Rebuttal Test. at 83.) Ms. Kling also developed a video animation to evaluate further the project's potential impacts to undeveloped recreation opportunities at Morgan Lake Park. The animation allows the viewer to determine the extent to which project features would be visible from areas not previously included in the ASC (the prior analysis focused on developed recreation opportunities). (Kling Rebuttal Test. at 79-81; Kling Rebuttal Ex. F.)

229. The Revised Supplemental Analysis discussed the magnitude of the proposed facility's impact on Morgan Lake Park in terms of duration, virtual contrast and scale dominance, resource change and viewer perception. As pertinent here, the Revised Supplemental Analysis noted:

[Visual Contrast and Scale Dominance] Though much of the park will have no to low visibility, visual contrast will be moderate to high where the towers are not screened. High visual contrast will be limited to the southern portions of the Park, and areas located along the western edge of Little Morgan Lake. In these areas, towers will appear co-dominant to dominant within the landscape. Therefore, impact magnitude for the park as a whole will be medium-high.

[Resource Change] The landscape character and scenic attractiveness of the park will be maintained in the northern portion, where developed recreation opportunities will be located. The majority (84 percent) of Morgan Lake Park and

For the most part, areas located north of Morgan Lake would have limited views of transmission towers, with exposure either precluded by vegetation, or minimized as a result of the combined effects of vegetation screening or backdrop provided by topography []. The landscape in these areas would appear similar to existing conditions, with broad, unobstructed, panoramic views extending to the north, east, and west []. Views to the south would appear enclosed due to the presence of the conifer stands along the southern perimeter of the lake, as is experience under existing conditions [].

One tower would be fully visible from a short segment of trail connecting Morgan Lake and Little Morgan Lake, and dispersed areas to the north []. The tower would contrast against the existing landscape at a weak to moderate level as a result of the backdrop provided by the hillside, and the consistency in vertical line with surrounding trees. Along the north side of Morgan Lake, tops towers would be visible to the west on approach to the west side of the lake, though viewer exposure from within the park would be limited to the top of the towers and with partial screening from vegetation lake [].

From the northwestern side of Little Morgan Lake, multiple towers with the potential for skylining could be seen []. Visual contrast in these areas is anticipated as moderate due to the skylining []. * * * As disclosed in the ASC, high magnitude impacts are expected in areas south of Morgan Lake and Little Morgan Lake due to the proximity of the Project and the lack of screening.

(Kling Rebuttal Ex. B at 6-12, embedded photos and citations to Exhibit F1, F2 and F3 omitted.)

its recreational features (campsites, fishing piers, and floating dock) will be screened from views of the Project []. In areas of dispersed or undeveloped recreation in the southern portion of the park, scenic integrity will be reduced to a moderate level for the majority of areas; however, integrity would be reduced to low in the southern portion of the Park, particularly in day use areas along the Sheep Creek Trail. Therefore, resource change of Morgan Lake Park as a whole will be medium.

[Viewer Perception] Viewer perception will range from low to high throughout Morgan Lake Park. Views of the Project will be experienced from a neutral position and will be equally peripheral and head-on and range from intermittent to continuous. Therefore, viewer perception for the park as whole will be medium.

(Kling Rebuttal Ex. B at 14-15; emphasis in original.)

230. Like the prior analyses, the Revised Supplemental Analysis referenced the Morgan Lake Plan objectives, and considered scenery as a valued attribute of the recreation opportunity. (Kling Rebuttal Ex. B at 17.) The Revised Supplemental Analysis also noted that while the project will introduce moderate contrast to the landscape and high visual contrast in discrete areas in the southern portion of the park, it would not preclude visitors from enjoying the recreation opportunities offered at the park. The Revised Supplemental Analysis concluded:

The Proposed Project will result in long-term visual impacts to Morgan Lake Park, primarily in the southern periphery of the park. Impacts will be of varying intensity as measured by visual contrast and scale dominance, resource change, and viewer perception. Visual impacts will not preclude visitors from engaging in the recreational opportunities offered at Morgan Lake Park, including the undeveloped or developed (day use and overnight facilities) opportunities. Therefore, visual impacts to Morgan Lake Park will be less than significant.

(*Id.*)

231. In response the limited parties' concerns regarding potential visual impacts to undeveloped areas within Morgan Lake Park, Idaho Power proposes using H-frame towers on the Morgan Lake Alternative between milepost 5 and milepost 8 in the vicinity of the park. (Kling Rebuttal Test. at 80; Kling Rebuttal Ex. E.)

Findings related to the Retirement and Financial Assurance standard

232. In the Second Amended Project Order, Section III(m) the Department stated as follows with regard to Exhibit M of Idaho Power's application for site certificate (ASC):

To find that the proposed transmission line satisfies the Financial Assurance Standard (OAR 345-022-0050(2)), the Council must find that the applicant has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition.

The application shall include the type and amount of the applicant's proposed bond or letter of credit to satisfy the requirements of OAR 345-022-0050.

The applicant shall propose a bond or letter of credit in a form and amount adequate to restore the site to a useful, non-hazardous condition in the event construction of the transmission line is not completed or if the transmission line were to be retired. Recognizing that the permanence of the transmission line can be less certain as circumstances change and technology evolves over time, it is recommended that the applicant submit a proposal that recognizes the increased risks associated with changing circumstances and/or an aging facility, and proposes a bonding mechanism commensurate with that risk.

The application shall include a proposed mechanism by which the certificate holder can keep the Council apprised of the condition of the transmission line, evolving transmission technology, and the line's performance in the context of the larger northwest power grid; an age at which a bond would become warranted to provide adequate restoration assurance in the event the transmission line were to be retired or decommissioned; and the amount, or graduated amount, of that bond.

(ODOE - B2HAPPDoc15 ApASC Second Amended Project Order 2018-07-26, page 17 of 29.)

233. In accordance with the Second Project Order, Idaho Power, in ASC Exhibit M, set out its proposed approach for satisfying the Financial Assurances standard (proposed type and amount of bond or comparable security) and evidence of reasonable likelihood of obtaining security in the event the project would be retired. Idaho Power proposed that it obtain and maintain a bond or letter of credit during the construction phase of the project and after the project has been in service for 50 years. (ODOE - B2HAPPDoc3-21 ASC 13_Exhibit M_Financial Capability_ASC 2018-09-28, pages 1-11 of 19.)

234. In ASC Exhibit M, Idaho Power provided evidence that it has the capability to finance the construction of the project and meet the requirements for retirement and restoration of the project site. Idaho Power explained that it is a vertically integrated, regulated utility that operates a large fleet of assets, including generation, transmission, and distribution facilities and that it has remained in business without interruption or default for nearly 100 years. Idaho Power noted, among other things, that it is a rate-regulated utility under the jurisdiction of the Idaho PUC and the Oregon PUC and the rates set by both state commissions include the costs associated with retiring facilities that are taken out of service. Idaho Power reported that it maintains credit ratings that have historically enabled it to access secured and unsecured debt at reasonable rates and under acceptable terms. Idaho Power also noted that it has in place a \$300 million credit facility with a syndicate of large financial institutions, with a termination date of October 2022, and that it may, when necessary, obtain capital contributions from IDACORP, Inc., Idaho Power's parent entity. (ODOE - B2HAPPDoc3-21 ASC 13_Exhibit M_Financial Capability_ASC 2018-09-28, pages 11-12 of 19.)

235. In ASC Exhibit M, Attachment M-2, as evidence of its financial capability to obtain a letter of credit in the amount of the retirement, decommissioning and site restoration costs,

Idaho Power submitted a letter from Wells Fargo Bank. The Wells Fargo letter states the bank's willingness to furnish or arrange a letter of credit to cover the full costs of retiring the project and returning the site to a useful and non-hazardous condition:

Based upon Idaho Power's current credit ratings, profile and information we have as of the date hereof and subject to acceptable pricing, terms and requisite internal approvals, and assuring no market disruption, Wells Fargo confirms to you that it would be highly interested in arranging (as administrative agent or under the existing credit facility or otherwise) and believes it would be successful in arranging, a syndicated letter of credit in an amount up to \$141 million for a period not to exceed three years (the LC Facility) for the purpose of ensuring Idaho Power's obligation that the site of the Boardman-to-Hemingway transmission project be restored to a useful and non-hazardous condition.

(ODOE - B2HAPPDoc3-21 ASC 13_Exhibit M_Financial Capability_ASC 2018-09-28, page 19 of 19.)

236. In ASC Exhibit W, Idaho Power provided information about site restoration following cessation of operation of the facility. Idaho Power estimated that the useful life of the proposed facility will be in excess of 100 years.⁸³ Idaho Power addressed site restoration activities, and asserted that such activities would be done in accordance with a Council-approved retirement plan. Idaho Power also addressed site restoration costs, and estimated that, should the facility be retired, the total cost of restoring the site to a useful, non-hazardous condition is \$140,902,000 in 4th quarter 2016 dollars. In addition, Idaho Power proposed site certificate conditions to ensure compliance with the relevant Council standards pertaining to retirement and financial assurance. Idaho Power submitted, as ASC Exhibit W, Attachment W-1, its cost estimate for removal and site restoration. (ODOE - B2HAPPDoc3-40 ASC 23_Exhibit W_Retirement_ASC 2018-09-28, pages 1-28.)

237. In ASC Exhibit W, and as required by OAR 345-027-0020(9), Idaho Power set out its plan for restoring the site to a useful, non-hazardous condition in the event of cessation of construction or operation. In ASC Exhibit W, Attachment W-1, Idaho Power explained that site restoration would involve removal of the transmission line (including all support structures, conductors, overhead shield wires, and communication sites) and the following components at the switching station: interconnecting bus system, switches, breakers, and instrumentation for the control and protection of the equipment. Idaho Power noted that its retirement plan will provide for removal of the cement foundations for each support structure to a depth of one foot below grade (depending on ground slope), except that any foundations located in land zoned Exclusive Farm Use (EFU) will be removed to a depth of three feet below grade.⁸⁴ (ODOE -

⁸³ The risk that the proposed facility would need to be retired is extremely low. From a practical standpoint, a 500 kilovolt ("kV") transmission line is designed, constructed, and operated to be in-service in perpetuity. From an accounting perspective, the useful life of a transmission line is 100 years. (Ellsworth Rebuttal Test. at 4-6.)

⁸⁴ Idaho Power proposed removing footings to a depth of one foot below ground surface in areas outside EFU-zoned land because it is more environmentally impactful to completely remove the footings than to

B2HAPPDoc3-40 ASC 23_Exhibit W_Retirement_ASC 2018-09-28, page 7 of 28; *see also* ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 300 of 10016.)

238. In the Proposed Order, the Department found that a 100-year lifetime is a reasonable estimated useful life for the proposed facility.⁸⁵ The Department also recommended that, based on the evidence in the record, the Council find that Idaho Power has the ability to restore the site to a useful, non-hazardous condition following permanent cessation of construction or operation of the proposed facility, subject to compliance with the recommended conditions set out therein. (ODOE - B2HAPPDoc2-1 Proposed Order on ASC and Attachments 2019-07-02, pages 299-302 of 10016.)

239. The Department reviewed Idaho Power's cost estimate and confirmed that the site restoration tasks, unit costs, labor rates, and cost estimate assumptions constitute a reasonable site restoration cost for the facility. The Department recommended that the Council find that \$140,779,000 (3rd Quarter 2016 dollars) is a reasonable estimate of an amount satisfactory to restore the site to a useful, nonhazardous condition. (ODOE - B2HAPPDoc2-1 Proposed Order on ASC and Attachments 2019-07-02, page 304 of 10016.)

240. In accordance with the Council rules requiring mandatory site certificate conditions related to the RFA standard,⁸⁶ the Department recommended conditions requiring Idaho Power to prevent the development of any conditions on the site that would preclude restoration of the site to a useful, non-hazardous condition and to retire the facility in accordance with a retirement plan approved by the Council if the Company permanently ceases construction or operation of the facility. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02,

leave in place the portion of the footings below one foot in depth. To maintain a safe and stable excavation site, each additional foot of removal depth increases the width of the excavation by two feet in each direction. Therefore, a 10-foot diameter footing removed to a depth of one foot would require a 14-foot diameter hole, whereas the same footing removed to a depth of three feet would require a 22-foot diameter hole, assuming 2:1 side slopes to prevent soils from caving into the hole and mixing with concrete debris. Idaho Power proposed a removal depth of three feet for footings in the EFU zone because of the concern that a one foot depth would provide insufficient clearance for farming equipment and for installation of irrigation. On farmland, concrete footings left in place could interfere with and damage equipment. (Ellsworth Rebuttal Test. at 38-39.)

⁸⁵ The Department found as follows:

The applicant explains that while components of transmission facilities may be replaced over time with new materials and hardware, the applicant designs, constructs, and operates the components of its transmission system for indefinite service. Based on the applicant's explanation of operating its transmission system for over 100 years and maintains it to operate it in perpetuity, the Department concurs that 100 year lifetime is a reasonable estimated useful life for the proposed facility.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 299-300 of 10016.)

⁸⁶ *See* OAR 345-025-0006(7), (8) and (9)

page 301 of 10016.) The Department also included Recommended RFA Condition 4 requiring Idaho Power to, among other things, submit a bond or letter of credit naming the State of Oregon, acting by and through the Council, as beneficiary or payee in an amount that will be increased on a quarterly basis to correspond with the cost of the construction over four years, to account for the total decommissioning cost for the facility. (*Id.* at 307-308.)

241. To satisfy mandatory condition OAR 345-025-0006(8)⁸⁷ the Department included Recommended RFA Condition 5, requiring that, once the facility is placed in service, Idaho Power maintain a bond or letter of credit as follows:

a. From the In-Service Date until In-Service Year 51, the amount of bond or letter of credit shall be \$1.00.

b. On the 50th anniversary of the In-Service Date, the certificate holder shall begin maintaining a bond or letter of credit in an amount that will increase on an annual basis for the next 50 years. In year 51, the amount of the bond or letter of credit will be set at one-fiftieth (1/50) of the total estimated decommissioning costs, adjusted for inflation, as specified in section (d) of this condition. Each year, through the 100th year of service, the bond or letter of credit shall be increased by one-fiftieth (1/50) of the estimated decommissioning costs. Once the bond or letter of credit is in an amount equal to 100 percent of decommissioning costs, it will remain at that level for the life of the facility.

c. On the fifth anniversary of the In-Service Date, and on each subsequent quinquennial thereafter, the certificate holder shall notify the Department 60 days prior and report to the Council in writing or in-person on the following subjects: (i) the physical condition of the facility; (ii) any evolving transmission or electrical technologies that could impact the continued viability of the facility; (iii) the facility's performance in the context of the larger power grid; and (iv) the certificate holder's general financial condition, including the certificate holder's credit rating at that time. * * * Based on the information provided in the 5-year report, and the Department's review and recommendations of such reports, the Council will consider whether the certificate holder should be required to post a bond or letter of credit that varies from the financial assurance requirements set forth in sections (a) and (b) of this condition. The certificate holder shall be subject to the Council's determination. The Council's determination may include extending the date on which the certificate holder would be required to begin posting the financial assurances set forth in section (b) of this condition.

d. The estimated total decommissioning cost for the facility is \$140,779,000 (3rd Quarter 2016 dollars), to be adjusted to the date of issuance of the bond or letter of credit in In-Service Year 51, and on an annual basis thereafter. Subject to Department approval, the certificate holder may request an adjustment of the bond

⁸⁷ OAR 345-025-0006(8) states, in pertinent part, "The certificate holder must maintain a bond or letter of credit in effect at all times until the facility has been retired. The Council may specify different amounts for the bond or letter of credit during construction and during operation of the facility."

or letter of credit amount based on final design configuration of the facility by applying the unit costs presented in, Attachment W-1 of the Final Order on the ASC, Facilities Removal and Site Restoration Cost Estimate. Such adjustments may be made without amendment to the site certificate. The Council authorizes the Department to agree to these adjustments in accordance with this condition. *
* *

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 310-11 of 10016.)

242. The Department concluded:

Subject to compliance with Retirement and Financial Assurance Conditions 1 through 3, the Department recommends the Council find that the proposed facility can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the proposed facility. Subject to compliance with Retirement and Financial Assurance Conditions 4 and 5, the Department recommends that the Council find that the certificate holder has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 311 of 10016.) The Department therefore recommended that the Council find that the proposed facility, including the proposed and alternative routes, complies with the Council's Retirement and Financial Assurance standard. (*Id.* at page 312.)

243. On October 12, 2021, Idaho Power obtained an updated letter of willingness from Wells Fargo Bank. The updated letter proposes up to a five-year letter of credit to cover the entire construction period. The letter of willingness can be updated annually until it is replaced by a letter of credit or bond when construction begins on the project. (Mills Rebuttal Test. at 4; Mills Rebuttal Ex. B.)

244. A financial institution cannot agree to a letter of credit for an indefinite amount of time. Financial conditions may change that require adjustments to factors such as carrying costs associated with the letter of credit. Therefore, letters are typically approved for a term length of no more than a five-year period. Letters of credits/bonds can be repeatedly renewed to continue coverage through the required term length. For the proposed facility, the letter of credit may have a five year term and then Idaho Power and its lenders will renegotiate the letter of credit/bond terms prior to the term's end, to extend coverage for an additional five years. It is standard industry practice to renew letters of credit/bonds to extend through the necessary length of coverage. (Mills Rebuttal Test. at 5.)

245. Idaho Power has discussed the phased-in aspect of the letter of credit/bond set out in the Proposed Order (Recommended RFA Condition 5) with Wells Fargo. The bank confirmed that the quarterly incremental increase in the letter of credit as construction on the project progresses is an arrangement to which it is willing to agree. Idaho Power also discussed the

quarterly incremental approach with its bond surety provider, and it confirmed quarterly incremental increases were reasonable and not out of the ordinary. (Mills Rebuttal Test. at 6.)

Findings related to the Soil Protection standard

246. In the Second Amended Project Order, the Department ordered Idaho Power to provide the following information with regard to the Soil Protection standard:

The applicant shall include information describing the impact of construction and operation of the proposed facility on soil conditions in the analysis area. Describe all measures proposed to maintain soil productivity during construction and operation. It is recommended that the applicant consult with local farmers, landowners, soil conservation districts, and federal land managers regarding mitigation of impacts to agricultural and forest lands. Specific discussion could include weed encroachment, interference with irrigation equipment, and the potential for restrictions to aerial applications caused by the proximity of transmission towers.

Exhibit I shall also include the required evidence related to the federally-delegated National Pollutant Discharge Elimination System (NPDES) 1200-C permit application. * * *.

If the applicant intends to rely upon an erosion and sediment control plan to meet the Soil Protection standard, provide a draft of the plan for review.

(ODOE - B2HAPPD0c15 ApASC Second Amended Project Order 2018-07-26, page 14 of 29.)

247. As required by OAR 345-021-0010(1)(i)⁸⁸ and the Second Amended Project Order, in ASC Exhibit I, Idaho Power identified the major soil types in the analysis area,⁸⁹ identified the current land uses that require or depend on productive soils, and identified and assessed the significant potential adverse impacts to soils from the project. (ODOE - B2HAPPD0c3-16 ASC 09a_Exhibit I_Soil_ASC_Part 1 2018-09-28, pages 13-27 of 115.) Idaho Power also explained that impacts to soils are limited because not all of the site boundary will be disturbed. In ASC Exhibit I states that, for the total proposed route, construction activities will disturb 21 percent (4,347.6 acres) of the site boundary, and that operation will disturb 3.6 percent (756.9 acres) of the site boundary. (*Id.* at page 17 of 115.) Idaho Power focused its quantitative soil analyses the construction disturbance area (CDA) and the smaller operation disturbance area (ODA). (Madison Rebuttal Test. at 9.)

⁸⁸ OAR 345-021-0010(1)(i) requires that the applicant provide, as Exhibit I, “[i]nformation from reasonably available sources regarding soil conditions and uses in the analysis area, providing evidence to support findings by the Council as required by OAR 345-022-0022[.]” In ASC Exhibit I, Table I-1 identified the soil orders within the site boundary, by acres for each county. (ODOE - B2HAPPD0c3-16 ASC 09a_Exhibit I_Soil_ASC_Part 1 2018-09-28, page 14 of 115.)

⁸⁹ For purposes of the Soil Protection standard, the analysis area means the area within the site boundary. (ODOE - B2HAPPD0c2 Proposed Order on ASC and Attachments 2019-07-02, page 99 of 10016.)

248. In ASC Exhibit I, Idaho Power explained its methods for identifying soil properties and its use of the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) State Soil Geographic Database (STATSGO) to characterize soil erosion and soil reclamation properties. (ODOE - B2HAPPDoc3-16 ASC 09a_Exhibit I_Soil_ASC_Part 1 2018-09-28, page 7 of 115.) Idaho Power noted that “when the final route has been selected and prior to construction, additional site-specific soil properties will be surveyed during the site-specific geotechnical investigation.” (*Id.*)

249. Idaho Power identified current land uses in the analysis area that require or depend on productive soils through analysis of high value farmland soils data and land cover type data. Idaho Power used SSURGO soils data to identify soils within the analysis areas that have potential for agricultural use. To characterize land cover types within the site boundary, Idaho Power used Regional Gap Analysis Project data along with desktop interpretation of 2012 National Agriculture Imagery Program imagery. (ODOE - B2HAPPDoc3-16 ASC 09a_Exhibit I_Soil_ASC_Part 1 2018-09-28, page 13 of 115; Madison Rebuttal Test. at 10-11.) Idaho Power noted that additional information regarding agricultural land uses is presented in the Agricultural Lands Assessment, ASC Exhibit K, Attachment K-1, which identifies the types of agriculture and the specific crops grown in the analysis area. (ODOE - B2HAPPDoc3-16 ASC 09a_Exhibit I_Soil_ASC_Part 1 2018-09-28, page 13 of 115.)

250. Because the proposed facility does not include cooling towers and has no effluent discharges, Idaho Power did not evaluate the potential adverse impact to soils from chemical factors such as salt deposition and land application of liquid effluent. (ODOE - B2HAPPDoc3-16 ASC 09a_Exhibit I_Soil_ASC_Part 1 2018-09-28, page 16 of 115; Madison Rebuttal Test. at 12.)

251. Idaho Power assessed the potential adverse impacts to soils from the Project due to erosion, loss of soil reclamation potential, compaction, chemical spills, and herbicide use. Idaho Power evaluated soil erosion potential based on four factors, the soil K factor (susceptibility to displacement by rainfall), wind, slope assessment, and the T factor (tolerance to remain productive). (ODOE - B2HAPPDoc3-16 ASC 09a_Exhibit I_Soil_ASC_Part 1 2018-09-28, pages 9-10 of 115; Madison Rebuttal Test. at 13.) As for loss of soil reclamation potential, Idaho Power considered several soil properties, including soil compaction, the amount of stony-rocky soil, droughty soil, depth to bedrock, and the presence of hydric soils. (ODOE - B2HAPPDoc3-16 ASC 09a_Exhibit I_Soil_ASC_Part 1 2018-09-28, pages 11-12 of 115; Madison Rebuttal Test. 17-18.) As for soil compaction, Idaho Power explained that its review of the STATSGO database indicated there were no highly compaction-prone soils within the site boundary, and therefore it did not quantify the impacts to highly compaction-prone soils. Idaho Power nevertheless addressed mitigation of compacted soils due to construction activities in Exhibit I. (*Id.*)

252. In ASC Exhibit I, Idaho Power also described the proposed measures to be taken to avoid or mitigate adverse impacts to soils. Idaho Power explained that as part of the siting process, the Company communicated with local, state, and federal entities, landowners, and other stakeholders to obtain input to minimize project impacts to irrigated agricultural lands and

other sensitive resources. In response to stakeholder communications, Idaho Power shifted the Proposed Route and included an alternative route for consideration. Idaho Power explained that it will conduct additional soil analysis during the final geotechnical exploration program and will consider the potential sensitivity of soils in designing and siting the facility. (ODOE - B2HAPPDoc3-16 ASC 09a_ Exhibit I_Soil_ASC_Part 1 2018-09-28, page 28 of 115.) Idaho Power added that it will minimize soil impacts by using best management practices (BMPs) and restoration efforts to restore soil surfaces and vegetation following disturbances.⁹⁰ (*Id.*) Idaho Power explained that the draft Reclamation and Revegetation Plan (ASC Exhibit P1, Attachment P1-3), sets out the measures to be used to ensure reclamation success in disturbed areas.⁹¹ (*Id.* at page 29 of 115.)

253. To address potential impacts to productive soils (privately owned agricultural lands), Idaho Power prepared an Agricultural Impacts Mitigation Plan (AIMP), which it incorporated into the Agricultural Land Assessment. (ODOE - B2HAPPDoc3-19 ASC 11_ Exhibit K_Land Use_ASC 2018-09-28, pages 430-37 of 614; Madison Rebuttal Test. at 27.) The AIMP identifies the measures Idaho Power will take to avoid, mitigate, repair and/or provide compensation for impacts that may result from the construction or operation of the facility on privately owned agricultural land. (*Id.*; Madison Rebuttal Test. at 27-28.)

254. As required by Council rules, Idaho Power included a draft monitoring plan for soil impacts during construction and operation. (ODOE - B2HAPPDoc3-16 ASC 09a_ Exhibit I_Soil_ASC_Part 1 2018-09-28, pages 36-37 of 115.) In addition, Idaho Power proposed site certificate conditions to ensure compliance with the Soil Protection standard, including conditions requiring the Company to finalize and submit for Department approval the following plans: An Oregon DEQ-approved construction related Spill Prevention, Control, and Countermeasures Plan (SPCC Plan), a final Blasting Plan, an Oregon DEQ-approved Erosion

⁹⁰ On this point, ASC Exhibit I states:

IPC will obtain an NPDES 1200-C Stormwater Construction Permit, and will implement an ESCP. IPC proposes a generic set of construction BMPs to be available for use on a majority of the Project where soils are not highly erosive, slopes are not steep, and construction is away from surface water. More specific BMP methods and BMP locations will be designated in areas with higher potential for soil erosion impacts. Where steep slopes cannot be avoided, site-specific BMPs tailored to encountered soil types in those areas will be applied to control and reduce erosion. The ESCP will present appropriate BMPs for minimizing impacts in areas with steep slopes. No construction will occur until the 1200-C stormwater permit has been obtained and the ESCP has been finalized and approved by ODEQ.

(ODOE - B2HAPPDoc3-16 ASC 09a_ Exhibit I_Soil_ASC_Part 1 2018-09-28, page 29 of 115.)

⁹¹ The Reclamation and Revegetation Plan was developed primarily to address potential impacts to fish and wildlife habitat, as opposed to rehabilitation of disturbed soils. However, it provides the framework for reclamation of areas impacted by project construction, operation, and maintenance. It also sets out the requirements for implementing and monitoring reclamation of disturbed vegetation and meeting the reclamation success standards. (Madison Rebuttal Test. at 28-29.)

and Sediment Control Plan (ESCP), a Reclamation and Revegetation Plan, and a Vegetation Management Plan. (*Id.*)

255. In ASC Exhibit I, Idaho Power also included Table I-12, identifying the information responsive to the requirements of OAR 345-021-0010(1)(i), OAR 345-022-0022, and Second Amended Project Order and its location within the ASC. (ODOE - B2HAPPDoc3-16 ASC 09a_Exhibit I_Soil_ASC_Part 1 2018-09-28, page 39-40 of 115.)

256. In the Proposed Order, the Department included Recommended Soil Protection Condition 1 requiring that, prior to construction, Idaho Power submit to the Department a final copy of its NPDES 1200-C permit, including the final ESCP, and that the Company conduct all work in compliance with the NPDES 1200-C permit and ESCP.⁹² The Department also included Recommended Soil Protection Condition 2 requiring submission of a final SPCC Plan and compliance with that Plan during construction of the facility. In the event Idaho Power takes over operation of the Longhorn Station, the Department included Recommended Soil Protection Condition 3, requiring a DEQ-approved SPCC Plan for operation. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 104-06 of 10016.) In addition, the Department included recommended conditions requiring Idaho Power to finalize and submit for Department approval a final Blasting Plan and requiring the Company to monitor and inspect facility components for soil impacts. (*Id.* at pages 108-09 of 10016.) The Department further noted that Recommended Fish and Wildlife Habitation Condition 2 requires the certificate holder to submit to the Department for approval a final Vegetation Management Plan monitoring and to conduct all work in compliance with that plan. (*Id.*)

257. Based on its findings and conclusions in the Proposed Order, and subject to compliance with the recommended site certificate conditions, the Department recommended that the Council find the proposed facility in compliance with the Soil Protection standard. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 109-10 of 10016.)

258. In ASC Exhibit I, Idaho Power presented the soils information at the order level by county for the entire site boundary on Table I-2-1. (ODOE-B2HAPPDoc3-17 ASC 09b_Exhibit I_Soil_ASC_Part 2 2018-09-28, pages 70-72 of 88.) In response to requests from limited parties, Idaho Power prepared an updated Table I-2-1 presenting soils information by county with the soil order, soil ID, soil name, acreage, percent and acreage of disturbance area, and soil properties. (Madison Rebuttal Test. at 52-53; Madison Rebuttal Ex. D; Madison Cross-Exam. Test., Tr. Day 2 at 49-52.)

⁹² The Department noted that the draft ESCP requires salvaging and segregating topsoil to reduce impacts to farmland and forested areas. The Department explained that Idaho Power's Agricultural Lands Assessment (ASC Exhibit K, Attachment K-1) details how the Company would mitigate impacts to productive soils and the agricultural and forest operations that require or depend on those soils. The Department added that Recommended Land Use Condition 14 requires the Company to finalize and submit to the Department for approval an Agricultural Lands Assessment, and to conduct all work in accordance with that assessment. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 107 of 10016.)

Findings related to compliance with the Structural Standard

259. The Structural Standard requires that the Council evaluate whether the applicant has adequately characterized the seismic hazard risk of the site, the geological and soil hazards of the site, and whether the applicant can design, engineer, and construct the proposed facility to avoid dangers to human safety and the environment from these hazards. OAR 345-022-0020.

260. In the Second Amended Project Order, the Department acknowledged that for this proposed facility, it would not be practical for Idaho Power to obtain detailed site-specific geotechnical investigation for the entire site boundary in advance of completing the final facility design and obtaining full site access. Nevertheless, the Department required that, as part of ASC Exhibit H (Geologic Hazards and Soil Stability) Idaho Power provide evidence that it consulted with the Oregon Department of Geology and Mineral Industries (DOGAMI) regarding the level of geologic and geotechnical investigation determined to be practical for the application submittal. The Department also required that geotechnical reports included in Exhibit H meet Oregon State Board of Geologist Examiners guidelines, as determined based on Idaho Power's consultation with DOGAMI. (ODOE - B2HAPPDoc15 ApASC Second Amended Project Order 2018-07-26, page 14 of 29.)

261. In ASC Exhibit H, Idaho Power provided information regarding the geological and soil stability within the site boundary for the project. Idaho Power described the analysis area, the methods to be used to generate the detailed information required by Council's standards, the geological and soil stability studies conducted to date, and a summary of its consultation with DOGAMI. Idaho Power also described the site-specific geotechnical work to be performed before construction, to be included in the site certificate as conditions; the approximate locations of geotechnical work; an assessment of seismic hazards; an assessment of geology and soil related hazards (including landslides, flooding, and erosion); and measures to be taken to avoid or mitigate dangers to human safety and the environment resulting from geologic hazards. (ODOE - B2HAPPDoc3-14 ASC 08a_Exhibit H_Geology_ASC_Part 1 2018-09-28, pages 7-35 of 243.)

262. Idaho Power's geotechnical and environmental consultant identified and assessed landslide hazard areas within the site boundary. The consulting firm reviewed historically recorded landslides from the SLIDO database and identified other unstable land conditions from geologic maps and aerial imagery. The consultant then supplemented the landside hazard area inventory by a limited reconnaissance-level survey, evaluating current land stability factors such as soil composition, slope, and revegetation. (Sorensen Rebuttal test. at 13-14; *see also* ODOE - B2HAPPDoc3-14 ASC 08a_Exhibit H_Geology_ASC_Part 1 2018-09-28, page 8 of 243).

263. Prior to construction, once Idaho Power obtains access and permission to proposed field investigation sites, Idaho Power will commence the second phase of its geotechnical exploration related to slope stability and landslides. Idaho Power's consultant will conduct geotechnical exploration to investigate subsurface soil and geologic conditions with an emphasis on areas identified as potential geologic hazards in ASC Exhibit H, Attachment H-1, the Engineering Geology and Seismic Hazards Supplement. (Sorensen Rebuttal test. at 19-20; ODOE - B2HAPPDoc3-14 ASC 08a_Exhibit H_Geology_ASC_Part 1 2018-09-28, page 41 of

243.)

264. Using the results of the geotechnical investigation, Idaho Power will prepare a final engineering geologic report, the Phase 2 Site-Specific Geotechnical Report, prior to final design and construction to assess site-specific hazards in conformance with DOGAMI's guidance and the Oregon State Board of Geologist Examiners' 2014 Guidelines for Preparing Engineering Geological Reports. (Sorensen Rebuttal Test. at 23; ODOE - B2HAPPDoc3-14 ASC 08a_Exhibit H_Geology_ASC_Part 1 2018-09-28, page 9 of 243.) In its Phase 2 Site-Specific Geotechnical Report, Idaho Power will include the requisite site-specific information for sites that will be impacted by construction and operation of the project. Idaho Power will attempt to locate structures, such as transmission tower foundations, to avoid potential slope instability hazards wherever possible. Idaho Power will locate structures with sufficient setback from slopes to mitigate for potential slope instability during construction and operation. Where appropriate and necessary, Idaho Power will employ appropriate slope instability mitigation techniques, including modification of slope geometry, hydrogeological mitigation, slope reinforcement methods, or revegetation. (Sorensen Rebuttal Test. at 24-25.)

265. Performing additional site-specific surveys prior to obtaining a site certificate is neither practical, because Idaho Power is unable to obtain right of entry for multiple sites, nor necessary for compliance with the Council's Structural Standard. Idaho Power has performed, to the extent practicable, a thorough analysis of landslide potential and slope stability in the project analysis area. (Sorensen Rebuttal Test. at 32.)

266. In its Phase 2 Site-Specific Geotechnical Report, to be completed after issuance of the site certificate and prior to construction, Idaho Power will include the requisite site-specific information for sites that will be impacted by construction and operation of the project. Further, where appropriate and necessary, Idaho Power will employ appropriate slope instability mitigation techniques. (Sorensen Rebuttal Test at 32.)

267. Although blasting is not specifically addressed in any Council standard, the Structural Standard addresses impacts that could potentially result from blasting activities, such as slope instability, landslides, and flooding. Because construction of the proposed facility may involve blasting, Idaho Power included, as part of ASC Exhibit G, Attachment G-5, a draft Framework Blasting Plan. As stated in the introduction of the Framework Blasting Plan:

The [Plan] outlines methods to mitigate risks and potential impacts associated with blasting procedures that may be required for construction of the [project]. Also included in this section is a preliminary outline for the Blasting Plan to be prepared by the Construction Contractor(s) and submitted to Idaho Power Company (IPC) if blasting is required. The Compliance Inspection Contractor (CIC) and the appropriate agencies will be notified in advance of any required blasting so the area can be cleared. If blasting is to occur on federal lands, IPC will submit the Blasting Plan to the federal land-management agencies for final review and approval.

* * * * *

The complete Blasting Plan will be developed by the Construction Contractor(s) in consultation with IPC as detailed engineering design of the Project is completed and will contain the detailed information necessary for site-specific guidance. This plan framework provides Project-specific guidance for development of the complete Blasting Plan by identifying treatments and measures required to avoid, minimize, and mitigate Project-related impacts; prevent unnecessary degradation of the environment; ensure blasting activities comply with federal, state, or other agency requirements; and meet any stipulations of the Site Certificate. The Construction Contractor(s) will be responsible for preparing and implementing the complete Blasting Plan.

(ODOE - B2HAPPDoc3-13 ASC 07_Exhibit G_Materials_ASC 2018-09-28, page 96 of 102.)

268. The Framework Blasting Plan includes design features for the project to be applied project-wide for environmental protection and to address concerns related to blasting. As pertinent here, Design Feature 32 states as follows:

Design Feature 32. Watering facilities (tanks, natural springs and/or developed springs, water lines, wells, etc.) will be repaired or replaced if they are damaged or destroyed by construction and/or maintenance activities to their predisturbed condition as required by the landowner or land-management agency. Should construction and/or maintenance activities prevent use of a watering facility while livestock are grazing in that area, then the Applicant will provide alternate sources of water and/or alternate sources of forage where water is available.

(ODOE - B2HAPPDoc3-13 ASC 07_Exhibit G_Materials_ASC 2018-09-28, page 102 of 102.)

269. Idaho Power submitted the Framework Blasting Plan in draft form in the ASC because the company did not have access to all land on which the transmission line is routed and therefore cannot determine with certainty precisely whether or where blasting will be required. Also, Idaho Power plans to make the final decisions regarding blasting locations in consultation with its Engineering, Procurement, and Construction contractor after the project design has been finalized, and the project design cannot be finalized until after the Council approves the site certificate. (Cummings Rebuttal Test. at 20.)

270. In the Proposed Order, the Department noted that, consistent with the Structural Standard, Idaho Power developed the draft Framework Blasting Plan “to ensure that the proposed facility design and construction avoids dangers to human safety and environment from risks such as subsidence, landslides, and slope instability which could be impacted by blasting activities.” (ODOE- B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 89 of 10016.) The Proposed Order discussed the plan’s safety procedures and notification process. The Department, based on consultation with DOGAMI and other agencies, recommended adding several requirements to the Risk Management section (Section 8) of the draft plan. The Department recommended, among other things, that the plan include the requirement to implement a seismic monitoring plan or application of scaled distance factors to

monitor and ensure ground vibration at the nearest structured do not exceed NFPA established limits during blasting activities. (*Id* at pages 90-91 of 10016.)

271. In addition, the Department recommended the Framework Blasting Plan include requirements for preparing and submitting post-monitoring and seismic report(s) and that the contractor demonstrate adequate insurance coverage for a minimum of \$1,000,000. The Department also recommended that the plan include an established agency review process applicable to finalization of the draft plan and any future plan amendments. The review process will allow adequate opportunities for appropriate state and local agencies, with subject matter expertise, to review, coordinate and ensure the plan complies with applicable requirements and minimizes environmental and health and safety risks during facility construction. (ODOE-B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 90-92 of 10016.)

272. The Department also recommended several conditions related to the Structural Standard, including measures to design the proposed facility to avoid seismic and non-seismic hazards. Recommended Structural Standard Condition 1, requires that prior to construction of a phase or segment of the facility, the certificate holder submit an investigation plan and a site-specific geological and geotechnical investigation report, prepared by an Oregon-licensed professional engineer or geologist, demonstrating that the facility site has been adequately characterized and that the facility and temporary construction activities, such as blasting, have been designed and located to avoid seismic, soil, and geologic standards. (ODOE-B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 88 of 10016.)

273. Recommended Structural Standard Condition 1 also sets out the minimum information required in the pre-construction investigation report, including specific methods for evaluating potential slope instability and landslide hazards, as follows:

Potential slope instability and landslide hazards based on boring locations spaced approximately 1 mile along the alignment: at dead-end structures; any corners or changes in alignment heading (angles); crossings of highways, major roads, rivers, railroads, and utilities as power transmission lines, natural gas pipelines, and canals; *locations where blasting may occur*; and, *locations necessary to verify lithologic changes and/or geologic hazards such as landslides, steep slopes, or soft soil area.*

(ODOE - B2HAPPDoc2-1 Proposed Order on ASC w Hyperlink Attachments 2019-07-02, page 89 of 10016; emphasis added.)

274. With regard to flooding risks from construction and operation of the proposed facility, the Proposed Order states as follows:

The applicant represents that it would set facility structures and towers back from areas of high flood risks during final design; or, where structures cannot be set back, the applicant would conduct a site-specific structural and erosion hazard assessment and would coordinate with local flood zone managers to determine mitigation requirements. Recommended Structural Standard Condition 1 would

require the pre-construction site-specific geological and geotechnical investigation report to, in part, identify facility components within the 100-year flood zone, any related potential risk to the facility, and measures to mitigate the identified hazards.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 94 of 10016.) The Department also found that the mitigation measures listed in ASC Exhibit H would reduce risks posed by flooding, soil erosion, landslides, and mass wasting events. (*Id.* at 99 of 10016.)

275. To address landowner concerns regarding construction-related blasting, Idaho Power agreed to incorporate the requirement of Design Feature 32 into a site condition, as part of Recommended Soil Protection Condition 4:

b. Prior to construction, the certificate holder will consult with landowners regarding right-of-way acquisition, and during these consultations, the certificate holder will discuss with the landowner any blasting that the certificate holder plans to conduct on the landowner's property. If the landowner identifies a natural spring or well on the property, the certificate holder will notify the landowner that at the landowner's request, the certificate holder shall conduct pre-blasting baseline flow and water quality measurements for turbidity. The certificate holder shall compensate the landowner for adequate repair or replacement if damages to the flow or quality of the natural spring or well occur solely as a result of blasting.

(Cummings Rebuttal Test. at 44-45.)

276. Given the size of the blasts required to place transmission tower foundations, the geotechnical testing, the site-specific reconnaissance that Idaho Power will undertake prior to blasting, and the safety measures required by the Draft Framework Blasting Plan, it is highly unlikely that private wells would be impacted by blasting conducted for the project. (Cummings Rebuttal Test. at 43-44.)

277. Any blasting required to place tower foundations for the project will not be of the size or strength that would likely cause damage to nearby structures or features, or exacerbate flooding risks. Blasting configurations for tower foundations, by their nature, involve relatively small diameter blast holes, small charge weights, shallow blast hole depths, and short durations of excitation. Such practices do not produce seismic excitation or ground displacement that approaches such a level of off-site severity that could damage structures or exacerbate flooding risks to nearby properties. Furthermore, where the blasting contractor is required to address potential blasting impacts, the blasting contractor can employ additional measures to mitigate these potential impacts in accordance with recommended site conditions and the Framework Blasting Plan guidelines. (Cummings Rebuttal test. at 13.)

278. Idaho Power will consult with landowners regarding any blasting that Idaho Power plans to conduct on the landowner's property. At the landowner's request, Idaho Power will conduct pre-blasting baseline flow and water-quality measurements, testing specifically for

turbidity. Because the blast holes are highly unlikely to intercept ground water that can migrate to wells or springs, it is not necessary to test well water for contaminants other than turbidity. (Cummings Rebuttal Test. at 44.)

279. Limited parties Horst and Cavinato also raised concerns under the Structural Standard that vibrations caused by passing construction vehicles may cause damage to a well located on their property, close to the unpaved portion of Hawthorne Drive. (Horst Direct Test. at 6.) As found above, there is a deep water well on Mr. Horst's property, located approximately 10 feet from the gravel road. (*Id*; Horst Ex. H.) About half of the well depth has steel casing, the remainder is drilled through hard rock. Mr. Horst also raised concerns that the well could be damaged from blasting activities on or near his property. (Horst Direct Test. at 6)

280. Robert Cummings is a geological engineer with expertise in rock blasting, geotechnical and mineral exploration and applied mining and engineering geology. In Mr. Cummings' opinion, the limited parties' concerns are unfounded and there is no need to perform preconstruction well water testing based on increased construction traffic on Hawthorne Drive. The seismic vibrations from passing construction vehicles will be minimal, and the limited traffic will not result in a cumulative fatigue effect or cause permanent damage to the well. There is also no need for Idaho Power to build new roads to direct construction-related traffic away from the deep well on the Horst-Cavinato property. Idaho Power's proposed mitigation measures, including reduced vehicle speeds, will address the limited parties' concerns about the well. (Cummings Rebuttal test. at 3, 46).

281. Limited party Jonathan White lives on Modelaire Drive in La Grande. His home is about 500 feet from the project site boundary at Hawthorne Dr. Mr. White raised concerns that construction-related blasting may cause damage to his home, property, and neighborhood streets. (White test.)

Findings related to hazardous materials management and monitoring

282. As part of Exhibit G, the ASC must include a materials analysis with: (a) an inventory of the industrial materials flowing into and out of the proposed facility during construction and operation; (b) the applicant's plans to manage hazardous substances⁹³ during construction and operation, including measures to prevent and contain spills; and (c) the applicant's plans to manage non-hazardous waste materials during construction and operation. (OAR 345-021-0010(1)(g).)

⁹³ The Oregon DEQ defines the term "hazardous substance" in OAR 340-122-0115(30) as follows:

- (a) Hazardous waste as defined in ORS 466.005;
- (b) Any substance defined as a hazardous substance pursuant to section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended, and P.L. 99-499;
- (c) Oil as defined in ORS 465.200(18); and
- (d) Methane generated at a historic solid waste landfill; and
- (e) Any substance designated by the commission under ORS 465.400.

283. In addition, as part of Exhibit W, the ASC must include information about site restoration. For facilities that might produce site contamination by hazardous materials,⁹⁴ the ASC must include a proposed monitoring plan or an explanation why a monitoring plan is unnecessary. (OAR 345-021-0010(1)(w)(E).)

284. In ASC Exhibit G, as required by OAR 345-021-0010(1)(g), Idaho Power described the hazardous and non-hazardous material to be used as part of the proposed project and the plan for managing these materials. In ASC Exhibit G, Section 3.3, Idaho Power described its plan to manage hazardous substances during construction and operation, including measures to prevent and contain spills:

Hazardous materials will be segregated when stored within the multi-use areas. Hazardous materials will be stored in approved containers and clearly labeled. The construction contractor will maintain an inventory of all hazardous materials used and corresponding material safety data sheets (MSDS). The construction contractor will maintain copies of the required MSDSs for each hazardous chemical, and will ensure they are readily accessible during each work shift, to all employees when they are in their work areas. MSDSs will also be kept in service and refueling vehicles. The MSDSs will provide basic emergency response information for small and large releases of each hazardous material. If bulk hazardous materials are used, the Emergency Response Guidebook, produced by the United States Department of Transportation, also will be used to prepare for emergencies.

(ODOE - B2HAPPDoc3-13 ASC 07_Exhibit G_Materials_ASC 2018-09-28, page 14 of 102.)

⁹⁴ The Oregon DEQ defines “hazardous materials” differently than “hazardous substance.” Pursuant to OAR 340-142-0005(9):

“Hazardous material” means one of the following:

- (a) Hazardous waste as defined in ORS 466.005.
- (b) Radioactive waste as defined in ORS 469.300, radioactive material identified by the Energy Facility Siting Council under 469.605 and radioactive substances as defined in 453.005.
- (c) Communicable disease agents as regulated by the Health Division under ORS 431 and 433.010 to 433.045 and 433.106 to 433.990.
- (d) Hazardous substances designated by the United States Environmental Protection Agency under section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.
- (e) Substances listed by the United States Environmental Protection Agency in 40 Code of Federal Regulations Part 302 — Table 302.4 (List of Hazardous Substances and Reportable Quantities) and amendments.
- (f) Material regulated as a Chemical Agent under ORS 465.550.
- (g) Material used as a weapon of mass destruction, or biological weapon.
- (h) Pesticide residue.
- (i) Dry cleaning solvent as defined by ORS 465.200(9).

285. As Attachment G-4 to ASC Exhibit G, Idaho Power included its Spill Prevention, Control, and Countermeasures Plan (SPCC Plan) to be implemented during construction of the project. The SPCC Plan outlines the preventive measures and practices that contractors will employ to reduce the likelihood of an accidental release of a hazardous or regulated liquid and, in the event of such a spill, to expedite the response and remediation. (ODOE - B2HAPPDoc3-13 ASC 07_Exhibit G_Materials_ASC 2018-09-28, page 66 of 102.)

286. Section 2 of the SPCC Plan addresses spill prevention practices. Spill prevention practices include: avoiding environmentally sensitive areas when selecting sites for project staging; requiring each contractor to develop a detailed, site-specific Hazardous Materials Management Plan prior to construction; and requiring each contractor to store, handle, and transfer fluids used during construction in a careful manner to prevent spills of hazardous materials. The SPCC Plan also requires that the dispensing and transfer of hazardous materials and wastes occur in accordance with national standards, including bonding or grounding during transfer of flammable liquids. (ODOE - B2HAPPDoc3-13 ASC 07_Exhibit G_Materials_ASC 2018-09-28, pages 68-72 of 102.)

287. Section 3 of the SPCC Plan addresses emergency preparedness and requires that each contractor develop an emergency response plan for environmental emergency preparedness and response, appropriate for the hazardous materials and wastes used and generated. Section 4 of the SPCC Plan addresses incident or emergency response and includes a process requiring immediate notification in the event of a release of one pound or more of any hazardous material or any amount of hazardous waste. (ODOE - B2HAPPDoc3-13 ASC 07_Exhibit G_Materials_ASC 2018-09-28, pages 72-76 of 102.)

288. In ASC Exhibit W, as required by OAR 345-021-0010(1)(w)(E), Idaho Power addressed site restoration in the event of retirement of the project. Idaho Power explained that because high-voltage transmission lines are designed and maintained to remain in service in perpetuity, it is highly unlikely that the project would ever be retired. Nevertheless, in ASC Exhibit W Idaho Power described the actions that would be necessary to restore the project site in the unlikely event the project is retired. In Section 3.5 of ASC Exhibit W, Idaho Power explained that when operating, the project is not likely to produce site contamination by hazardous materials. Therefore, a monitoring plan for hazardous materials is unnecessary:

The Project is not likely to cause site contamination by hazardous materials because the hazardous materials to be employed during Project construction and operation are limited to oils in transformers at the station, propane tanks at communication sites, and small quantities of lubricants, vehicle fuels, and herbicides used during Project construction and maintenance. A Spill Prevention, Control, and Countermeasures Plan will be developed by the Engineering, Procurement, and Construction contractor and submitted to ODOE prior to commencing construction of the Project. The Spill Prevention, Control, and Countermeasures Plan is developed to prevent and address any leakage or spills of these materials that may occur during construction and operations of the Project. Additionally, IPC will fully comply with Oregon Department of Environmental

Quality requirements for storage of hazardous materials and cleanup and disposal of hazardous waste on all lands associated with the Project. Given the limited quantities of hazardous materials that will be used for the Project, site contamination is highly unlikely and therefore a monitoring plan is unnecessary.

(ODOE - B2HAPPDoc3-40 ASC 23_Exhibit W_Retirement_ASC 2018-09-28, page 11 of 28.)

289. In the Proposed Order, the Department discussed Idaho Power's draft SPCC Plan in connection with compliance with the Soil Protection standard. The Department noted that, during construction of the project, Idaho Power will require construction contractors to abide by the SPCC Plan. The Proposed Order set out pertinent provisions of the Draft SPCC Plan and recommended conditions relating to the SPCC Plan:

Recommended Soil Protection Condition 2: The certificate holder shall:

a. Prior to construction of the facility, submit to the Department a final copy of a Construction Spill Prevention Control and Countermeasures Plan (SPCC Plan). The protective measures described in the draft Construction SPCC Plan, as provided in Attachment G-4 of the Final Order on the ASC, shall be included in the final SPCC Plan, unless otherwise approved by the Department.

b. During construction of the facility, the certificate holder shall conduct all work in compliance with the final SPCC Plan.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 106 of 10016.)

290. The Proposed Order further found that Idaho Power did not anticipate needing an SPCC Plan during operations unless it were to operate the Longhorn Station instead of BPA. However, if that were to happen, the Department recommended another Soil Protection Condition related to implementing an SPCC Plan during operation of the Longhorn Station, if necessary.

Recommended Soil Protection Condition 3: Prior to operation, if the certificate holder is required by DEQ statutes or rules to implement a SPCC Plan for operation of the facility, the certificate holder shall submit to the Department a copy of a DEQ-approved operation-related SPCC Plan. The certificate holder shall maintain compliance with the operation-related SPCC Plan during operations at the Longhorn Station.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 106-07 of 10016.)

291. In the Proposed Order, with regard to measures to contain chemical spills, the Department found as follows:

Based upon applicant representations, and compliance with the recommended conditions, any spills are expected to be limited and contained, and would be unlikely to leave the site boundary.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 107 of 10016.) The Department further recommended that the Council find the proposed facility in compliance with the Soil Protection standard, subject to Idaho Power's compliance with the recommended site certificate conditions. (*Id.* at pages 109-110.)

292. With regard to the Retirement and Financial Assurance Standard and the requirement to restore the site to a useful, non-hazardous condition at the end of the facility's useful life, the Proposed Order acknowledged Idaho Power's intent to design and maintain the transmission line to remain in service in perpetuity. The Department agreed that 100-year lifetime is a reasonable estimated useful life for the facility. In the Proposed Order, the Department recommended Retirement and Financial Assurance Conditions to ensure adequate restoration of the site to a useful, non-hazardous condition following permanent cessation of construction or operation of the proposed facility. (ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 299-302 of 10016.)

293. The Department did not require Idaho Power to implement a long-term hazardous materials monitoring plan because no hazardous materials will be used or stored on site during operation of the facility. With regard to facility retirement and site restoration, the Department found, in pertinent part, as follows:

The mandatory condition at OAR 345-025-0006(7), which the Department recommends the Council adopt as Retirement and Financial Assurance Condition 1, requires the certificate holder to prevent the development of any conditions on the site that would preclude restoration of the site to a useful, non-hazardous condition to the extent that prevention of such site conditions is within the control of the certificate holder. Hazardous materials that would be used during facility construction and operation would be limited to oils in the shunt reactors at Longhorn station, propane tanks at communication sites, and small quantities of lubricants, vehicle fuels, and herbicides used during facility construction and maintenance. None of the oils in the reactors at the Longhorn Station would contain polychlorinated iphenyls (PCB). Recommended Soil Protection Condition 2 would require the applicant and its contractors to follow a Spill Prevention, Control, and Countermeasures Plan or similar type of spill prevention and management plan to minimize and address and leakage or spills of these materials during facility construction and operation.

In Section IV.B., Organizational Expertise of this order, the Department recommends that the Council find that the applicant has the organizational expertise to construct, operate, and retire the proposed facility in compliance with that Council standard. In addition, the Department recommends that the Council find that the applicant meets the Council's Soil Protection, Fish and Wildlife Habitat, and Waste Minimization standards (Sections IV.D., IV.H., and IV.N. of

this order, respectively). Each of those sections imposes conditions on the applicant that are designed so that the construction and operation of the proposed facility would minimize adverse impacts on the surrounding land.

Based upon the evidence in the record, the Department recommends that the Council find that the applicant has the ability to restore the site to a useful, non-hazardous condition following permanent cessation of construction or operation of the proposed facility, subject to compliance with the recommended conditions listed above.

(ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 302 of 10016.)

294. Petroleum-based products are considered hazardous substances, but not hazardous materials. (Stippel Rebuttal Testimony, Issue M-6, at 10.) Idaho Power will not be using or storing any hazardous materials, as defined by Oregon DEQ, during construction or operation of the proposed facility, except blasting agents and explosives, which will only be used during construction. (*Id.* at 7; ODOE - B2HAPPDoc3-13 ASC 07_Exhibit G_Materials_ASC 2018-09-28, pages 15-18 of 102.)

295. During operations, Idaho Power will be using gasoline, diesel fuel, motor oil, antifreeze and transmission fluid inside vehicles that come and go from the project site, but it will not be storing these materials on site. In addition, Idaho Power will be using herbicide for on-site weed control, but herbicides are not a recognized or regulated hazardous material for purposes of the DEQ rules. Furthermore, herbicide will not be stored on site during operations. It will be delivered to the site when needed and hand applied under manufacturer directions. (Stippel Rebuttal Test. Issue M-6, at 9; ODOE - B2HAPPDoc3-13 ASC 07_Exhibit G_Materials_ASC 2018-09-28, page 15 of 102.)

CONCLUSIONS OF LAW

Fish and Wildlife Habitat Standard

Issue FW-3: The draft Noxious Weed Plan complies with the Council's standards. Idaho Power is not required to demonstrate compliance with the Weed Control Laws to satisfy the Fish and Wildlife Habitat Standard. The Council is not the agency responsible for enforcing compliance with the Weed Control Laws.

Issue FW-5: The Fish and Wildlife Habitat standard does not require or establish setbacks. Ms. Gilbert has not established that Idaho Power must mitigate impacts to riparian areas from the setback location to the outer edges of the riparian area or that all riparian habitat areas should be ODFW Habitat Category 2 at a minimum.

Issue FW-6: The updated draft Noxious Weed Plan is adequate to serve its

intended purpose of establishing the measures the Company will take to control noxious weed species and prevent the introduction of these species during construction and operation of the project. Ms. Geer has not presented evidence or persuasive argument to show that the Noxious Weed Plan is invalid or that Idaho Power will be unable to implement and adhere to the plan when finalized.

Issue FW-7: Idaho Power's Fish Passage Plan complies with the Fish and Wildlife Habitat standard's Category 2 mitigation requirements. Idaho Power is not required to revisit its fish passage plans because threatened Steelhead redds (Snake River Basin Steelhead) have been identified in the upper Ladd Creek watershed.

Historic, Cultural and Archeological Resources Standard

Issue HCA-3: Recommended HCA Condition 2, requiring Idaho Power to submit a final EFSC HPMP for Department approval and to conduct all construction-related activities in compliance with the approved EFSC HPMP provides adequate mitigation for visual impacts to identified HCA resources. There is no requirement for Council to provide further public review and comment on the EFSC HPMP prior to finalization of the plan.

Issue HCA-4: National Historical Oregon Trail segments with ruts located on Mr. Horst's property can be adequately protected from adverse impacts from proposed facility based on HCA site certificate conditions. Any direct impacts would be avoided and indirect impacts would be minimized and mitigated.

Issue HCA-6: Limited party Webster has not established that, as part of Recommended HCA Condition 2, Idaho Power is required to have Oregon Trail expert added to the Cultural Resource Team and present during preconstruction surveys to identify emigrant trail locations.

Issue HCA-7: For purposes of Council review under the HCA standard, Idaho Power adequately evaluated historic and archaeological resource identified as "Site 6B2H-MC-10" on Mr. Williams' property, Parcel 03S37E01300.

Land Use Standard

Issue LU-4: The Fosses have not established that operation of the proposed transmission line would interfere with GPS-navigated irrigation systems.

Issue LU-7: In evaluating the proposed facility impacts to the cost of forest practices, Idaho Power accurately determined the total acres of lost production and indirect costs.

Issue LU-8: Idaho Power adequately evaluated the proposed facility's impacts on forest management practices. The proposed measures to mitigate impacts on

forested areas are adequate and appropriate.

Issue LU-9: Idaho Power adequately analyzed the risk of wildfires from operation of the proposed transmission lines, especially during “red flag” warning weather conditions and the impact the proposed transmission line may have on Mr. Myers’ ability to utilize aerial application on his farmland.

Issue LU-11: Idaho Power adequately evaluated the impacts from the proposed facility on accepted farm practices and the cost of accepted farm practices. The proposed measures to mitigate the facility’s impacts to surrounding farmlands are adequate and appropriate.

Noise Control Rules

Issue N-1: The Department lawfully modified the noise sensitive property owner identification requirement in ASC Exhibit X from one mile to one-half mile of the site boundary. OAR 345-021-0010(1)(x)(E) does not require notification to all owners of noise sensitive properties within one mile of the site boundary.

Issue N-2: The Department did not err in recommending that the Council grant a variance or exception from the Oregon DEQ’s Noise Rules. The Department’s recommendation is consistent with ORS 467.010.

Issue N-3: Idaho Power’s methodologies for evaluating compliance with OAR 340-035-0035 were appropriate. The Department did not err in approving the methodology.

Issue N-4: The proposed mitigation/Recommended Noise Control Conditions (as amended herein) adequately protect the public health, safety, and welfare.

Issue N-6: Idaho Power’s methodology for assessing baseline noise levels reflect reasonable baseline noise estimates for residents of the Morgan Lake area.

Public Services Standard

Issue PS-1: Ms. Badger-Jones has not established that Idaho Power was required to evaluate traffic safety impacts from construction-related use of Morgan Lake Road.

Issue PS-2: Further public review and comment on the Wildfire Mitigation Plan is unnecessary for purposes of approving the site certificate. Furthermore, there is no requirement under the Council’s rules that the Wildfire Mitigation Plan include specific fire protection or suppression tools, such as remote cameras, a shut off plan, and on-site firefighting equipment and personnel during construction.

Issue PS-3: The Council’s reliance on Public Services Condition 7 and the

OPUC-approved Wildfire Mitigation Plan is adequate to address wildfire response consistent with the Public Services standard.

Issue PS-4: Idaho Power adequately analyzed the risk of wildfire arising out of operation of the proposed facility and the ability of local firefighting service providers to respond to fires in the project area.

Issue PS-5: Ms. Gilbert presented no evidence or argument in support of this issue. A preponderance of the evidence establishes the sufficiency of the Wildfire Mitigation Plan as it relates to compliance with the Public Services standard.

Issue PS-6: Idaho Power has adequately evaluated the potential traffic impacts and modifications needed on the Hawthorne Loop, as well as the unpaved, private-access portion of Hawthorne Drive.

Issue PS-8: The Department's proposed revisions to Public Services Condition 7 are redundant with Attachment U-3 (the FPS Plan) and existing condition requirements.

Issue PS-9: A preponderance of the evidence supports Idaho Power's proposed revisions to draft FPS Plan and the Department's proposed revisions to Recommended Public Services Condition 6.

Issue PS-10: The draft FPS Plan (Attachment U-3) is adequate to establish compliance with the Public Services standard in terms of fire protection. The evidence also demonstrates that local service providers would be able to respond to a facility-related fire.

Recreation Standard

Issue R-1: Idaho Power adequately evaluated the potential adverse impact of the proposed facility on recreational opportunities at Morgan Lake Park.

Issue R-2: Idaho Power is not required to demonstrate compliance with the Morgan Lake Park Plan because there are no proposed project components located within the park boundary. Nevertheless, Idaho Power considered the objectives and values of the Morgan Lake Plan in determining that scenery is a valued attribute of Morgan Lake Park, and incorporated that determination in its analysis of potential project impacts to the park.

Issue R-3: The funds paid to the City of La Grande are not intended to mitigate for the proposed facility's visual impacts at Morgan Lake Park. Rather, the funds are intended for recreational improvements as mitigation for potential impacts to the park as a recreational resource. Recommended Recreation Condition 1 provides the mitigation for visual impacts.

Issue R-4: Idaho Power’s supplemental analysis of Morgan Lake Park adequately evaluates the proposed project’s visual impacts in the undeveloped areas of the park.

Retirement and Financial Assurance Standard

Issue RFA-1: The proposed \$1 bond amount for the first 50 years of operation, with a phased-in increase over the next 50 years of operation until the bond covers the full decommissioning cost, adequately protects the public from facility abandonment and provides a basis for the estimated useful life of the facility.

Issue RFA-2: In the event of retirement of the proposed transmission line, removal of concrete footings to a depth of one foot below the surface is sufficient to restore the site to a useful, nonhazardous condition.

Scenic Resources and Protected Areas Standards

Issue SR-2: Idaho Power satisfied the Scenic Resources and Protected Area standards at Flagstaff Hill/NHOTIC. Idaho Power was not required to analyze the feasibility of undergrounding the transmission line as mitigation for potential visual impacts.

Issue SR-3: Idaho Power accurately assessed the visual impact of the proposed project in the vicinity of the NHOTIC and properly determined that the impact would be less than significant as defined by Council rule.

Issue SR-7: The methodology Idaho Power used to determine the extent of adverse impact of the proposed facility on scenic resources, protected areas, and recreation along the Oregon Trail was reasonable and appropriate. Limited parties have not shown that the methodology was flawed, that Idaho Power erred in applying numeric values to the adverse impact, and/or that the Company used unsatisfactory measurement locations/observation points in its visual impact assessment.

Soil Protection Standard

Issue SP-1: Neither the Soil Protection Standard nor the General Standard of Review require Idaho Power to evaluate soil compaction, loss of soil structure and infiltration, loss of stored carbon in the soil, and/or the loss of soil productivity as a result of the release of stored carbon in soils to demonstrate compliance with the Council’s standards. Idaho Power presented sufficient information for the Council to find that the proposed facility, taking into account mitigation, is not likely to result in a significant adverse impact to soils.

Structural Standard

Issue SS-1: Ms. Webster has not sustained her burden of producing evidence on this issue. Additionally, Idaho Power has proposed a modified version of Design Feature 32 be added to Recommended Soil Protection Condition 4.

Issue SS-2: Mr. Cooper has not shown that construction-related blasting is likely to increase the risk of flooding in areas adjacent to the proposed transmission line. Mr. Cooper also has not established the need to evaluate hydrology or to analyze all existing creeks and ditches that drain into streets and private property, or the need to take core soil samples prior to selection of the final route for Idaho Power to demonstrate compliance with the Structural Standard.

Issue SS-3: Limited parties Horst and Cavinato have not established the need to require Idaho Power to test water quality of private water wells before, during, and after construction of the proposed facility.

Issue SS-5: Idaho Power has provided sufficient evidence to evaluate compliance with the Structural Standard. There is no need for Idaho Power to conduct additional site-specific geotechnical surveys prior to issuance of the site certificate to comply with Structural Standard. Based on compliance with the pertinent conditions, Idaho Power has demonstrated the ability to evaluate and avoid potential geologic and soils hazards, and blasting-related impacts, in accordance with the standard's requirements.

Miscellaneous Issue

Issue M-6: Public review is not required for finalization of the SPCC Plan. The SPCC Plan is sufficient for purposes of compliance with the Soil Protection and Retirement and Financial Assurances standards. Because the proposed facility will not produce contamination from hazardous materials, no long-term monitoring for hazardous materials is necessary and Idaho Power was not required to propose such a monitoring plan in the ASC pursuant to OAR 345-021-0010(w).

OPINION

Fish and Wildlife Habitat Standard

As pertinent to the remaining issues in this matter, the Fish and Wildlife Habitat standard, OAR 345-022-0060 states:

To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are consistent with:

(1) The general fish and wildlife habitat mitigation goals and standards of OAR

635-415-0025(1) through (6) in effect as of February 24, 2017[.]

Noxious weed control – Issues FW-3 and FW-6

Issue FW-3: Whether the Draft Noxious Weed Plan (Proposed Order Attachment P1-5) adequately ensures compliance with the weed control laws, ORS 569.390, ORS 569.400, and ORS 569.445.

Oregon’s Weed Control law are set out in ORS Chapter 569. ORS 569.390, titled “Owner or occupant to eradicate weeds,” states as follows:

Each person, firm or corporation owning or occupying land within the district shall destroy or prevent the seeding on such land of any noxious weed within the meaning of ORS 569.360 to 569.495 in accordance with the declaration of the county court and by the use of the best means at hand and within a time declared reasonable and set by the court, except that no weed declared noxious shall be permitted to produce seed.

ORS 569.400, addressing the refusal or failure to eradicate weeds, states in pertinent part:

(1) If the owner or occupant of the land fails or refuses to immediately destroy or cut the noxious weeds in accordance with ORS 569.360 to 569.495, the weed inspector shall at once notify the county court. The county court shall at once take necessary steps for enforcement of ORS 569.360 to 569.495. * * * .

And finally, ORS 569.445, addressing the duty to clean machinery before moving, states in pertinent part:

No person operating or having control of any threshing machinery, clover huller, hay baler, seed cleaning or treating machinery or other machinery shall move said machinery over any public road or from one farm to another without first thoroughly cleaning it. Before moving it, all hay or bundle racks and all other equipment shall be thoroughly swept and cleaned. * * * .

Limited parties Geer and Gilbert have standing on Issue FW-3. Both Ms. Geer and Ms. Gilbert contend that, in order to grant a site certificate, the Council must find that the applicant’s weed control plan complies with ORS 569.390, 569.400, and 569.445. More specifically, they argue that the draft Noxious Weed Plan does not comply with Oregon’s Weed Control laws for the following reasons: (1) it does not require Idaho Power to control all noxious weeds within the site boundary; (2) it does not apply to all state and county-listed noxious weeds; (3) it does not include provisions ensuring that no noxious weeds will go to seed; (4) it does not require sufficient monitoring and control for the life of the development; and (5) it does not sufficiently account for vehicle and equipment cleaning.⁹⁵ See Gilbert Opening Arguments Issue FW-3;

⁹⁵ In their arguments, Ms. Geer and Ms. Gilbert also raise contentions that fall outside the scope of Issue FW-3. Specifically, both limited parties challenge the procedure for finalizing the Noxious Weed Plan and assert that the public is entitled another opportunity to review and comment before the Plan is

Geer Direct Test.; Geer Direct Test.; Gilbert Closing Brief; Geer Closing Arguments on Issues FW-3 and FW-6; Geer Response to Closing Arguments Issues FW-3 and FW-6; Gilbert Response Brief Issue FW-3.

Contrary to the limited parties' contentions, Idaho Power is not required to demonstrate compliance with ORS Chapter 569 to satisfy the Council's siting standards generally or the Fish and Wildlife Habitat standard in particular.⁹⁶ This is because there is no specific requirement under ORS 469.510 or under OAR 346-021-0010 to address weed control in the ASC and the Department did not identify ORS Chapter 569 as applicable to the proposed facility in the Project Order.⁹⁷ Furthermore, the Council is not responsible for enforcing Oregon's Weed Control laws, as per ORS 569.400 that enforcement responsibility lies with the county courts. Therefore, contrary to Ms. Gilbert's argument, the Council is not waiving compliance with the Weed Control laws by finding that the proposed facility complies with the Fish and Wildlife Habitat standard.

Responsibility for pre-existing weed infestations. Both Ms. Gilbert and Ms. Geer argue that Idaho Power bears responsibility for weed control throughout the site boundary (and not just the ROWs) and that the Council must impose conditions to ensure that noxious weeds are not allowed to go to seed for the life of the development. However, the siting standards only require that Idaho Power address noxious weed infestations resulting from the project and that the Company prevent or mitigate those project-related adverse impacts. There is no Council rule that requires Idaho Power to demonstrate that it will eradicate preexisting noxious weeds that are not the result of ground disturbance associated with project construction. ORS Chapter 569 may impose additional obligations on Idaho Power as a landowner or occupant to control non-project-related noxious weed infestations, but as noted above, those obligations are independent from and not a requirement of demonstrating compliance with the Council's siting standards.

Treating all state and county-listed weeds. Ms. Geer argues that Idaho Power should treat all noxious weeds, regardless of their classification. Based on the provisions of the updated draft Noxious Weed Plan, Idaho Power commits to identifying, controlling, treating, and monitoring noxious weed species listed on Oregon's Weed Board Class A, B and T lists; as well as Baker, Malheur, Morrow, Umatilla, and Union county Class A and B lists.⁹⁸ Idaho Power also commits to consulting with county weed districts annually regarding appropriate treatment (if any) for Class C weeds and to annual review of state and county weed lists to ensure that any

finalized. Gilbert Opening Arguments Issue FW-3 at 6; Geer Surrebuttal Test. Although this contention falls outside the scope of Issue FW-3, the same challenge to the finalization of draft plans is addressed *infra* in connection with Issue M-6.

⁹⁶ Contrast with OAR 345-022-0060 specifically requiring consistency with ODFW's habitat mitigation goals and standards and the sage-grouse specific habitat mitigation requirements.

⁹⁷ OAR 345-015-0160 requires the Department to send a project order to the applicant establishing, among other things, "(a) All state statutes and administrative rules containing standards or criteria that must be met for the Council to issue a site certificate for the proposed facility, including applicable standards of divisions 22, 23 and 24 of this chapter."

⁹⁸ Taylor Rebuttal Exhibit B at 35.

changes in noxious weed classification will be identified and incorporated into the Plan.⁹⁹ The updated draft Noxious Weed Plan is consistent with the state Weed Control laws.

Frequency of monitoring/prohibiting weeds going to seed: Limited parties Geer and Gilbert argue that, in order to comply with the Weed Control laws, Idaho Power must monitor areas that may contain Category B noxious weeds twice annually and the Noxious Weed Plan only provides for annual monitoring for up to five years. The limited parties also argue that, pursuant to ORS 469.390, the Noxious Weed Plan must include provisions ensuring that no noxious weeds will go to seed. As discussed above, although ORS 569.390 requires landowners and occupiers to use the best means to prevent the seeding of any noxious weed, nothing in the weed control statutes specifically require twice annual monitoring of the land in issue. Second, and as previously discussed, any obligation to control noxious weeds imposed on a landowner or occupier by ORS Chapter 469 is independent of the showing an applicant must make to demonstrate compliance with the Council’s siting standards in general, and the Fish and Wildlife Habitat standard in particular.

In addition, as set out in the updated draft Noxious Weed Plan, Idaho Power has committed to monitoring and controlling noxious weeds “at least once annually” during the first five-year period.¹⁰⁰ After the five-year initial assessment period, Idaho Power will prepare a location-specific long-term monitoring plan to ensure control or mitigation of all project-related noxious weed infestations.¹⁰¹ Finally, there is no need for the Noxious Weed Plan to include provisions ensuring that no noxious weeds will go to seed because the Council is not responsible for enforcing the provisions of ORS 569.390.

Vehicle and equipment cleaning/compliance with ORS 569.445. Finally, Ms. Gilbert argues that the Noxious Weed Plan must comply with ORS 569.445, and that for the life of the project, Idaho Power must thoroughly clean all vehicles and equipment prior to movement over any public roads or from one property to another. Gilbert Opening Argument at 6-7; Gilbert Closing Brief at 12-14. Ms. Gilbert contends that because ORS 569.445 requires thorough cleaning of “any threshing machinery, clover huller, hay baler, seed cleaning or treating machinery or other machinery,” the statute extends to any vehicle or machinery that Idaho Power may use in constructing or operating the facility.

Both the Department and Idaho Power assert that the Company is not required to demonstrate compliance with ORS 569.445 in order for the Council to grant the site certificate. They further assert that Ms. Gilbert’s reading of ORS 569.445 is overbroad, and the statute is limited to in its application to agricultural machinery. The ALJ agrees with the Department and Idaho Power on both points.

First, as discussed above, because the Weed Control laws are not referenced in ORS 469.501 or the Project Order, Idaho Power is not required to demonstrate compliance with ORS

⁹⁹ *Id.* at 11-12.

¹⁰⁰ Taylor Rebuttal Exhibit B at 36 (updated draft Noxious Weed Plan, Section 6.1).

¹⁰¹ *Id.*

569.445 for purposes of the Council’s siting standards and Council is not responsible for enforcing these laws. Second, even if Idaho Power was required to demonstrate compliance with the Weed Control laws, ORS 569.445 is not applicable in this context. Applying accepted principles of statutory construction, the ALJ finds that the phrase “or other machinery” in ORS 569.445 is limited to other machinery used for agricultural purposes and does not extend to passenger vehicles, construction vehicles, and/or construction equipment.

Under the interpretive rule of *ejusdem generis*, a nonspecific or general phrase that appears at the end of a list of items in a statute is to be read as referring only to other items of the same kind as the items in the list. *See, e.g., Vannatta v. Keisling*, 324 Or 514, 533 (1997). Consequently, the phrase “other machinery” in ORS 569.445 must be read in light of the types of machinery specified in the statute (“threshing machinery, clover huller, hay baler, seed cleaning or treating machinery”). All of these items share the same basic characteristic – machinery commonly used in farming. Simply stated, the text and context of ORS 569.445 does not support Ms. Gilbert’s broad interpretation of the term “other machinery.” The statute does not apply to Idaho Power’s construction and operation of a high voltage transmission line.

In summary, the draft Noxious Weed Plan, as updated, complies with the Council’s standards. Idaho Power is not required to demonstrate compliance with the Weed Control Laws to satisfy the Fish and Wildlife Habitat Standard. Because the Council is not the agency responsible for enforcing compliance with the Weed Control Laws, the Noxious Weed Plan need not include provisions ensuring that no weeds will go to seed for the life of the development.

*Proposed site certificate conditions related to Issue FW-3:*¹⁰²

Ms. Gilbert timely proposed site certificate conditions related to noxious weed control in her Opening Arguments;¹⁰³ ~~which are addressed below.~~ Ms. Gilbert proposed additional conditions in her Closing Brief on Issue FW-3.¹⁰⁴ Ms. Gilbert’s proposed conditions are addressed below. To the extent these additional conditions and requested modifications to the Proposed Order are substantively different from those conditions timely proposed in her September 17, 2021 filing, the conditions and requested modifications are untimely.¹⁰⁵ ~~Therefore, the ALJ declines to address them.~~

¹⁰² In its Rebuttal to Direct Testimony, Evidence and Response to Proposed Site Certificate Conditions, at pages 25-28, the Department proposed amending Recommended Fish and Wildlife Condition 3. However, in its Closing Brief, the Department withdrew the proposed revisions/amendments to Recommended Fish and Wildlife Condition 3 based on the revisions and clarifications in Idaho Power’s updated draft Noxious Weed Plan (submitted as Taylor Rebuttal Exhibit B). ODOE Closing Brief at 16-20.

¹⁰³ The conditions that Ms. Gilbert proposed in her Opening Arguments on Issue FW-3 overlap in many respects with conditions she proposed in her Opening Arguments on Issue LU-11. To the extent Ms. Gilbert’s proposed conditions for Issue LU-11 relate to noxious weed control, they are addressed in this section.

¹⁰⁴ *See* Gilbert Closing Brief on FW-3 at 33-34.

¹⁰⁵ ~~Pursuant to OAR 345-015-0085(1), “parties shall submit proposed site certificate conditions to the hearing officer in writing according to a schedule set by the hearing officer.” In this matter, the ALJ set~~

Gilbert Proposed Noxious Weed Condition 1: During construction, operation and site restoration, IPC will require any equipment leaving the site to travel on public roads or which will cross from one property owners land to another to be cleaned to assure there is no unintentional spread of noxious weeds.¹⁰⁶

Gilbert Proposed Noxious Weed Condition 2: No noxious weeds are allowed to develop seeds within the site development.¹⁰⁷

Gilbert Proposed Noxious Weed Condition 3: The developer will monitor and treat noxious weeds occurring within the site boundary annually for the life of the development unless a different schedule is approved by the ODFW and the Council.¹⁰⁸

Gilbert Proposed Noxious Weed Condition 4: Monitoring and treatment methodologies to be followed for the life of the project will be developed in coordination with the ODFW.¹⁰⁹

Gilbert Proposed Noxious Weed Condition 5: The developer will monitor and control all noxious weeds within their site boundary for the life of the project on a schedule approved by the ODFW and updated every five years.¹¹⁰

Both the Department and Idaho Power assert that the above-proposed conditions are inappropriate and/or unnecessary for purposes of establishing compliance with the Council's siting standards. The ALJ agrees, and for the reasons that follow, the ALJ denies Ms. Gilbert's proposed noxious weed conditions.

Gilbert Proposed Noxious Weed Condition 1 is unnecessary and inappropriate because, as discussed above, ORS 569.445 does not apply to Idaho Power's construction vehicles and equipment. Moreover, the vehicle washing protocols set out in the Noxious Weed Plan are sufficient to ensure that Idaho Power's construction vehicles and equipment will not introduce or spread noxious weeds.

Gilbert Proposed Noxious Weed Condition 2 is unnecessary and inappropriate because it

~~September 17, 2021 as the deadline for submitting written direct testimony, evidence, and any proposed site certificate conditions. Case Management Order at 16, 18.~~

¹⁰⁶ Gilbert Opening Arguments Issue FW-3 at 7; Gilbert Opening Arguments Issue LU-11 at 16.

¹⁰⁷ Gilbert Opening Arguments Issue FW-3 at 15; Gilbert Opening Arguments Issue LU-11 at 16.

¹⁰⁸ Gilbert Opening Arguments Issue FW-3 at 15; Gilbert Opening Arguments Issue LU-11 at 16.

¹⁰⁹ Gilbert Opening Arguments Issue FW-3 at 8.

¹¹⁰ Gilbert Opening Arguments Issue FW-3 at 12.

extends beyond the Council's jurisdiction. Idaho Power's commitments and obligations regarding noxious weeds are set out in the Noxious Weed Plan. As set out therein, Idaho Power commits to controlling noxious weeds that are within project ROWs and that result from the Company's surface-disturbing activities during construction and operation. As previously stated, the Council is not tasked with enforcing ORS 569.390. Enforcement of the weed eradication laws lies with the county court. *See* ORS 569.400(1).

Gilbert Proposed Noxious Weed Conditions 3, 4 and 5 are also inappropriate and unnecessarily restrictive. The updated draft Noxious Weed Plan provides that if Idaho Power's control of noxious weeds is deemed unsuccessful after five years of monitoring and noxious weed control actions, then the Company will coordinate with ODOE regarding appropriate steps forward and will prepare a location-specific long-term monitoring plan based on the results of the initial five-year assessment period.¹¹¹ Insofar as Ms. Gilbert's proposed conditions grant ODFW sole authority to determine the methods and frequency of noxious weed monitoring and treatment, the proposals are inconsistent with the Council rules governing agency review final monitoring and mitigation plans.

Gilbert Proposed Noxious Weed Conditions

1. Future modifications, amendments or other changes to the Noxious Weed Plan must continue to include the following conditions.
2. The developer will monitor and control all existing and future noxious weeds at the site of the development for the life of the project. Monitoring and control of noxious weeds will occur a minimum of once a year, or more frequently to assure no noxious weeds are allowed to develop seeds. In the event that Category A weeds have been identified at the site, the monitoring and control will occur at least twice annually.
3. During the life of the development all machines and equipment must be cleaned prior to entering the site, leaving the site and entering public roads, moving machines and/or equipment from one property owner's land to another or from a location containing noxious weed species to one that does not contain the noxious weed species.
4. In the event that the developer fails to control noxious weeds and avoid their spread to adjoining areas, the increased costs, changes in procedures and damages related to their spread will be assessed and mitigation required.

For the same reasons proffered for Ms. Gilbert's Proposed Noxious Weed Conditions 3, 4 and 5, the above-proposed conditions are inappropriate and unnecessarily restrictive. First, including a condition that applies to the Noxious Weed Plan that precludes certain provisions from being amended or modified in the future ((1) above) is inconsistent with both statute and rule. ORS 469.402 provides Council broad discretion and authority to delegate future review and approval of site certificate requirements, such as an amendment to the Noxious Weed Plan, to the Department. Similarly, the Fish and Wildlife Habitat standard (OAR 345-022-0060) requires avoidance, minimization and mitigation of impacts to wildlife habitat through a demonstration of consistency with ODFW's Fish and Wildlife Habitat Mitigation Policy. The standard offers no prescriptive requirement that must be met to demonstrate such consistency. Therefore, it would be inconsistent to prohibit the Department and/or Council's review of components of the plan if, in the future, there is reason and basis to do so. The Department's action cannot be arbitrary and capricious. There is a built-in formal agency review process included in both the plan and condition that applies to any future change to the plan which

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ensure that such changes would be reviewed by subject matter/agency experts; establishing a limit on this type of future potential review is unnecessary.

Accordingly, the Council and ALJ rejects each of Ms. Gilbert's proposed conditions related to noxious weed control.

Ms. Geer also timely proposed site certificate conditions related to Issue FW-3 (and FW-6), which are addressed below. In her Closing Arguments, Ms. Geer submitted additional revisions to her proposed conditions related to Issue FW-3.¹¹² These proposed conditions, as revised in her Closing Arguments as applicable, are addressed below. To the extent that these additional proposed conditions are substantively different from those timely proposed in her September 17, 2021 filings, the proposals are untimely and the ALJ declines to address them.

Geer Proposed Noxious Weed Condition 1: The developer must implement a management and monitoring plan which assures that noxious weeds located on the site of the proposed transmission line are not allowed to produce seeds during the life of the project. The [Council] must determine that the plan meets the requirements of the statute, approve of the plan, and include it in the site certificate.¹¹³

Geer Proposed Noxious Weed Condition 2: Prior to the start of construction, Idaho Power will consult with Oregon Natural Areas program, land trusts, and local Parks departments to re-examine the proposed routes to avoid high quality natural areas and submit a revised Application for Site Certificate to the Energy Facility Siting Committee.¹¹⁴

¹¹¹ Taylor Rebuttal, Exhibit B at 36.

¹¹² In her Closing Arguments Ms. Geer restated her proposed conditions and proposed additional revisions/amendments to Recommended Fish and Wildlife Condition 3. Geer Closing Arguments at 20-23.

¹¹³ Geer Proposed Invasive Weeds Site Certificate Condition, September 17, 2021.

¹¹⁴ Geer Proposed Conditions on Issues FW-3 and FW-6 at 2.

Geer Proposed Noxious Weed Condition 3: Prior to the start of construction, Idaho Power will agree to control invasive weeds that are ecologically devastating to natural, scenic and recreational areas - not just those weeds on county and state noxious weeds lists, which are only those driven by being “economically important” (agriculture). Idaho Power would consult with local experts on each natural, scenic, and recreation area to get lists of ecologically damaging weeds to control.¹¹⁵

Geer Proposed Noxious Weed Condition 4: Request that Idaho Power assume weed control for the life of the B2H transmission line project.

Geer Proposed Noxious Weed Condition 5: Request that Idaho Power prepare a detailed Final Weed Plan which all concerned parties and any member of the public will review and provide input; this will become part of the Application for Site Certificate.

Site Certificate Conditions of Susan Geer on Issues FW-3 and FW-6 at 2.

Both the Department and Idaho Power oppose Ms. Geer’s proposed noxious weed conditions as inappropriate and/or not necessary to meet the requirements of ORS Chapter 569. The ALJ agrees.

Geer Proposed Noxious Weed Condition 1 is inappropriate because, as discussed above, the Council is not required to determine that the Noxious Weed Plan complies with the Weed Control laws. The Council’s authority to address noxious weeds is limited to assessing compliance with Council siting standards. Also, as discussed above, the Council is not responsible for enforcing ORS 569.390. That responsibility lies with the weed supervisors and county courts.

Geer Proposed Noxious Weed Condition 2 and 3 are inappropriate and/or unnecessary because they exceed the Council’s jurisdiction. As to Proposed Condition 2, the Council has no authority to direct Idaho Power to consult with other programs or agencies to re-examine the proposed routes. Also, as Idaho Power notes, the term “high quality natural areas” is vague and ambiguous, and the proposed condition is unnecessary because Idaho Power has provided sufficient evidence to establish that the project complies with the Protected Area Standard. Idaho Power also notes that the project will directly impact only one State Natural Area, the Ladd Marsh Wildlife Area, but the impacts are permissible under OAR 345-022-0040(3). As to Geer Proposed Noxious Weed Condition 3, the Council has no authority to require that Idaho Power address “ecologically devastating” weeds that are not listed on Weed Board and impacted counties’ lists of Class A and Class B noxious weeds.

Geer Proposed Noxious Weed Condition 4 is unnecessary because, as discussed above, weed control is adequately addressed in the updated draft Noxious Weed Plan.

¹¹⁵ *Id.*

Geer Proposed Noxious Weed Condition 5 is inappropriate because it is inconsistent with the Council's rule governing monitoring and mitigation plans. Idaho Power will finalize the Noxious Weed Plan in consultation with the Department and appropriate state and local agencies. As discussed in more detail later in this order,¹¹⁶ the Council's rules do not require further public review and comment on monitoring and mitigation plans prior to finalization and Council's approval of a site certificate. *See* ORS 469.402 (authorizing the Council to delegate the approval of a future action to the Department).

Geer Proposed Noxious Weed Condition

Request that Idaho Power not only collect detailed research-level data on noxious weeds and revegetation success as they outline in the Reclamation and Revegetation Plan under 6.0 RECLAMATION SUCCESS STANDARDS, MONITORING, AND MAINTENANCE, but enter that data electronically and share it in a user-friendly format with Oregon State agencies, affected landowners, and provide it upon request to any interested member of the public.

If available Idaho Power should also provide weed control and revegetation data for all other Projects. These types of data are hard to find for Energy development projects. The EFSC and concerned parties need to access and analyze these data for future decision making.

Geer's above referenced Proposed Noxious Weed Condition is inappropriate and/or unnecessary. First, use of the phrase "detailed-research-level data" is not explained; arguments have not been provided that support why the amount of data to be collected under the Noxious Weed Plan (recommended Fish and Wildlife Condition 3) and Reclamation and Revegetation Plan (recommended Fish and Wildlife Condition 1) do not constitute a reasonable level of biological data necessary to inform pre-disturbance conditions and establish appropriate success criteria. Second, the proposed terms of Ms. Geer's condition would exceed the Council's jurisdiction. The Council has no authority to require that Idaho Power collect detailed-research level data, assuming this to mean a level of data and analysis tantamount to an academic level research project, to evaluate and inform the success of noxious weed control and/or restoration. Similarly, the ASC under review represents the only facility proposed by Idaho Power that would be an EFSC-jurisdictional facility. Regardless, Council has no authority to require that the Noxious Weed Plan, Reclamation and Revegetation or associated site certificate conditions require an evaluation of data obtained from all other Idaho Power owned and operated facilities.

For the above-stated reasons, the Council and ALJ denies-denies Ms. Geer's proposed conditions related to noxious weed control and natural areas.

Issue FW-6: Whether the Noxious Weed Plan provides adequate mitigation for potential loss of habitat due to noxious weeds when it appears to relieve Applicant of weed monitoring and control responsibilities after five years and allows for compensatory mitigation if weed control is unsuccessful.

Ms. Geer also has standing on Issue FW-6. On this issue, Ms. Geer asserts as follows: (1) in natural areas, Idaho Power should be required to prevent or eliminate all non-native invasive plant species and not just those listed as noxious; (2) the Noxious Weed Plan improperly relieves Idaho Power of monitoring and control responsibilities after five years at the expense of native habitat; (3) the Noxious Weed Plan does not provide adequate mitigation

for potential loss of habitat; and (4) the Noxious Weed Plan does not offer adequate compensatory mitigation if weed control is unsuccessful. Geer Closing Arguments Issue FW-6 at 15-17. For the reasons that follow, Ms. Geer's challenges to the adequacy of the Noxious Weed Plan are without merit.

Non-native species in natural areas. Ms. Geer's argument about non-native invasive species in natural areas is outside the scope of Issue FW-6. Issue FW-6 asks whether the Noxious Weed Plan provides adequate mitigation for potential habitat loss due to noxious weed infestations resulting from project-related activities; it does not encompass the presence of non-native invasive species in natural areas. Moreover, even if Ms. Geer had properly raised this argument, no Council siting standard requires prevention or eradication of non-native invasive plant species as a condition for siting an energy facility. Treatment of non-native invasive plant species is a matter outside of the Council's jurisdiction and there is no authority for the Council to require that Idaho Power prevent or eliminate all non-native invasive plant species in natural areas within the site boundary.

Monitoring and control responsibilities. Contrary to Ms. Geer's contention, the Noxious Weed Plan does not relieve Idaho Power of monitoring and control responsibilities after five years. As discussed above with regard to Issue FW-3, the updated draft Plan establishes a five-year initial assessment period, after which Idaho Power will prepare a location-specific long-term monitoring plan to ensure control or mitigation of all project-related

¹¹⁶ See discussion *infra* in connection with Issue M-6 and limited party Marlette's contention that the Council should provide the public an additional opportunity to review and comment on all draft monitoring and mitigation plans prior to approving a site certificate.

noxious weed infestations.¹¹⁷ This five-year initial assessment period followed by a long-term monitoring plan is consistent with past Council orders and in compliance with the Fish and Wildlife Habitat standard. Ms. Geer has not demonstrated otherwise.

Mitigation for loss of habitat. To the extent Ms. Geer contends that the Fish and Wildlife Habitat Mitigation Plan is inadequate or that the habitat categories addressed therein are overly broad, these arguments fall outside the scope of Issue FW-6. As previously discussed, Issue FW-6 is limited to whether the Noxious Weed Plan provides adequate mitigation for potential adverse impacts from noxious weeds resulting from project construction and/or operation. Ms. Geer has not demonstrated that the Noxious Weed Plan is inadequate for its stated purpose.¹¹⁸

Compensatory mitigation. Ms. Geer asserts that none of the draft plans (Reclamation and Revegetation, Habitat Mitigation, and draft Noxious Weed) suffices to compensate landowners for the loss of high-quality native habitat. She also asserts that the mitigation goal of no net loss is “becoming a controversial practice,” and that even mitigation that fulfills legal requirements often fails to fully compensate for lost habitat. Geer Closing Argument at 17-18. First, this argument exceeds the scope of Issue FW-6, which as previously discussed, is limited to the adequacy of the weed monitoring and control provisions of the Noxious Weed Plan. Second, Ms. Geer’s challenge is misplaced because the goal of compensatory mitigation is not to compensate the landowner, but to compensate for the lost habitat. The Council’s Fish and Wildlife Habitat standard applies the ODFW Habitat Mitigation Policy, which is designed to address adverse impacts to fish and wildlife habitat, and not impacts to landowners. Furthermore, as Idaho Power notes in its Response Brief, if a landowner is adversely impacted by habitat loss, the Company will address this during negotiations with the landowner related to the ROW for the project. These negotiations occur outside the site certificate process and the Council’s jurisdiction.

In summary, a preponderance of the evidence establishes that the updated draft Noxious Weed Plan is adequate to serve its intended purpose, setting out the measures the Company will take to control noxious weed species and prevent the introduction of these species during construction and operation of the project. Ms. Geer has not presented evidence or persuasive argument that brings into question the validity of the updated draft Noxious Weed Plan or Idaho Power’s ability to implement and adhere to the plan when finalized.

Proposed site certificate conditions related to Issue FW-6:

In an addendum to her closing brief on Issues FW-3 and FW-6, Ms. Geer proposed an additional site certificate condition. She requested that Idaho Power electronically share the data

¹¹⁷ See Taylor Rebuttal Exhibit B at page 36 (updated draft Noxious Weed Plan, Section 6.1).

¹¹⁸ As the Department notes in its Closing Brief, Idaho Power’s mitigation for potential habitat loss is not limited to the requirements of the draft Noxious Weed Plan. The Council’s evaluation of whether the proposed facility meets the requirements of OAR 345-022-0060 is collectively based on the draft Reclamation and Revegetation Plan, the draft Habitat Mitigation Plan and draft Noxious Weed Plan. ODOE Closing Brief at 24.

on noxious weeds and revegetation success required under Section 6.0 of the Reclamation and Revegetation Plan “in a user-friendly format with other Oregon state agencies, affected landowners, and upon request to any interested member of the public.” Geer Addendum to Closing Brief, February 28, 2022 at 1. This condition is addressed under the evaluation of Geer’s proposed conditions for FW-3.

~~Ms. Geer did not timely submit this proposed condition to the ALJ in accordance with the schedule set in the Case Management Order, and therefore neither the Department nor Idaho Power had any opportunity to address and respond to it. Because Ms. Geer did not timely submit this requested condition, the ALJ declines to address its necessity or appropriateness.~~

Ruling on Idaho Power’s Motion to Strike Portions of Ms. Geer’s Closing Argument for FW-6:

With regard to Issue FW-6, Idaho Power moves to strike statements in Ms. Geer’s Closing Argument that Idaho Power contends are outside the scope of the issue. Specifically, Idaho Power moves to strike statements challenging the adequacy of the Fish and Wildlife Habitat Mitigation Plan, statements asserting the Noxious Weed Plan must separately address noxious weeds in natural areas, and statements pertaining to the Council’s General Standard of Review. Idaho Power’s Response Brief and Motion to Strike, Issue FW-6, at 5-7.

The ALJ agrees that the challenged statements in Ms. Geer’s Closing Argument are outside the scope of Issue FW-6. Issue FW-6 asks whether the Noxious Weed Plan provides for adequate weed monitoring and control provisions when it appears to relieve Idaho Power of responsibility after five years. Issue FW-6 does not involve a challenge to the adequacy of the Fish and Wildlife Habitat Mitigation Plan. Therefore, the ALJ gives no weight to Ms. Geer’s arguments regarding the Fish and Wildlife Habitat Mitigation Plan. Furthermore, Ms. Geer did not timely raise her concerns about weed control measures in natural areas or compliance with the General Standard of Review (OAR 345-022-0000). Therefore, the ALJ does not consider her arguments on those matters.

Riparian area setbacks – Issue FW-5

Issue FW-5: Whether Applicant should be required to mitigate impacts to riparian areas from the setback location to the outer edges of the riparian area because the riparian habitat should be rated as Category 2 at a minimum.

Ms. Gilbert has standing on Issue FW-5. She waived her opportunity to submit witness testimony or additional evidence on this issue. Therefore, she is limited in her closing arguments to relying on evidence previously admitted into the evidentiary record as part of the B2H Project Record.¹¹⁹ In her closing argument, Ms. Gilbert argues that: (1) under ODFW habitat mitigation rules, all fish bearing water sources and riparian area habitats should be rated as Category 1, or Category 2 as a minimum; and (2) the BLM’s FEIS requires a 300-foot setback and, based on

¹¹⁹ See *Ruling on Motion to Dismiss* at 4-6.

ORS 469.310¹²⁰ and ORS 469.370(13),¹²¹ the Council should require that same setback be incorporated into the site certificate. Gilbert Closing Brief at 2-6.

With regard to habitat characterization, Ms. Gilbert argues that “[t]he plain language of the ODFW habitat mitigation rules lead an individual to conclude that the presence of specific wildlife species at a site would impact the category of habitat the area is assigned.” Gilbert Closing Brief at 5. She further asserts that the Department and Council have misinterpreted the ODFW’s habitat mitigation rule and that their interpretation of required mitigation for riparian habitat impacts is not entitled to deference. Gilbert Closing Brief at 7-8. However, contrary to Ms. Gilbert’s contention, even according to ODFW’s interpretation of OAR 635-415-0025, the mere presence of a special status species or a migratory versus resident fish does not automatically elevate the habitat categorization of a given area.¹²² Therefore, the Department’s reading of the habitat categorization rule (*i.e.*, that fish species can exist within a degraded habitat and the existence of a state-listed threatened and endangered species does not meet the definition of a Category 1 habitat)¹²³ is consistent with ODFW’s interpretation of its own rule.

Furthermore, as set out in the findings, the Department addressed and approved Idaho Power’s methodology for identifying the types and locations of habitat, including riparian habitats, affected by the proposed facility. In the Proposed Order, the Department also noted that ODFW staff thoroughly reviewed Idaho Power’s habitat categorization methodology. Both ODFW and the Department approved Idaho Power’s approach to assigning habitat categories (Category 2 or Category 3) to riparian habitat areas.¹²⁴ The Department also noted that the mere presence of special status species in fish bearing streams does not require identifying riparian areas as Habitat Category 2.¹²⁵

As to the extent of the setbacks, Ms. Gilbert has not provided any evidence or identified any statute or rule requiring greater riparian setbacks than those included in the Proposed Order. Contrary to Ms. Gilbert’s contention, the Fish and Wildlife Habitat standard does not require or establish particular setbacks from fish bearing streams. Rather, the standard requires consistency with ODFW’s habitat mitigation goals and standards. For Category 2 habitats, OAR 635-415-

¹²⁰ ORS 469.310 sets out the policy for energy facilities in Oregon: “[I]t is the declared public policy of this state that the siting, construction and operation of energy facilities shall be accomplished in a manner consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of this state.”

¹²¹ ORS 469.370(13) requires the Council to “conduct its site certificate review, to the maximum extent feasible, in a manner that is consistent with and does not duplicate the federal agency review.”

¹²² Reif Cross-Exam. Test., Tr. Day 5 at 84-85.

¹²³ See ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 316 of 10016, n. 321.

¹²⁴ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 316-18 of 10016.

¹²⁵ See also Reif Cross-Exam. Test., Tr. Day 5 at 84-85.

0025 does not require specific setbacks, application of federal habitat protections, or complete avoidance of impacts. Rather, under ODFW's rule, the Category 2 mitigation goal is no net loss of either habitat quantity or quality and to provide a net benefit of habitat quantity. For the project at issue, mitigation for temporary and permanent impacts would occur via revegetation and long-term acquisition and enhancement of mitigation lands, which are consistent with the ODFW's Category 2 and 3 mitigation goals.

In summary, Ms. Gilbert has not established that Idaho Power is required to mitigate impacts to riparian areas from the setback location to the outer edges of the riparian area or that all riparian habitat areas should be designated ODFW Habitat Category 2 at a minimum. A preponderance of the evidence in the record supports the riparian setbacks identified in the Proposed Order.

Proposed site certificate conditions related to Issue FW-5:

In her Closing Brief on Issue FW-5, Ms. Gilbert submitted two proposed conditions related to setbacks in riparian areas.¹²⁶ Because Ms. Gilbert did not submit these proposed conditions to the ALJ in a timely manner in accordance with the schedule set in the *Case Management Order*,¹²⁷ there is no need to address their necessity or appropriateness. Nevertheless, based on the discussion of Issue FW-5 above, both proposed conditions are unnecessary and inappropriate because Idaho Power is not required to have a 300-foot setback in riparian areas.

Ruling on Idaho Power's Motion to Strike Portions of Ms. Gilbert's Closing Brief on Issue FW-5:

¹²⁶ Ms. Gilbert included proposed the following conditions in her Closing Brief on Issue FW-5, :

(1) Prior to the start of construction in areas within 300 feet of water sources, wildlife surveys must be completed to determine if the habitat is supporting wildlife listed as threatened or endangered. Every effort should be made to avoid the riparian area extending 300 feet from the water source. Any construction activity occurring in the riparian area will require mitigation for direct impacts as well as mitigation for indirect impacts in an area extending up to 300 feet from the location of the activity.

(2) Developer will avoid construction in the riparian zone extending 300 feet from water sources. Direct and indirect impacts to riparian areas within 300 feet of water containing fish require habitat mitigation be provided at a minimum of Category 2 level.

Gilbert Closing Brief Issue FW-5 at 8.

¹²⁷ Pursuant to OAR 345-015-0085(1), "parties shall submit proposed site certificate conditions to the hearing officer in writing according to a schedule set by the hearing officer." In this matter, the deadline for submitting written direct testimony, evidence, and any proposed site certificate conditions was September 17, 2021. *Case Management Order* at 16, 18. *See also Ruling on Motion to Dismiss* at 6 ("Because Ms. Gilbert waived the opportunity to submit witness testimony and any new evidence, her presentation on Issue FW-5 is limited to argument based on evidence previously admitted into the contested case record as part of the B2H Project Record.")

In the motion, Idaho Power moves to strike statements in Ms. Gilbert’s brief that reference documents that are not part of the evidentiary record and/or that raise arguments outside the scope of Issue FW-5. Specifically, Idaho Power moves to strike statements that reference the Oregon Integrated Water Resources Strategy,¹²⁸ statements that reference the Total Maximum Daily Load (TMDL) for the Upper Grande Ronde Sub-Basin,¹²⁹ and a general reference to the “federal register regarding fish present” in streams near the project.¹³⁰ Alternatively, Idaho Power asks that these challenged statements be given no weight. Issue FW-5 Motion to Strike at 4-5.

The ALJ agrees that the Oregon Integrated Water Resources Strategy and the TMDL for the Upper Grande Ronde Sub Basin are not part of the B2H Project Record and that Ms. Gilbert is not entitled to reference or rely upon these documents in her Closing Brief on Issue FW-5. Therefore, the ALJ gives these challenged statements no weight. Furthermore, Ms. Gilbert’s reference to the federal register is entitled to no weight, because she has not cited any specific code provision.

Fish Passage Plans – Issue FW-7

Issue FW-7: Whether Applicant’s Fish Passage Plans, including 3A and 3B designs, complies with the Fish and Wildlife Habitat standard’s Category 2 mitigation requirements; whether Applicant must revisit its plans because threatened Steelhead redds have been identified in the watershed.

Limited parties Ann and Kevin March have standing on Issue FW-7. The Marches contend that Idaho Power cannot demonstrate compliance with ODFW’s Habitat Category 2 mitigation goals or the Fish Passage rules because streams designated as non-fish bearing in the ASC may actually provide habitat for Snake River Basin steelhead.¹³¹ The Marches further assert that Idaho Power bears the burden to identify all streams that may provide habitat for

¹²⁸ See Gilbert Closing Brief Issue FW-5 at 6 (“Oregon’s Integrated Water Resources Strategy from August 2012 indicates that * * *”).

¹²⁹ See *id.* (“* * * the results are made abundantly clear in the report regarding the Upper Grande Ronde Sub-Basin TMDL by the Oregon Department of Environmental Quality from 2000.”).

¹³⁰ See *id.* at 2.

¹³¹ The Marches also fault the ODFW for not undertaking habitat surveys in the Ladd Creek watershed since the Oregon Department of Transportation completed the I-84 improvement project in 2018 and for not identifying Snake River Basin steelhead in the watershed. They argue that ODFW is not complying with its own Habitat Mitigation requirements and Fish Passage rules. See March Closing Brief at 7-12. However, the Marches’ challenge to the adequacy of ODFW’s surveys and studies falls outside the Council’s jurisdiction and the scope of Issue FW-7. Also, as the Department notes in its Response Brief, the fact that ODFW may not have the capacity and had not prioritized spawning surveys in the Ladd Creek watershed is immaterial to the Council’s review of Idaho Power’s ability to comply with the Fish and Wildlife Habitat standard or the Fish Passage Law. Department Response at 22.

Snake River Basin Steelhead and to “definitively state” which streams in the upper Ladd Creek watershed are not capable of providing fish habitat. March Closing Brief at 2, 16, 24.

As an initial matter, the Marches misstate the burden of proof for purposes of establishing compliance with the Council standards in general, and OAR 345-022-0060 in particular. In general, Idaho Power has the burden of proving by a preponderance of the evidence in the decision record that the facility complies with all applicable statutes, administrative rules and applicable local government ordinances. OAR 345-021-0100(2). More specifically, under the Fish and Wildlife Habitat standard, Idaho Power must provide information demonstrating that, more likely than not, the design, construction and operation of the proposed facility, taking into account mitigation, *are consistent with* the general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025. OAR 345-022-0060. Contrary to the Marches’ contention, however, to establish compliance with the Fish and Wildlife Habitat standard and/or the Fish Passage rules, Idaho Power does not have to “definitively state” whether Snake River Basin steelhead have entered the upper Ladd Creek watershed and/or whether Snake River Basin Steelhead have populated streams previously categorized as non-fish bearing.

The following points are important to keep in mind in resolving Issue FW-7: First, Idaho Power categorized all potentially fish bearing streams in the upper Ladd Creek watershed above the I-84 culvert within the site boundary as Habitat Category 2.¹³² Therefore, the potential presence of Snake River Basin Steelhead in these streams would not change the habitat designation. Second, Idaho Power is not proposing construction of new road crossings or major replacement of existing road crossings on any identified streams in the upper Ladd Creek watershed.¹³³ Consequently, there no need for Idaho Power to prepare a Fish Passage Plan for any of the crossings in the upper Ladd Creek watershed regardless of the potential presence of Snake River Basin Steelhead in these streams because all proposed project-related crossings in the upper Ladd Creed watershed will rely on the existing bridges or culverts.¹³⁴

In their Closing Brief, the Marches argue that “OAR 635-415-0020 is not fulfilled because of a lack of studies and data since the completion of the I-84 Fish Passage Improvement Project.” March Closing Brief at 26. However, contrary to the Marches’ contention, and as discussed above, Idaho Power is not obligated to satisfy the provisions of OAR 635-415-0020 (Implementation of Department Habitat Mitigation Requirements). Rather, pursuant to OAR 345-022-0060 (Fish and Wildlife Habitat), Idaho Power is required to show, by a preponderance of the evidence, that taking into account mitigation, the design, construction and operation are “consistent with” the mitigation goals and standards of OAR 635-415-0025(1) through (6).

¹³² James Rebuttal Test. at 19-20; *see also* ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 315-316 of 10016.

¹³³ James Rebuttal Test. at 18 (“Regardless of whether the streams in the upper Ladd Creek watershed were identified as fish-bearing or non-fish-bearing, the Fish Passage Plan and Fish Passage Approval requirements are not triggered because Idaho Power is not proposing construction of any new, or major replacement of existing, artificial obstructions on any of the road-stream crossings in that watershed.”)

¹³⁴ James Rebuttal Test. at 18-19.

Idaho Power has done so in ASC Exhibit P1, Attachment P1-6.¹³⁵ Furthermore, to the extent the Marches’ assert that the ODFW has not complied with OAR 635-415-0020 because it has not studied or surveyed the Ladd Creek watershed since ODOT completed the I-84 Fish Passage Improvement Project, that claim falls outside the Council’s jurisdiction.

The Marches next argue that “OAR 345-021-0010(1)(p) is not fulfilled because no presence of threatened and sensitive [Snake River Basin Steelhead] was documented in the Ladd Creek watershed.” March Closing Brief at 26. However, as discussed above, Idaho Power has no obligation to document the presence of this species in the Ladd Creek watershed in ASC Exhibit P1 in order to establish compliance with the Fish and Wildlife Habitat standard.

The Marches further contend that Idaho Power has presented “incomplete fish passage data” and that “OAR 635-412-0020 may not be fulfilled due to the lack of assumed native migratory fish presence and a lack of data verifying a ‘non-fish’ designation at 5 crossings.” March Closing Brief at 26. First, as previously discussed, Idaho Power has no obligation to definitively show that streams labeled non-fish bearing in the Ladd Creek watershed do not, in fact, bear Snake River Basin Steelhead (or other fish species) to establish compliance with the Council’s standards. Second, because Idaho Power does not propose to construct fish passage obstructions for any of the crossings in the upper Ladd Creek watershed, the Fish Passage Approval rules are not triggered in that watershed and the Company is not required to prepare a Fish Passage Plan for any of these crossings. Third, as discussed below, the Department has recommended amending Fish Passage Condition 1 to address the concern that the ODFW was not able to definitively affirm the non-fish bearing designation of the five non-fish road-stream crossings in the upper Ladd Creek watershed identified in ASC Exhibit P1-7B, Table 3. Recommended Amended Fish Passage Condition 1 and Recommended Fish and Wildlife Condition 4 will ensure that any new information regarding fish use arising prior to construction will be addressed.

The Marches also argue that “OAR 635-412-0035 may not be fulfilled because of a lack of data from ODFW and [Idaho Power] in regards to streams labeled as ‘non-fish’ streams.” March Closing Brief at 26. This argument lacks merit for the same reasons stated above. OAR 635-412-0035 (Fish Passage Criteria) only applies where there is a proposal to construct an artificial obstruction across waters of the state inhabited or historically inhabited by native migratory fish. OAR 635-412-0020(1). Here, Idaho Power does not propose construction or major replacement of any artificial obstructions in the upper Ladd Creek watershed, therefore the proposed project will not trigger the Fish Passage Approval requirements in the upper Ladd Creek watershed.¹³⁶

¹³⁵ ODOE - B2HAPPD0c3-25 ASC 16A_Exhibit P1_Wildlife_ASC_Part 1_Main thru Attach P1-6 rev 2018-09-28, pages 773-940 of 940. *See also* ODOE - B2HAPPD0c2 Proposed Order on ASC and Attachments 2019-07-02, pages 326-329 of 10016.

¹³⁶ Furthermore, in the event updated information required by Recommended Fish Passage Condition 1 indicates that streams previously designated non-fish bearing are, in fact, fish bearing *and* Idaho Power subsequently revises its proposal to include construction of an artificial obstruction at such a crossing location (thereby triggering the Fish Passage requirements), then Recommended Amended Fish Passage

Finally, the Marches assert that the ASC is missing ephemeral stream habitat data and that “OAR 635-021-0010 (1)(p)(D)(E)(F) and OAR 635-412-0020 are not fulfilled due to an assumed ‘non-fish’ designation of ephemeral streams and a lack of data to support this designation.” March Closing Brief at 26. As the Department notes, this is a new contention not previously raised in the Marches’ petition for party status or the evidence submitted in support of Issue FW-7. Department Response to Closing Arguments at 20. Idaho Power similarly argues that this contention (compliance with the content requirements of OAR 345-021-0010(1)(p)) is outside the scope of Issue FW-7. Idaho Power’s Response Brief for Issue FW-7 at 68. The ALJ agrees. Because the Marches raised this contention for the first time in their Closing Brief, neither the Department nor Idaho Power had the opportunity to respond to this challenge with rebuttal evidence. Therefore, this particular contention (failure to include ephemeral stream habitat data in the ASC) is not properly before the ALJ.¹³⁷

In summary, in the Proposed Order, the Department found that, assuming compliance with the recommended Fish Passage condition, the proposed facility complies with the Fish Passage Requirements of OAR chapter 635, division 412. The Marches have not demonstrated otherwise. The Department further found that, assuming compliance with recommended Fish and Wildlife conditions (in particular, Recommended Fish and Wildlife Condition 4 pertaining to the Fish and Wildlife Habitat Mitigation Plan) the proposed facility is consistent the ODFW habitat mitigation goals and standards described in OAR 635-415-0025. The Marches have not demonstrated otherwise. The presence of Snake River Basin Steelhead in the upper Ladd Creek watershed does not alter these determinations.

Proposed site certificate conditions related to Issue FW-7:

In response to testimony filed by the Marches on Issue FW-7, the Department proposed a revision to Recommended Fish Passage Condition 1(a), to require a re-evaluation of streams identified as non-fish bearing in the Ladd Creek watershed as part of finalizing the Fish Passage Plan.

ODOE Recommended Amended Fish Passage Condition 1(a):¹³⁸

a) Prior to construction, the certificate holder shall finalize, and submit to the Department for its approval in consultation with ODFW, a final Fish Passage Plan. As part of finalizing the Fish Passage Plan, the certificate holder shall

Condition 1 would require that Idaho Power seek Council approval of a site certificate amendment to incorporate ODFW approval and fish passage design/plan for the road-stream crossing.

¹³⁷ Moreover, and contrary to the Marches’ unsupported assertion, evidence in the record demonstrates that, to the greatest extent possible, Idaho Power surveyed all potential fish-bearing stream crossings, regardless of perennial, intermittent, or ephemeral designation. *See* ODOE - B2HAPPDoc3-28 ASC 16A_Exhibit P1_Wildlife_ASC_Part 3_Attach P1-7B 2018-09-28, page 10 of 164

¹³⁸ The new/amended language is in bold.

request from ODFW any new information on the status of the streams within the site boundary and shall address the information in the final Fish Passage Plan. **In addition, the certificate holder shall seek concurrence from ODFW on the fish-presence determinations for non-fish bearing streams within the Ladd Creek watershed, as presented in ASC Exhibit P1-7B Table 3. If the certificate holder in consultation with ODFW, determines any of the previously identified non-fish bearing streams within the Ladd Creek Watershed to be fish-bearing, the certificate holder shall complete a crossing risk evaluation and obtain concurrence from ODFW on applicability of fish passage requirements. If fish passage requirements apply, certificate holder shall seek approval from the Energy Facility Siting Council of a site certificate amendment to incorporate ODFW approval of new crossings and fish passage design/plans and conditions.** The protective measures described in the draft Fish Passage Plan in Attachment BB-2 to the Final Order on the ASC, shall be included as part of the final Fish Passage Plan, unless otherwise approved by the Department.

ODOE Rebuttal to Direct Testimony at 43.

Idaho Power does not oppose the revision/amendments to the Department's Recommended Amended Fish Passage Condition 1. Given the Department's recommendation and Idaho Power's assent, the ALJ recommends that the Council approve this proposed revision/amendment.

The Marches timely proposed seven additional site certificate conditions related to Issue FW-7.¹³⁹ Both the Department and Idaho Power contend that these proposed conditions are unnecessary, inappropriate and unsupported by evidence in the record.

March Proposed FW Condition 1: Prior to the start of construction, Idaho Power will request that the Oregon Department of Fish and Wildlife undertake and complete a formal analysis and survey of the Ladd Creek Watershed for Snake River Basin Steelhead.

This proposal is both unnecessary and inappropriate. It is unnecessary because, as discussed above, the presence of Snake River Basin Steelhead in the Ladd Creek watershed will not change the habitat category or the fact that Idaho Power is not proposing to construct or replace any crossings on streams in this watershed. It is inappropriate because requests to the ODFW fall outside the Council's jurisdiction. Therefore, this proposed condition is denied.

March Proposed FW Condition 2: Prior to the start of construction, Idaho Power will request of the National Oceanographic and Atmospheric Administration that the agency undertake a 2.11 Re-initiation of Consultation. This can and should be undertaken [] if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not considered.

¹³⁹ See Site Certificate Conditions of Anne and Kevin March Issue FW-7, filed September 17, 2021.

This proposal is both unnecessary and inappropriate because implementation of the federal Endangered Species Act and requests to NOAA fall outside the Council's jurisdiction. Accordingly, this proposed condition is denied.

March Proposed FW Condition 3: Prior to the start of construction, Idaho Power will request that the Record of Decision be revisited once this new information is entered into the NOAA database.

This proposal is both unnecessary and inappropriate because the BLM's Record of Decision is a matter outside the Council's jurisdiction. Therefore, this proposed condition is denied.

March Proposed FW Condition 4: Idaho Power shall revise its plans for the Ladd Creek Watershed once it receives this information from ODFW and NOAA, to accurately reflect migration patterns of Snake River Basin Steelhead and its spawning and rearing habitat.

This proposal is unnecessary and inappropriate because, as discussed previously, the assumed distribution of Snake River Basin Steelhead in the upper Ladd Creek watershed does not change the habitat category nor does it trigger the Fish Passage Approval requirements. Accordingly, this proposed condition is also denied.

March Proposed FW Condition 5: Idaho Power shall adjust its construction work window plans to accommodate this species and its habitat with no loss of fish or net loss of critical habitat.

This proposal is unnecessary and inappropriate because Idaho Power does not propose construction or major replacement of any stream crossings in the upper Ladd Creek watershed (where the Marches contend that Snake River Basin Steelhead are present). In the absence of any proposed construction there is no need to impose seasonal restrictions on when construction may occur. Consequently, this proposed condition is denied.

March Proposed FW Condition 6: Idaho Power shall create a mitigation plan for the Ladd Creek Watershed based on the presence of Threatened Snake River Basin Steelhead.

This proposal is unnecessary and inappropriate because the presence of Snake River Basin Steelhead in the Ladd Creek watershed will not change the habitat category or the fact that Idaho Power does not propose construction or replacement of stream crossings in this watershed. Therefore, this proposed condition is denied.

March Proposed FW Condition 7: Idaho Power shall create a Fish Plan in conjunction with ODFW that incorporates this data of historic and present use of Snake River Basin Steelhead in the Ladd Creek Watershed for migration and spawning and rearing habitat.

For the same reasons set out above, this proposal is unnecessary and inappropriate. The assumed distribution of Snake River Basin Steelhead in the upper Ladd Creek Watershed does not, in and of itself, trigger the Fish Passage Approval requirements. Moreover, the Fish Passage Rules require a Fish Passage Plan for a specific crossing or obstruction, rather than for the entirety of a watershed. Therefore, this proposed condition is also denied.

Historic, Cultural and Archeological Resources Standard

The HCA standard, OAR 345-022-0080, provides in pertinent part:

[T]o issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impacts to:

- (a) Historic, cultural or archaeological resources that have been listed on, or would likely be listed on the National Register of Historic Places;
- (b) For a facility on private land, archaeological objects, as defined in ORS 358.905(1)(a), or archaeological sites, as defined in 358.905(1)(c); and
- (c) For a facility on public land, archaeological sites, as defined in ORS 358.905(1)(c).

Oregon Trail resources – Issues HCA-3, HCA-4 and HCA-6

Issue HCA-3: Whether Historic, Cultural and Archeological Resources Condition [2] (EFSC HPMP) related to mitigation for crossings of Oregon Trail resources provides adequate mitigation for visual impacts and sufficient detail to allow for public participation.

Limited parties Gilbert and Marlette have standing on Issue HCA-3. They both contend that Idaho Power has not provided sufficient evidence to support a finding of compliance with the HCA standard because the EFSC HPMP does not clearly identify the historic resources, potential adverse visual impacts to those resources, and site-specific mitigation plans. (Marlette Closing Brief, Issue HCA-3; Gilbert Closing Brief, Issue HCA-3). Ms. Gilbert adds that Idaho Power is treating the Oregon Trail as a single historic site, and therefore it must identify all impacts for the entire transmission line and appropriate mitigation before the Council can approve a site certificate. She asserts that the project “requires this evaluation to occur prior to the start of construction on any section of the proposed transmission line. This information must be provided in order to make an eligibility determination, not afterwards.” Gilbert Closing on Issue HCA-3 at 4-5; *see also* 15-17. Ms. Gilbert also argues that the Council cannot determine whether the proposed facility is not likely to result in significant adverse impacts to historic resources until Idaho Power surveys the entirety of the analysis area. *Id.* at 19-20.

First, it is important to note that the proposed facility will not result in direct physical

disturbance to any listed or likely NRHP-eligible Oregon Trail segments. The proposed facility will, however, cross or be visible from Oregon Trail segments and therefore will indirectly impact these resources.¹⁴⁰ Second, and contrary to the limited parties' contentions, the HCA standard does not require that Idaho Power complete all tasks to ensure that project impacts to historical or cultural resources are avoided, minimized or mitigated to less than significant prior to issuance of a site certificate. As the Department noted in the Proposed Order, some tasks (including the cultural resource survey data based on final design and site access) may be completed and submitted for review *after* issuance of a site certificate and prior to construction:

Pursuant to OAR 345-015-0190(5), an ASC is complete when the Department finds that the applicant has submitted information adequate for the Council to make findings or impose conditions on all applicable Council standards. Further, under ORS 469.401(2), the site certificate shall contain conditions that ensure compliance with the standards, statutes and rules that apply to the facility. Therefore, the Council may use the information in the record to make findings and impose conditions to ensure compliance with the Council standards that require surveys, *and the final survey information may be submitted for review prior to construction.*

ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 53 of 10016; emphasis added.

In Section IV.K. of the Proposed Order, the Department specifically endorsed this process with regard to compliance with the HCA standard:

The Department, in coordination with SHPO and the BLM, and to be consistent with EFSC statute, determined the most prudent pathway to evaluate EFSC historic, cultural, and archaeological resource information is to align with the Section 106 federal review. * * *

To ensure that, based on the Section 106 compliance review, the resource inventory tables are provided to the Department and include updated impact assessment and mitigation measures via the [EFSC] HPMP to verify compliance with OAR 345-022-0090, the Department recommends the Council adopt Recommended Historic, Cultural, and Archaeological Resources Condition 2, outlined further below. Final impact avoidance, minimization, and mitigation measures depends on which, if any, of the subsection of the EFSC Historic, Cultural, and Archaeological Resources standard apply (OAR 345-022-0090(1)(a) through (c)). Because the EFSC standard relies upon the determinations that will result from the Section 106 compliance review, the Department recommends Historic, Cultural, and Archaeological Resources Condition 2, require the final HPMP to be submitted to the Department, SHPO and applicable Tribal government reviewing agencies *once the lead federal agency eligibility determinations have been established and based upon final design of the phase or segment of the proposed facility.* The Department recommends the applicant

¹⁴⁰ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 449 of 10016.

provide county-specific mitigation measures for impacts to NHT/Oregon Trail resources.

ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 512-13 of 10016; emphasis added.

Ms. Gilbert next argues that, as part of establishing compliance with the HCA Standard, Idaho Power must demonstrate compliance with the Programmatic Agreement and NHPA Section 106 requirements. Gilbert Closing on HCA-3 at 7-12. Simply stated, and contrary to Ms. Gilbert's contention, Idaho Power is not required to demonstrate compliance with NEPA Section 106 or the PA for purposes of the Council's review because the Council does not enforce compliance with federal laws.

In her opening argument on Issue HCA-3, Ms. Gilbert specifically challenges the methodology Idaho Power used to assess visual impacts to historic properties for purposes the HCA standard. She notes that Idaho Power used a different method to assess impacts for EFSC than it did for the BLM. She questions whether "the EFSC review can be accepted as meeting NEPA requirements." Gilbert Opening on HCA-3 at 4. This contention falls outside the scope of Issue HCA-3, which is limited to the adequacy of the EFSC HPMP. Further, as noted above, for purposes of the Council's review under the Council rules, Idaho Power is not required to demonstrate compliance with the PA and BLM HPMP.

The Council's HCA standard does not mandate any specific methodology for assessing visual impacts. Furthermore, as set out in the Rebuttal Testimony of Kirk Ranzetta, the BLM and SHPO methodologies for assessing visual impacts do not completely align with the information an applicant must provide for Council review under the HCA standard, particularly in light of the Council's definition of "significant" adverse impacts in OAR 345-001-0010(52).¹⁴¹ Nevertheless, as discussed above, Idaho Power coordinated with the BLM, SHPO and Department in developing its methodology for assessing visual impacts to historic properties (VAHP Study Plan) and incorporated pertinent aspects of the BLM methodology and the SHPO methodology into its plan.¹⁴² Idaho Power used, and will continue to use, this same methodology to ascertain the potential effects to historic properties and cultural resources for the entire length of the proposed transmission line.¹⁴³

¹⁴¹ Ranzetta Rebuttal Test. at 79-81. OAR 345-001-0010(52) states:

"Significant" means having an important consequence, either alone or in combination with other factors, based upon the magnitude and likelihood of the impact on the affected human population or natural resources, or on the importance of the natural resource affected, considering the context of the action or impact, its intensity and the degree to which possible impacts are caused by the proposed action. Nothing in this definition is intended to require a statistical analysis of the magnitude or likelihood of a particular impact.

¹⁴² Ranzetta Rebuttal Test. at 80-81.

¹⁴³ *Id.*

The PA is not a binding document in the Council review process. The VAHP Study Plan, which as noted above, was prepared in consultation with the Section 106 Cultural Resources Working Group, provides a reasonable and appropriate method for assessing indirect impacts from the project for purposes of the HCA standard. Furthermore, the EFSC HPMP, prepared specifically for the Department and to comply with the Council’s certification process, provides adequate mitigation measures for visual impacts to historic and cultural resources.

In her Response Brief, Ms. Marlette argues that the proposed facility will have a substantial adverse impact on the National Historic Oregon Trail because the transmission line will be visible from the trail segments and NHOTIC. She argues that Idaho Power’s proposed mitigation methods do not sufficiently protect against significant and permanent adverse impacts, and that even indirect impacts should be avoided, rather than minimized or mitigated. (Marlette Response at 1-3.) Ms. Gilbert, in her response, similarly argues that the proposed facility will “permanently and seriously degrade” the Oregon Trail resources within the state and that there is no way to mitigate for impacts that will reduce the visual impact to less than significant to areas such as NHOTIC.¹⁴⁴ (Gilbert Response at 1-3.)

The limited parties state their concerns, but they provide no persuasive evidence to support the contention that the proposed facility will result in significant adverse impacts to Oregon Trail resources that cannot be adequately mitigated. In the Proposed Order, the Department evaluated Idaho Power’s proposed mitigation for indirect impacts to Oregon Trail resources¹⁴⁵ and recommended mitigation for indirectly affected Oregon Trail segments, all to be included in the EFSC HPMP.¹⁴⁶ The Department noted:

[M]itigation established through the federal Section 106 compliance review may be used to satisfy the EFSC mitigation requirement for listed or likely NRHP-eligible Oregon Trail/NHT trail segments if applicant can demonstrate that it addresses both the design modifications and the restoration; preservation and maintenance; or compensation mitigation within affected area (county), as included in the below Table HCA-4b (included in the HPMP). If not duplicated through the federal Section 106 process, the applicant shall establish the scope and scale of Table HCA-4b mitigation, prior to construction, subject to Department review and approval, in consultation with SHPO, its consultants, or

¹⁴⁴ To the extent Ms. Gilbert seeks to apply the visual impact assessment requirements of the Council’s Scenic Resources or Protected Area standard, or of the NEPA Section 106 process, to the HCA standard, her arguments are misplaced. The Scenic Resources and Protected Area standards are designed to measure different impacts to different resources than the HCA standard. Moreover, as previously discussed, the federal requirements for assessing cultural resources are also inapplicable to the HCA standard.

¹⁴⁵ See Proposed Order, Tables HCA-3 and HCA-4 (also included in the EFSC HPMP), ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 461-70 of 10016.

¹⁴⁶ See Proposed Order, Table HCA-5b (also included in the EFSC HPMP), ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 471-72 of 10016.

other entities with expertise with historic trails.

ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 471 of 10016. Per the Department's recommendation, the EFSC HPMP requires that Idaho Power use design modification and at least one other mitigation measure, with a demonstrated direct benefit to the affected area. The limited parties have not demonstrated that these mitigation measures set out in the EFSC HPMP are inconsistent with the Council's definition of mitigation under OAR 345-001-0010(33).

Finally, the limited parties argue that the Court of Appeals' decision in *Gould v. Deschutes County*, 216 Or App 150 (2007), requires that the EFSC HPMP be adequately developed (*i.e.*, that it include all site-specific mitigation plans) prior to issuance of the site certificate and/or that the Council must defer consideration of the plan to allow public participation in the plan finalization. *See* Gilbert Closing on HCA-3 at 20; Marlette Closing at 5-6. The limited parties misconstrue *Gould* and its application in the context of the Council's review of an ASC. For the reasons discussed in more detail below (in connection with Issue M-6),¹⁴⁷ *Gould* does not require further public review and comment of the EFSC HPMP prior to finalization of the plan and/or Council's approval of the site certificate. *See* ORS 469.402 (authorizing the Council to delegate the approval of a future action to the Department).

In summary, a preponderance of the evidence establishes that the EFSC HPMP provides adequate mitigation for visual impacts to HCA resources. Recommended HCA Condition 2 requires that Idaho Power conduct all construction activities in compliance with the final Department-approved EFSC HPMP. The Council's rules do not require further public review and comment on the EFSC HPMP prior to finalization and approval of the plan.

Proposed site certificate conditions related to Issue HCA-3:

Ms. Gilbert timely submitted one proposed condition in her opening argument brief regarding Issue HCA-3,¹⁴⁸ ~~discussed below. She also submitted and~~ several more proposed conditions related to the HCA standard in her closing brief on HCA-3, as discussed below.¹⁴⁹
~~Because Ms. Gilbert~~

¹⁴⁷ See the discussion of *Gould* in connection with Issue M-6 and Ms. Marlette's contention that the Council should provide the public an additional opportunity to review and comment on all draft monitoring and mitigation plans prior to approving a site certificate.

¹⁴⁸ Gilbert Contested Case Opening Argument Regarding Issue HCA-3 at 4. Ms. Gilbert also timely submitted two other proposed conditions related to the HCA Standard (related to the Programmatic Agreement and to visual analysis for historic places), which are discussed *infra*, under the heading *Gilbert Additional Proposed Site Certificate Conditions*.

¹⁴⁹ Gilbert Contested Case Closing Regarding Issue HCA-3 at 8, 10-13, 18-20. Two of the conditions proposed in Ms. Gilbert's closing brief are similar to those included in her September 17, 2021 submission: one requiring a cumulative effects assessment pursuant to 36 CFR § 800.5, and the other pertaining to the Programmatic Agreement and the requirement to identify and provide mitigation for historical properties within five miles of the transmission line. ~~Those two Conditions~~ proposed conditions by Ms. Gilbert are discussed *infra*, under the heading *Gilbert Additional Proposed Site Certificate Conditions*.

~~did not submit these latter proposed conditions to the ALJ in a timely manner in accordance with the schedule set in the Case Management Order,¹⁵⁰ the ALJ declines to address their necessity or appropriateness.~~

Gilbert Proposed HCA Condition: The developer must complete a visual analysis of all historic sites using the methods accepted and used by BLM in evaluating visual impacts.

Both the Department and Idaho Power oppose this proposed condition as unnecessary and inappropriate. The ALJ agrees. Under ORS 469.370(13), the Council shall conduct its site certificate review, to the maximum extent feasible, in a manner that is consistent with and does not duplicate the federal agency review. However, the Council's role is to ensure compliance with applicable state and local laws, not federal laws. As discussed above, there is no requirement under the Council's standard that Idaho Power use the BLM's methodology to assess visual impacts to historic properties.

Furthermore, Idaho Power has already aligned its visual impact assessment for the Council's review process with the BLM's Section 106 review process.¹⁵¹ Idaho Power included the Programmatic Agreement in the ASC. To assess compliance with the Council's HCA standard, Idaho Power prepared the VAHP Study Plan in consultation with the Section 106 Cultural Resources Working Group, which included the Department, SHPO, and the BLM. The VAHP Study Plan guided Idaho Power's visual assessment of above-ground cultural resources potentially affected by the construction and operation of the proposed facility, to determine whether the effects are adverse. Because the BLM's visual resource management responsibilities and impact assessment measures differ from the methods for inventorying and assessing the project's impacts on historical and cultural resources under the Council's standards, it is not appropriate to require Idaho Power to use the same assessment tools in this context.¹⁵²

In short, Ms. Gilbert has not demonstrated that this proposed condition is necessary or appropriate. The Department and Idaho Power have explained why it is unnecessary. Accordingly, the proposed condition is denied.

In her Closing Arguments, Ms. Gilbert proposed the following condition:

Gilbert Proposed HCA-3 Condition

1. Prior to the start of construction at any location along the proposed transmission line, the developer must provide site specific information regarding the direct and indirect impacts for all areas of the Oregon Trail (NHT) including camps, associated markers, glyphs or other trail elements located within 5 miles of the proposed transmission line. Documentation must including at least one photograph of the location directed toward the area where the transmission line would be visible. Information must include proposed site specific mitigation. The public will be provided an opportunity to review, comment and request a contested case. Council will make a determination regarding compliance with the standard and whether the recommended mitigation is adequate. Council determination will be included in the Final Historic Properties Management Plan issued prior to the start of construction. (OAR 345-022-0080; OAR 345-022-0090; OAR 660-015-0000(5) ORS 469.503 (1) and OAR 345-0020-0010)

2. The developer must provide documentation supporting their decision regarding the 229 objects and sites selected for ILS study which Idaho Power based their decision that only 39 had the potential to be [NRHP] eligible or meet one of the criteria. (Historic Properties Management Plan, Boardman to Hemingway Transmission Line Project, September, 2018, Page 19)
3. Idaho Power must provide site specific information regarding impacts to all land which they claimed they could not access prior to obtaining a site certificate if they have or will access it prior to the issuance of a Site Certificate. This condition must be met prior to the issuance of a site certificate and the information must be made available for public disclosure, comment and contested case purposes per the justification provided in the body of this document.
4. All information provided post site certificate for locations which were not included in the original application based upon the “Energy Facility Siting Council Decisions for Linear Facilities site Restricted Access within a Site Boundary: Boardman to Hemingway Transmission Line” that is submitted after a site certificate is issued must be addressed with a Type A Amendment allowing the public access to a full contested case process due to the failure to disclose all accessible information to the public and the council during the original application process.

Idaho Power and Council oppose this proposed condition as unnecessary and inappropriate (IPC’s March 30, 2022 Response Brief for Contested Case Issues HCA-3, HCA-4, HCA-6 and HCA-7, p.21-25).

Council evaluates each condition based on the substantive terms. For Proposed HCA-3 Condition 1, the condition would require: 1) preconstruction identification of Oregon National Historic Trail resources within 5-miles of the proposed transmission line; and an evaluation of direct and indirect impacts within 5-miles.

The applicant has already established a 2-mile direct study area, and 5-mile indirect study area (ODOE - B2HAPPDoc3-36 ASC 19 Exhibit S Cultural ASC Public 2018-09-28. Page 9 of 783) – these study areas will apply at preconstruction finalization of impact and mitigation evaluation. Therefore, the existing indirect analysis and HPMP are based on the 5-miles Ms. Gilbert’s proposed condition refers. The site certificate would authorize direct impacts within an approved site boundary, which is less than 300 feet wide. Therefore, there is no basis to require that the applicant evaluate potential direct impacts of the proposed transmission line to a distance of 5-miles.

Proposed HCA-3 Condition 1 would require preconstruction photographic documentation of Oregon Trail resources within 5-miles of the proposed transmission line.

In areas that the applicant had approved access for surveys during the ASC process, photographic documentation of Oregon Trail (NHT) resources has been provided in the record of this case (See ASC, Exhibit S, Errata Sheet at S-10 – S-70 (ODOE - B2HAPPDoc3-55 ASC Exhibit S Errata Info Redacted 2019-03-06. Page 10-70 of 79). Photographic documentation of any additional Oregon Trail (NHT) resources not yet documented would be included under recommended HCA Condition 2, as presented in the Proposed Order. Recommended HCA Condition 1, as presented in the Proposed Order, requires avoidance of any direct, physical

impacts to Oregon Trail (NHT) resources. Therefore, the proposed terms of Ms. Gilbert's HCA-3 Condition 1 ignore existing information on the record and the mechanics of recommended HCA Condition 2, which would provide the necessary photographic documentation of all Oregon Trail (NHT) resources with a potential for indirect impact (within 5-miles of the proposed transmission line) as necessary to document the resource; and the type of mitigation that would be finalized and implemented for indirect impacts consistent with the requirements of the standard.

Gilbert's Proposed HCA-3 Condition 1 would require that, prior to construction, the photo documentation and site specific mitigation for Oregon Trail (NHT) resources within 5-miles of the proposed facility be subject to public review and comment; Council review and approval; and include appeal provisions.

Idaho Power is conducting a phased-approach for conducting surveys and evaluating resources and mitigation – the phased approach includes identification and field study for areas the site access had been obtained from landowners during the ASC phase; additional identification, field study and evaluation would be completed in the second phase at preconstruction, as required under the terms and conditions of the site certificate (HCA Condition 2). The phased approach could result in review of impacts and mitigation, following Council approval of the site certificate, which is allowable under ORS 469.402, if the circumstances are warranted. The Council finds that allowing a is warranted given the scope and scale of the project and study area, covering 1,500 miles for indirect impacts. Therefore, the Council maintains the authorization under ORS 469.402 to delegate the future review and approval, under ORS 469.402, of the HPMP to the Department, in consultation with the other state and tribal agencies and the Department's third-party consultant, which the Council considers to be appropriate.

Proposed HCA-3 Condition 2 would require that Idaho Power provide documentation supporting their decision regarding the 229 objects and sites selected for ILS study which Idaho Power based their decision that only 39 had the potential to be [NRHP] eligible or meet one of the criteria. The Council finds that these proposed terms go beyond the scope of HCA-3, which applies specifically to NRHP-eligible or likely eligible Oregon Trail resources. The record contains Idaho Power's evaluation and reasoning for its NRHP-eligibility recommendations for Oregon Trail (NHT) resources (ASC, Exhibit S, Errata at S-10 (ODOE - B2HAPPDoc3-55 ASC Exhibit S Errata Info_Redacted 2019-03-06 Page 10 of 79). This proposed condition is therefore rejected.

Proposed HCA-3 Condition 3 would require that, prior to site certificate approval, Idaho Power submit site specific information for any lands they have subsequently gained survey access/permission to and allow the public an opportunity to review and comment on the potential impacts and mitigation. Council does not have authority to impose conditions that apply prior to issuing a site certificate.

Proposed HCA-3 Condition 4 would require that any new protected resources that would be impacted by the proposed facility require evaluation through a Type A amendment process. The Council finds this to be inappropriate and unnecessary. Requiring that any future identification of a protected resource that would be impacted, requiring mitigation, to automatically be reviewed under the Council's Type A review process is arbitrary and capricious. Department staff must evaluate an amendment request, and a request for Type B review if included, based on the facts of the amendment and specific factors pursuant to OAR 345-027-0357(8) or any other factors deemed appropriate for

evaluating the appropriate procedural path for an amendment. However, Type A review for applications to amend a site certificate is the default – a certificate holder must demonstrate in writing to the Department that Type B review is justified. If Type B review is determined justified by the Department, it is subject to review by Council (OAR 345-027-0357(6)). For these reasons, Council finds Proposed HCA-3 Condition 4 to be unnecessary.

Based on the reasoning and analysis presented above, Council rejects Gilbert’s proposed HCA-3 conditions.

Ruling on Idaho Power’s Motion to Strike Portions of Ms. Gilbert’s Response Brief on Issue HCA-3:

In its motion, Idaho Power moves to strike, or in the alternative requests that no weight be given to, statements and arguments in Ms. Gilbert’s Response Brief on Issue HCA-3 that

¹⁵⁰ Pursuant to OAR 345-015-0085(1), “parties shall submit proposed site certificate conditions to the hearing officer in writing according to a schedule set by the hearing officer.” In this matter, the deadline for submitting written direct testimony, evidence, and any proposed site certificate conditions was September 17, 2021. *Case Management Order* at 16, 18.

¹⁵¹ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 439 of 10016.

¹⁵² See Ranzetta Rebuttal Test. at 79-81.

reference compliance with the Protected Areas standard and the Land Use Standard. Idaho Power argues that these standards and Ms. Gilbert's statements related thereto, are outside the scope of Issue HCA-3, which is limited to whether the EFSC HPMP complies with the HCA standard. Motion at 5-7.

In her response brief, Ms. Gilbert references the Protected Areas standard and the Land Use standard in arguing that the project will have a significant adverse impact on Oregon Historic Trail resources. Gilbert Response on Issue HCA-3 at 3-7. The ALJ agrees that Ms. Gilbert's references to/and reliance upon these other standards are misplaced in the context of Issue HCA-3. Accordingly, the ALJ grants Idaho Power's request and gives these statements no weight.

Issue HCA-4: Whether National Historical Oregon Trail segments with ruts located on Mr. Horst's property (Hawthorne Drive, La Grande) can be adequately protected from adverse impacts from proposed facility.

Limited parties Horst and Cavinato have standing on Issue HCA-4. They argue that the segment of the Oregon Trail that runs across the Horst property is listed on the National Registry, that there are visible ruts alongside the private access portion of Hawthorne Drive, and that Idaho Power has not properly identified these ruts in the ASC. They also argue that the construction and operation of the proposed facility will adversely impact their property and quality of life and that monetary compensation will not compensate for their loss of peace and tranquility. Horst Closing Brief at 8, 12.

Limited parties Horst and Cavinato have not presented persuasive evidence to support their claim. Rather, the contested case record establishes that Idaho Power can adequately protect the NHT segments with ruts located on the Horst property from any adverse impacts from the proposed facility.¹⁵³ First, Recommended HCA Condition 1 requires Idaho Power to design and locate facility components to avoid direct impacts to Oregon Trail/NHT resources, including trail ruts, regardless of where the resources are located.¹⁵⁴ Consequently, if Idaho Power opts for the Mill Creek Route as the final route, and if NHT ruts are identified in the Direct Analysis Area, then the Company will avoid direct impacts to these resources by micro-siting portions of the project or using other measures to protect the ruts from degradation.

Second, as discussed previously, Recommended HCA Condition 2 requires Idaho Power to submit a final EFSC HPMP that will be updated based on the outcome of the Section 106 review with site-specific mitigation identified based on final design and location of the project

¹⁵³ Idaho Power did not identify the Oregon Trail segments located on the Horst property in its initial analysis because these resources lie outside the Direct Analysis Area and Idaho Power did not have access to the property to perform surveys to assess impacts. When Idaho Power obtains permission to survey the property, the Company, in consultation with the Department and the Oregon SHPO, will evaluate the segments and develop measures to avoid, minimize, or mitigate impacts consistent with the PA and the EFSC HPMP. Ranzetta Rebuttal Test. at 83.

¹⁵⁴ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 474 of 10016.

and the final impact assessments. Therefore, Idaho Power would minimize and mitigate indirect impacts to NHT ruts on the Horst property in accordance with HCA Condition 2 and the EFSC HPMP.

Accordingly, a preponderance of the evidence establishes that Idaho Power can protect Oregon Trail segments with ruts located on Mr. Horst's property. The limited parties have not shown otherwise.

Issue HCA-6: Whether, as part of the [EFSC] HPMP Applicant should be required to have an Oregon Trail expert, recommended by OCTA and agreed to by the Field Director, added to the Cultural Resource Team and present during preconstruction surveys to adequately identify emigrant trail locations.

Limited party Stacia Webster has standing on Issue HCA-6, and bears the burden of producing evidence to support her claim. Ms. Webster did not file any written direct testimony or exhibits in support of her position on Issue HCA-6 nor did she submit written closing argument regarding this issue. Because Ms. Webster failed to submit evidence and/or argument in support of her contention, the claim is unsubstantiated.¹⁵⁵ The findings in the Proposed Order constitute prima facie evidence of Idaho Power's compliance with the HCA standard.

Archaeological resource Site 6B2H-MC-10 – Issue HCA-7

Issue HCA-7: Whether Idaho Power adequately evaluated historic and archaeological resource "Site 6B2H-MC-10" on Mr. Williams' property, Parcel 03S37E01300.

Limited party Williams has standing on Issue HCA-7. As set out in the findings above, Proposed Order, Section IV.K.1.3, Table HCA-7 lists Site 6B2H-MC-10 on Mr. Williams' property as a potentially impacted historic property or archaeological site on private land. The Proposed Order describes the resource as unevaluated hunting blind within the Visual Assessment Analysis Area along the Morgan Lake Alternative Route.¹⁵⁶ Mr. Williams argues that Idaho Power has not completely surveyed his property and that the Council should not approve a site certificate until the Company has properly evaluated and documented resources on his property in accordance with the requirements of OAR 345-022-0090. Williams Closing Argument at 1. In his direct testimony, Mr. Williams asserted that his property (including Site 6B2H-MC-10) is listed on the NRHP. Mr. Williams also asserted that an archaeologist located a rock alignment and two lithic scatters in or near the Direct Analysis Area, which were not addressed in Tetra Tech's Summary of Surveys. Williams Direct Test. at 1-3.

First, to the extent that Mr. Williams asserts Idaho Power failed to address archaeological resources on his property other than Site 6B2H-MC-10, these claims fall outside the scope of

¹⁵⁵ Because Issue HCA-6 is unsubstantiated, there is no need to address the merits of the claim in this order. *See Ruling on Motion to Dismiss* at 8.

¹⁵⁶ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 499 of 10016.

Issue HCA-7.¹⁵⁷ Issue HCA-7 is limited to the adequacy of Idaho Power's evaluation of Site 6B2H-MC-10.¹⁵⁸

Second, and contrary to Mr. Williams' contention, Site 6B2H-MC-10 is not listed on the NRHP. In 2021, the Oregon Trail La Grande to Hilgard Segment was listed on the NRHP, but there is no evidence that Site 6B2H-MC-10, a hunting blind, was included in that listing. Third, Idaho Power has yet to evaluate Site 6B2H-MC-10 because the site is not located within the Direct Analysis Area. Rather, Site 6B2H-MC-10 is located just south of the Direct Analysis Area's southern boundary, within the Visual Assessment Analysis Area.¹⁵⁹ As explained previously, Idaho Power will evaluate indirect impacts cultural resources during Phase 2 of its VAHP Study Plan, in accordance with the Department's recommendations in the Proposed Order and the EFSC HPMP, and consistent with the processes contained in the PA.¹⁶⁰ Also as previously stated, the Council's standards do not require Idaho Power to complete its visual assessments and the Enhanced Archaeological Survey prior to issuance of the site certificate. The EFSC HPMP will be finalized and approved by the Department prior to construction of the facility. Idaho Power will complete Phase 2 of the archeological survey after the site certificate is issued, but prior to construction on the selected route, when site access has been secured for all properties.¹⁶¹

In short, the preponderance of the evidence establishes that Idaho Power adequately evaluated Site 6B2H-Mc-10 consistent with the Council's HCA standard. Mr. Williams has not shown to the contrary.

Proposed site certificate conditions related to Issue HCA-7:

In his Closing Argument, Mr. Williams also proposed site certificate conditions related to his property and the contents of the finalized EFSC HPMP.¹⁶² Mr. Williams proposed condition (1-4 and 6-10), as provided in the footnote below, contain provisions that the Department included in recommended HCA Condition 2 of the Draft Proposed Order, but removed in the Proposed Order as the language was redundant, yet not inclusive of all, requirements included in the HPMP. The Council finds the reintroducing requirements under the HPMP into the condition is unnecessary, as the condition requires that the plan be implemented, and the plan requires that 1-4 and 6-10 of Mr. Williams proposal be completed. Mr. Williams proposed condition (5) would require that Idaho Power complete an evaluation of resources on his property under ORS 385.905(1)(a) and ORS 358.905(1)(c). Similarly, this review would occur for all historic, cultural and archeological resources with a potential for direct or indirect impacts from construction or operation of the proposed. Council refrains from including a condition provision applicable to one sole property owner where the evaluation sought applies to all applicable resources. Council finds that the HPMP and HCA Condition 2, as amended in this order, are sufficient to ensure that resources are identified and evaluated; that direct and indirect impacts are assessed; and that mitigation will be identified, implemented and monitored, as applicable. Mr. Webster's proposed condition is therefore rejected. Because Mr. Williams did not submit these proposed conditions to the ALJ in a timely manner with his direct testimony in accordance with the schedule set in the Case Management Order, the ALJ declines to address

¹⁵⁷ See *Rulings on Idaho Power Company's Objections to Limited Parties' Surrebuttal Testimony and In the Matter of Boardman to Hemmingway*, OAH Case No. 2019-ABC-02833
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Exhibits, issued January 3, 2022, at 5.

¹⁵⁸ *Id.*; *see also Amended Order on Party Status* at 74, 79.

¹⁵⁹ Ranzetta Rebuttal Test. at 85-86.

¹⁶⁰ Ranzetta Rebuttal Test. at 86; *see also Proposed Order*, Table HCA-7: Potentially Impacted Resources under OAR 345-022-0090(1)(a), at 492 n. 498, ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 499 of 10016.

¹⁶¹ Ranzetta Rebuttal Test.; *see also ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments* 2019-07-02, page 445-46 of 10016.

¹⁶² *See Williams Closing Argument* at 2. Mr. Webster's proposed condition is as follows:

The final HPMP shall include:

1. A revised High Probability Areas Assessment and revised inadvertent Discovery Plan;
2. Updated information to reflect process updates described in the Final Order of the ASC with respect to EFSC historic, cultural, and archaeological resource information to align with the Section 106 federal review;
3. Final eligibility determinations for newly identified resources and previously inventoried resources, with supporting documentation (final Cultural Resources Technical Report, ILS, RLS), from the lead federal agencies;
4. Based on the final eligibility determinations, identify which resources qualify for protections under OAR 345-022-0090(1)(a) through (c);
5. Applicant recommendations and supporting documentation to demonstrate if the resource on Mr. Williams' property qualifies as an archaeological object or site under ORS 358.905(1)(a) and ORS 358.905(1)(c).
6. A proposed site specific impact assessment including avoidance, minimization and/or mitigation measures for the resource.
7. Final site specific impact (direct and indirect) avoidance measures and an impact assessment for a phase or segment of the facility, or specific facility component, including avoidance measures in Historic, Cultural, and Archaeological Resources Condition 1;
8. Final site specific impact (direct and indirect) minimization measures based on final design of a phase or segment of the facility, or specific facility component;
9. Final site specific impact (direct and indirect) mitigation measures based on final design of a phase or segment of the facility, or specific facility component;
- 4-10. The certificate holder shall conduct all construction activities in compliance with the final Department-approved HPMP.

them.¹⁶³

Land Use Standard

As pertinent here, ORS 469.503 states as follows:

In order to issue a site certificate, the Energy Facility Siting Council shall determine that the preponderance of the evidence on the record supports the following conclusions:

* * * * *

(4) The facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission.

Additionally, the Land Use standard, OAR 345-022-0030 provides, in pertinent part:

(1) To issue a site certificate, the Council must find that the proposed facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission.

(2) The Council shall find that a proposed facility complies with section (1) if:

(a) The applicant elects to obtain local land use approvals under ORS 469.504(1)(a) and the Council finds that the facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or

(b) The applicant elects to obtain a Council determination under ORS 469.504(1)(b) and the Council determines that:

(A) The proposed facility complies with applicable substantive criteria as described in section (3) and the facility complies with any Land Conservation and Development Commission administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646(3)[.]

* * * * *

(3) As used in this rule, the “applicable substantive criteria” are criteria from the affected local government’s acknowledged comprehensive plan and land use ordinances that are required by the statewide planning goals and that are in effect on the date the applicant submits the application. * * *.

¹⁶³ As noted previously, the deadline for submitting written direct testimony, evidence, and any proposed site certificate conditions was September 17, 2021. *Case Management Order* at 16, 18.

GPS irrigation systems – Issue LU-4

Issue LU-4: Adequacy of the analysis of potential impacts of transmission line interference with GPS units on irrigation system.

Limited parties Jim and Kaye Foss have standing on Issue LU-4, and bear the burden of producing evidence to support their claim. The Fosses did not file any written direct testimony or exhibits in support of their position on Issue LU-4 nor did they submit written closing argument regarding Issue LU-4. Because the Fosses failed to submit evidence and/or argument in support of their contention that operation of the proposed transmission line would interfere with the GPS navigated irrigation system on their property, the ALJ considers their claim unsubstantiated.¹⁶⁴ The findings in the Proposed Order constitute *prima facie* evidence of Idaho Power's compliance with the Land Use standard.

Forest management practices – Issues LU-7 and LU-8

Issue LU-7: Whether the evaluation of the proposed facility impacts to the cost of forest practices accurately determined the total acres of lost production or indirect costs.

Issue LU-8: The adequacy of Applicant's evaluation of the proposed facility impacts to the cost of forest management practices and whether mitigation must be provided for the entire length of the transmission line for the operational lifetime.

Ms. Gilbert has standing on Issues LU-7 and LU-8. Ms. Gilbert did not timely submit any direct testimony, exhibits, or proposed site certificate conditions in support of her contentions on Issues LU-7 or LU-8.¹⁶⁵ However, she submitted a written closing brief combining her arguments on these two issues. In her Closing Brief on Issues LU-7 and LU-8, Ms. Gilbert argues that Idaho Power did not properly identify forestlands in Union County in accordance with Statewide Planning Goal 4 and did not properly calculate the potential impacts to the costs of accepted forest practices.¹⁶⁶ More specifically, Ms. Gilbert asserts that Idaho Power erred in applying the substantive criteria from the UCZPSO because Union County's ordinance does not comply with state law. Gilbert Closing Brief at 7, 17, 23-26. She further

¹⁶⁴ Where, as with Issue LU-4, the claim is deemed unsubstantiated, there is no need to address the merits of the claim in this order. *See Ruling on Motion to Dismiss* at 9.

¹⁶⁵ *See Ruling on Motion to Dismiss* at 9-11.

¹⁶⁶ Ms. Gilbert raises essentially the same contentions with Issues LU-7 and LU-8 that she raised in opposing Idaho Power's Motion for Summary Determination regarding Issue LU-5. *See Ruling on Issues LU-2, LU-3, LU-5 and LU-6* at 19-23. Issue LU-5 asked "whether calculation of forest lands must be based on soil class or whether it is sufficient to consider acreage where forest is predominant use." *Id.* at 2. In ruling in Idaho Power's favor as a matter of law, the ALJ found that Idaho Power properly used SSURGO soil classification data in determining the prominent use of hybrid-zoned land in Union County. *Id.* at 8, 22-23.

contends that land with a timber capability rating of 20 cubic foot per acre per year (cf/ac/yr) must be considered forestland and that Idaho Power must use the same soil capacity standard when determining prominent use and differentiating between farmland and forestland in Union County.¹⁶⁷ *Id.* at 9, 25, 29. As discussed below, Ms. Gilbert’s arguments are without merit.

As set out above, to issue a site certificate, the Council must find that the proposed facility complies with the statewide land use planning goals adopted by the Land Conservation and Development Commission. Statewide Planning Goal 3, pertaining to agricultural lands, states that “agricultural lands shall be preserved and maintained for farm use * * *.” OAR 660-015-0000(3). Statewide Planning Goal 4, pertaining to forestlands, states as follows:

To conserve forest lands by maintaining the forest land base and to protect the state’s forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

OAR 660-015-0000(4).

To implement Goal 4, the Land Conservation and Development Commission (LCDC) adopted administrative rules, found in OAR chapter 660, division 6. OAR 660-006-0000 sets out the requirements for governing bodies to accomplish the purpose of conserving forestlands. Local governments must (a) designate forestlands on the comprehensive plan map consistent with Goal 4 and OAR chapter 660, division 6; (b) zone forestlands for uses allowed pursuant to OAR chapter 660, division 6; and (c) adopt plan policies consistent with OAR chapter 660, division 6. For purposes of Goal 4, and as relevant here, “forest lands” means “those lands acknowledged as forest lands.” OAR 660-006-0005(7). OAR 660-006-0015 requires that lands inventoried as forestlands be designated in the comprehensive plan and implemented with a zone that conserves forestlands consistent with OAR chapter 660, division 6, unless an exception to Goal 4 applies.

OAR 660-006-0025 sets out uses authorized in forest zones. OAR 660-006-0050 authorizes a governing body to establish hybrid agriculture/forest zones with the same authorized uses. As pertinent here, “new electric transmission lines” may be authorized on forestlands,¹⁶⁸ subject to the following review standards:

¹⁶⁷ Ms. Gilbert also includes in her Closing Brief on Issues LU-7 and LU-8 arguments that are outside the scope of either issue, such as challenges to the draft Fish and Wildlife Mitigation plan and the draft Noxious Weed Plan. Because these arguments are outside the scope of Issue LU-7 or LU-8, the ALJ declines to address them in this context.

¹⁶⁸ OAR 660-015-0025(4)(q) states:

The following uses may be allowed on forest lands subject to the review standards in section (5) of this rule:

* * * * *

(a) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands; [and]

(b) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel[.]

OAR 660-006-0025(5).

As discussed in the findings, the UCZPSO includes a hybrid farm-forest zone, the Timber-Grazing zone, as authorized by OAR 660-006-0050. UCZPSO 5.02 addresses permitted uses in the Timber-Grazing zone. UCZPSO 5.04 sets out the authorized conditional uses in the Timber-Grazing zone and the general review criteria. UCZPSO 5.04 mirrors the language in OAR 660-006-0025(4)(q) by authorizing “new electric transmission lines” as a conditional use in the Timber-Grazing zone. UCZPSO 5.04.21. Similarly, UCZPSO 5.06 mirrors the language in OAR 660-006-0025(5) in setting out the conditional use review criteria:

A use authorized by Section 5.04 of this zone may be allowed provided the following requirements or their equivalent are met. These requirements are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands.

1. The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands.
2. The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

UCZPSO 5.06.

In preparing ASC Exhibit K, Idaho Power worked closely with Union County planning staff to analyze the predominant use on each of the 61 parcels within the project site boundary located wholly or partially in the Timber-Grazing Zone. In accordance with UCZPSO requirements, Idaho Power determined the predominant use of the hybrid-zoned parcels by using soil maps and SSURGO data to determine soil designations and capabilities where such data was available. Where such data was not available to evaluate the predominant use, Idaho Power conservatively classified the land as forestland.¹⁶⁹ Idaho Power determined that for the Proposed

(q) New electric transmission lines with right of way widths of up to 100 feet as specified in ORS 772.210. New distribution lines (e.g., gas, oil, geothermal, telephone, fiber optic cable) with rights-of-way 50 feet or less in width[.]

ORS 772.210, in turn, authorizes a public utility to enter and condemn lands for construction of service facilities.

¹⁶⁹ ODOE - B2HAPPDoc3-19 ASC 11_Exhibit K_Land Use_ASC 2018-09-28, page 239 of 614.

Route, approximately 53 percent of Timber-Grazing zoned land has a predominant use of rangeland and about 47 percent had a predominant use of forestland. For the Morgan Lake Alternative Route, Idaho Power determined that about 60 percent had a predominant use of rangeland and about 40 percent was classified as forestland.¹⁷⁰

Contrary to Ms. Gilbert's contentions, Idaho Power did not err in applying the UCZPSO to identify the amount of forestland in Union County potentially impacted by the proposed facility. Furthermore, Ms. Gilbert has not established that Union County's zoning ordinance is contrary to state law, as there is no state law provision requiring that all land parcels consisting of soils capable of producing 20 cf/ac/year of timber be classified as forestland when determining prominent use and differentiating between farmland and forestland.

Ms. Gilbert cites to OAR 660-033-0130(4)(c)(B)(iii)¹⁷¹ in support of her contention that soils with a capacity to produce as little as 20 cf/ac/yr must be classified as forestland. However, this rule, found in Chapter 660, Division 33 (Agricultural Land) is not applicable to the Goal 4 analysis, and does not govern the predominant use analysis for the Timber-Grazing zone in Union County.

Ms. Gilbert also sites to several LUBA decisions to support her argument, but these decisions also fail to demonstrate that Idaho Power erred in determining the predominant use of hybrid-zoned land in Union County. The LUBA cases referenced in Ms. Gilbert's brief address the classification of land based on soils data in the context of a land use plan amendment. The cases apply OAR 660-006-0010(2) to discuss the process of identifying Goal 4 forestland, but the rule's provisions relevant to identifying "lands suitable for commercial uses" only apply "where a plan amendment is proposed."¹⁷² The matter at hand is the Council's evaluation of

¹⁷⁰ *Id.*

¹⁷¹ OAR 660-033-0130(4)(c)(B)(iii), pertains to approval of a *single family residential dwelling* on land zoned for *agricultural use* not provided in conjunction with farm use in counties outside the Willamette Valley. The provision states, in part, as follows:

If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules * * *. If a lot or parcel is under forest assessment, it is presumed suitable if, in Western Oregon, it is composed predominantly of soils capable of producing 50 cubic feet of wood fiber per acre per year, or in Eastern Oregon it is composed predominantly of soils capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land[.]

¹⁷² OAR 660-006-0010, titled Identifying Forest Land, states in pertinent part:

(1) Governing bodies shall identify "forest lands" as defined by Goal 4 in the comprehensive plan. Lands inventoried as Goal 3 agricultural lands, lands for which an

compliance with Goal 4 for purposes of siting an energy facility, not a plan amendment application. Furthermore, even if these LUBA decisions were relevant to determining the predominant use of parcels in Union County's hybrid farm-forest zone, the cases do not establish, as a matter of law, a bright line threshold for the level of cf/ac/yr productivity that qualifies land as forestland.

Third, and most importantly, even if Idaho Power did understate the amount of Goal 4 forestland in Union County potentially impacted by the proposed facility, the fact remains that the calculation of impacted forestland in Union County is not pertinent to the evaluation of whether the proposed facility complies with Goal 4. For purposes of the Council's review, the relevant inquiry is whether the proposed facility (an authorized use in forest lands under OAR 660-006-0025(4)(q)) satisfies the review standards set out in OAR 660-006-0025(5) (*i.e.*, whether the proposed use will force a significant change or significantly increase the cost of accepted farming or forest practices or significantly increase the risk of fire). The conditional use review criteria in Union County (UCZPSO 5.04) are the same as those set out in OAR 660-006-0025(5). Therefore, any purported error related to identifying forestland in Union County would not substantively affect the analysis of whether the proposed transmission line satisfies the conditions to be sited in Goal 4 forestlands.

Finally, to the extent Ms. Gilbert asserts that the proposed facility will significantly increase the cost of accepted farming or forest practices on Goal 4 forestlands, she has not provided any evidence to support this contention. The Department found that the proposed facility satisfies the conditional use criteria of OAR 660-006-0025(5)(a) and Ms. Gilbert has not shown otherwise. Nor has Ms. Gilbert demonstrated the need for Idaho Power to implement all planned mitigation measures for the operational lifetime of the project. Indeed, there is no reason to require Idaho Power to continue implementing mitigation measures during operations that are specific to the construction phase, and no need to require forest impact mitigation measures along the entire transmission line, when the line only crosses forestlands in two

exception to Goal 4 is justified pursuant to ORS 197.732 and taken, and lands inside urban growth boundaries are not required to be planned and zoned as forest lands.

(2) *Where a plan amendment is proposed:*

(a) Lands suitable for commercial forest uses shall be identified using a mapping of average annual wood production capability by cubic foot per acre (cf/ac) as reported by the USDA Natural Resources Conservation Service. Where NRCS data are not available or are shown to be inaccurate, other site productivity data may be used to identify forest land, in the following order of priority:

(A) Oregon Department of Revenue western Oregon site class maps;

(B) USDA Forest Service plant association guides; or

(C) Other information determined by the State Forester to be of comparable quality.

Emphasis added.

counties, Umatilla and Union.

To summarize, with regard to Issue LU-7, a preponderance of evidence in the record demonstrates that Idaho Power accurately identified the amount of forest land impacted by the proposed facility in Union County, and accurately estimated the total acres of lost production and indirect costs. Ms. Gilbert has not shown otherwise. With regard to Issue LU-8, the preponderance of the evidence establishes that Idaho Power adequately evaluated the proposed facility's impacts on the cost of forest management practices. The proposed measures to mitigate impacts on forested areas are adequate and appropriate, and Ms. Gilbert has not presented any evidence to demonstrate otherwise.

Proposed site certificate conditions related to Issues LU-7 and LU-8:

In her Closing Brief on Issues LU-7 and LU-8, Ms. Gilbert proposed, for the first time in this contested case, 10 new site certificate conditions related to forestland in Union County.¹⁷³ Idaho Power opposes the conditions (Idaho Power's Response Brief and Motion to Strike for LU-4, LU-7, LU-8, LU-9, and LU-11, p. 93-98) as unnecessary and inappropriate and Council agrees. Ms. Gilbert's proposed conditions, as included in footnotes below, are not consistent with the findings of fact, conclusions of law and opinion provided in this order for Issues LU-7 and LU-8, and would require analysis and reassessment of impacts within farm-forest hybrid zoned land based on the presumption that Ms. Gilbert prevailed on the issue. The Council adopts the ALJ's findings of fact, conclusions of law and opinion on Issues LU-7 and LU-8 and therefore rejects conditions that would only apply if Council were to have found that the ALJ's findings of fact, conclusions of law and opinion on those issues were in error.

¹⁷³ Ms. Gilbert proposed the following site certificate conditions in her Closing Brief:

Unnumbered Gilbert Proposed Condition: Prior to the start of construction in Union and Umatilla Counties, the developer must provide documentation that mitigation was provided to forest landowners to compensate for the loss of timber production for the life of the development. This amount was calculated by the department to be approximately \$40,100 per acre of impact for forested land in Union County and \$24,600 per acre of impact for forest land in Umatilla County. This amount is in addition to the negotiations for an easement for the transmission line and associated roads.

Gilbert Proposed Forestland Condition 1: Prior to the start of construction in Union County the developer must provide documentation regarding the soil types and capacity amounts used to determine whether parcels of land being crossed was "forest land."

Gilbert Proposed Forestland Condition 2: Charts showing the amount of land in each category based upon the soil type and mitigation required for habitat impacts must be updated.

Gilbert Proposed Forestland Condition 3: The council must determine if the development complies with the Land Use Goal 4 based upon the increased amount of forest land being impacted.

Gilbert Proposed Forestland Condition 4: The forest practices plan must be updated and

other rules that are impacted by the change in forest land being crossed.

Gilbert Additional Proposed Forestland Condition 1: Documentation in the file showing 18.3 acres of permanent impacts to forest land on the Morgan Lake Route and documentation in the "Plan for Alternate Practice" showing that 296.8 acres of forest land will be cleared. At a minimum, the mitigation needs to include the acres of trees being cleared for the duration of the project. * * * This amount plus any additional forest land not previously identified must be mitigated.

~~However, because Ms. Gilbert did not submit these proposed conditions in accordance with the schedule set by the ALJ in the Case Management Order, the Department and Idaho Power had no opportunity during the contested case hearing to present evidence in response to these proposals. Because Ms. Gilbert's submission of these proposed conditions is untimely and in contravention of the Ruling on Motion to Dismiss, the ALJ declines to address them.~~

Ruling on Idaho Power's Motion to Strike Portions of Ms. Gilbert's Closing Brief on Issues LU-7 and LU-8:

In its Response Brief, Idaho Power moves to strike or, in the alternative, give no weight to certain statements in Ms. Gilbert's Closing Brief on Issues LU-7 and LU-8. Specifically, Idaho Power challenges statements that address an issue for which Ms. Gilbert does not have limited party status, statements that seek to relitigate matters already resolved on summary determination, and/or statements that reference or rely on the Hartell deposition transcript and exhibits. Idaho Power Motion to Strike, Issues LU-7 and LU-8 at 7-13.

As discussed in the Evidentiary Rulings section above, the ALJ declined to reopen the evidentiary record to admit certain documents, including the Hartell deposition transcript, that Ms. Gilbert did not timely offer in support of her position(s) on Issues LU-7, LU-8 and LU-11. The ALJ noted that Ms. Gilbert submitted the Hartell deposition transcript in support of her opposition to Idaho Power's Motion for Summary Determination on Issues LU-2, LU-3, LU-5, LU-6, but she did not offer it as evidence during the hearing testimony phase.

Because Ms. Gilbert did not timely offer the Hartell deposition transcript (or the exhibits referenced in the transcript) in connection with Issues LU-7, LU-8 or LU-11, she is not entitled to rely upon this evidence in her Closing Brief. Furthermore, as discussed previously, based on the *Ruling on Motion to Dismiss*, Ms. Gilbert is limited in her closing arguments on Issues LU-7 and LU-8 to referencing evidence previously admitted into the evidentiary record as part of the B2H Project Record. For these reasons, the ALJ grants Idaho Power's alternate request and gives no evidentiary weight to Ms. Gilbert's discussion of the Hartell deposition in her Closing

Gilbert Additional Proposed Forestland Condition 2: The evaluation of impacts causing increased costs or requirements to change procedures in forest lands must be corrected to address the additional forest land impacted.

Gilbert Additional Proposed Forestland Condition 3: Amounts identified as needed to provide mitigation for habitat impacts to forest land must be updated to reflect new information.

Gilbert Additional Proposed Forestland Condition 4: Updated financial impacts of development must have objective mitigation required to compensate landowners for the impacts.

Gilbert Additional Proposed Forestland Condition 5: No credit for mitigation can be allowed for actions that are not required and identified in the Site Certificate including payments to landowners resulting from right of way compensation.

Gilbert Closing Brief Issues LU-7 and LU-8 at 4, 9-11, and 34.

Brief.¹⁷⁴ The ALJ also gives no weight to arguments in the Closing Brief outside the scope of Issues LU-7 and LU-8 (such as challenges to the Fish and Wildlife Habitat Mitigation Plan and the Noxious Weed Plan and comments on the alleged unmitigated costs of the proposed facility to be assumed by the landowner).

Accepted farm practices – Issues LU-11 and LU-9

Issue LU-11: Whether the impacts from the proposed facility on accepted farm practices and the cost of accepted farm practices have been adequately evaluated or mitigated.

Ms. Gilbert also has standing on Issue LU-11. Ms. Gilbert challenges, on multiple grounds, the Proposed Order's analysis of potential impacts to farm practices. Ms. Gilbert asserts that the Proposed Order and Site Certificate fail to comply with ORS 215.275(4) and (5) and fail to protect agricultural lands and landowners from adverse impacts.

ORS 215.275 addresses the siting of utility facilities in exclusive farm use-zoned lands. As pertinent here, the statute provides:

(4) The owner of a utility facility approved under ORS 215.213 (1)(c)(A) or 215.283 (1)(c)(A) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this section shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(5) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting under ORS 215.213 (1)(c)(A) or 215.283 (1)(c)(A) to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands.

¹⁷⁴ In the Motion to Strike, Issues LU-7 and LU-8, Idaho Power also asked that, even if the challenged portions of Ms. Gilbert's Closing Brief are not considered, the ALJ review the Hartell deposition transcript to assess whether consideration of the excluded document would have altered the determination on Issues LU-7 and LU-8. Motion to Strike, Issues LU-7 and LU-8 at 9. In accordance with Idaho Power's request, the ALJ has reviewed the Hartell deposition transcript (as offered in by Ms. Gilbert on June 25, 2021 in opposition to Idaho Power's Motion for Summary Determination on Issue LU-5, without deposition exhibits attached). In the deposition, Mr. Hartell explained Union County's process for determining predominant use of land parcels and identifying forest land in the Timber-Grazing zone. He also explained that Union County's review of Idaho Power's predominant use analysis did not result in any adjustments to the predominant use value that Idaho Power initially assigned to parcels in the Timber-Grazing zone. The ALJ confirms that nothing in the Hartell deposition transcript would change her conclusions and determinations on Issues LU-7 and LU-8.

In essence, this zoning law makes the utility owner responsible for restoring, as nearly as possible, disruptions to farmland caused by the construction and operation of the facility, and requires the governing body to impose clear and objective conditions on the construction and operation of the facility to mitigate and minimize any impacts on surrounding farmland.

With regard to compliance with ORS 215.275(4), Ms. Gilbert contends that the Proposed Order fails to adequately address the proposed facility's impacts on agricultural landowners and the costs of restoring the land to allow for farming, should the facility be retired or abandoned. Gilbert Opening Arguments Issue LU-11 at 5-6; Gilbert Closing Brief Issue LU-11 at 1-3, 8-10. On the one hand, Ms. Gilbert misreads ORS 215.275(4) and conflates it with OAR 345-022-0050, the Retirement and Financial Assurance standard. The zoning law requires the facility owner to restore agricultural land damaged or disturbed by the "siting, maintenance, repair or reconstruction of the facility," whereas the Council standard requires a finding that, upon retirement, the applicant is able to obtain a bond or letter of credit in an amount sufficient to restore the site to a "useful, non-hazardous condition." Insofar as Ms. Gilbert challenges the sufficiency of Idaho Power's retirement under ORS 215.275(4), her argument is misplaced.¹⁷⁵

On the other hand, and contrary to Ms. Gilbert's contention, the Proposed Order includes a site certificate condition addressing Idaho Power's compliance with ORS 215.275(4). As set out in the findings above, Recommended Land Use Condition 14 requires Idaho Power to implement the Agricultural Lands Assessment. The Agricultural Lands Assessment, in turn, requires the Company to restore, as nearly as possible, any impacted farmlands to former productivity.¹⁷⁶ The obligations in Recommended Land Use Condition 14 and the Agricultural Lands Assessment will ensure that Idaho Power will restore productivity, as nearly as possible, to any impacted farmlands as required by ORS 215.275(4).

With regard to ORS 215.275(5), Ms. Gilbert asserts that the various mitigation plans set out in the Proposed Order, including the Agricultural Lands Assessment and Agricultural Mitigation Plan, the Noxious Weed Plan, and the Fire Prevention and Suppression Plan, do not contain clear and objective conditions that serve to mitigate and minimize the proposed facility's impacts on surrounding farmlands. She also contends that these plans do not contain enough detail to allow the public the right to participate in the process. Gilbert Opening Arguments Issue LU-11 at 3-4, 6-16; Gilbert Closing Brief Issue LU-11 at 7-8, 11-24.

Ms. Gilbert's concerns about the sufficiency of the Noxious Weed Plan are addressed above in connection with Issue FW-3. Ms. Gilbert's concerns about the sufficiency of the Fire Prevention and Suppression Plan appear to be outside the scope of Issue LU-11, but are nevertheless addressed *infra* in the context of Issues PS-4 and PS-10. Ms. Gilbert's concerns about the finalization of draft plans generally (and the lack of opportunity for public review and

¹⁷⁵ Ms. Gilbert's challenges to the adequacy of Idaho Power's bond/letter of credit are outside the scope of Issue LU-11. The argument is addressed *infra* in connection with Issue RFA-1.

¹⁷⁶ See Proposed Order, Attachment K-1 at 35 (Section 7.0, discussing the Agricultural Mitigation Plan and efforts to minimize impacts to agricultural lands); ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 8916 of 10016.

comment) also appear to be outside the scope of Issue LU-11, but are nevertheless addressed elsewhere in this order.¹⁷⁷

Ms. Gilbert's specific challenges to the adequacy of the Agricultural Lands Assessment and the Agricultural Mitigation Plan incorporated therein are also without merit. As set out in the findings, the Agricultural Mitigation Plan (Section 7 of Attachment K-1) identifies the measures Idaho Power will take to avoid, mitigate repair and/or provide compensation for impacts that may result from the construction or operation of the proposed facility on privately owned agricultural land. The plan states that the Company "will reasonably restore the land to its former condition or compensate each landowner, as appropriate, for damages and/or impacts to agricultural operations caused as a result of Project construction and as outlined in this plan."¹⁷⁸ The plan identifies specific actions that Idaho Power take to minimize and mitigate impacts including but not limited to tower placement, weed control, replacement of topsoil and removal of rocks contained in any material brought to the construction area and scheduling construction activities to minimize impacts to livestock operations.¹⁷⁹ In the Proposed Order, the Department found that adherence with the plan and Recommended Land Use Condition 14 will restore agricultural land impacted by construction of the facility as nearly as possible to prior condition, as required by ORS 215.275(4), following clear and objective conditions to mitigate impacts to agricultural landowners as required by ORS 215.275(5).¹⁸⁰

In her Opening Arguments and Closing Brief, Ms. Gilbert identified a list of potential impacts to farm practices that she contends will result from the project,¹⁸¹ but she has not provided any evidence to support these assertions. In addition, she has failed to acknowledge the findings in the Proposed Order regarding the potential impacts to agricultural lands, the provisions of the Agricultural Lands Assessment, and/or the rebuttal testimony of Idaho Power's witness, Kurtis Funke, responding to each of her concerns.¹⁸²

Ms. Gilbert also challenged calculations set out in Attachment K1, Table 5-7, Site Boundary and Average Temporary/Permanent Disturbance Areas by Project Component, and asserted that Idaho Power failed to include all land that will subject to construction and permanent impacts. Gilbert Closing Brief at 32-34. Contrary to Ms. Gilbert's contentions, however, the preponderance of the evidence establishes that Idaho Power did not understate the amount of agricultural land in the project area. The preponderance of the evidence also establishes that Idaho Power appropriately included the features that would result in construction

¹⁷⁷ See the discussion of *Gould* under Issue HCA-3 *supra* and the discussion under Issue M-6 *infra*.

¹⁷⁸ ODOE – B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 8918 of 10016.

¹⁷⁹ *Id.*, pages 8916 to 8924 of 10016.

¹⁸⁰ *Id.*, pages 23-32 of 10016.

¹⁸¹ See Gilbert Opening Arguments Issue LU-11 at 17-19; Gilbert Closing Brief Issue LU-11 at 27-38.

¹⁸² See Funke Rebuttal Test. at 46-66 (responding to each concern/allegation identified in Ms. Gilbert's Opening Arguments on Issue LU-11).

disturbance in Table 5-7.¹⁸³ To the extent Ms. Gilbert identified errors in the presentation of acres impacted for different structure types, Idaho Power prepared an updated Table 5-7 correcting these errors.¹⁸⁴

Moreover, even assuming that Idaho Power did err in its calculation of acreage of agricultural land permanently disturbed by the project the error would not alter the evaluation of under ORS 215.275(5). As the Department notes in its Closing Brief:

[A]s presented in the Proposed Order, the Department’s evaluation of whether the proposed facility would significantly impact accepted farm practices or the cost thereof under ORS 215.275(5) is not based on acres of permanent impacts. Rather, the evaluation is based on the applicant’s assessment of accepted farm practices within the area surrounding the site boundary; the applicant’s assessment of potential impacts to those practices; and whether the applicant’s proposed mitigation for those impacts would ensure that accepted farm practices are not significantly impacted. Therefore, correlating a factual discrepancy to the ORS 215.275 compliance evaluation ignores the substance of the evidence and information developed and relied upon for the ORS 315.275 evaluation.

ODOE Closing Brief at 75.

In short, the fact that the proposed facility will have construction-related and permanent impacts on privately owned agricultural lands does not mean the facility cannot satisfy the requirements of ORS 215.275. As the Oregon Supreme Court recognized in *Friends of Parrett Mountain v. NW. Nat. Gas Co.*, 336 Or 93, 115, (2003), the requirement in ORS 215.275(5) to mitigate and minimize a utility facility’s impacts on agricultural land “requires the general reduction in the intensity and frequency of an impact, not * * * the absolute avoidance or elimination” of such impacts.

A preponderance of evidence in the record establishes that Idaho Power adequately assessed and mitigated potential impacts to accepted farm practices on surrounding farmlands consistent with ORS 215.275(5). The Company has demonstrated compliance with the Council’s Land Use Standard as it relates to Issue LU-11. Ms. Gilbert has not shown otherwise.¹⁸⁵

¹⁸³ Funke Rebuttal Test. at 48-49.

¹⁸⁴ *Id.* at 49-50; Funke Rebuttal Exhibit C.

¹⁸⁵ As Idaho Power notes in its Closing Arguments and Response Brief, unsupported concerns about potential impacts to exclusive farm use-zoned lands cannot reasonably support a conclusion that a proposed facility will result in a significant change in accepted farm practices or a significant increase in the cost of farm practices. See *Falcon Heights. Water and Sewer Dist. v. Klamath County*, LUBA No. 2011-068 at 12-13 (Dec. 22, 2011), Attachment A to Idaho Power’s Closing Arguments for Contested Case Issues LU-4, LU-7, LU-8, LU-9, and LU-11.

Proposed site certificate conditions related to Issue LU-11:

In her Opening Arguments on Issue LU-11, Ms. Gilbert proposed site certificate conditions related to monitoring and control of noxious weeds. Gilbert Opening Arguments at 13, 16. Those proposed conditions are addressed above in Issue FW-3.

In her Closing Brief on Issue LU-11, Ms. Gilbert restates the proposed noxious weed conditions and proposes additional conditions related to the finalization of draft mitigation plans and mitigation for impacts to agricultural lands.¹⁸⁶ ~~Because Ms. Gilbert did not submit these additional proposed conditions to the ALJ in a timely manner in accordance with the schedule set in the Case Management Order, the Department and Idaho Power had no opportunity during the contested case hearing to present evidence in response. Therefore, the ALJ declines to address these untimely proposed conditions in any detail, other than to note that,~~ Ms. Gilbert has not presented evidence to support ~~them~~ the proposed additional conditions and based on the determination on Issue LU-11 above, they are unnecessary and inappropriate.

Issue LU-9: Whether Applicant adequately analyzed the risk of wildfires from operation of the proposed transmission lines, especially during “red flag” warning weather conditions and the impact the proposed transmission lines will have on Mr. Myers’ ability to use an aerial applicator on his farmland.

Limited party Sam Myers has standing on Issue LU-9 as a personal interest. In his submissions on this issue, Mr. Myers focused on the cost of farm practices related to wildfire risks and potential damage to soils caused by a catastrophic fire. Specifically, Mr. Myers asserts that Idaho Power’s draft Fire Prevention and Suppression Plan does not adequately address the risk of transmission line-related fires during Red Flag weather conditions and/or in extreme whirlwind events. He also contends that the Company lacks a mitigation plan to rehabilitate soils damaged in the event of a catastrophic fire. Myers Direct Test. at 1-5; Myers Closing Brief

¹⁸⁶ Ms. Gilbert proposed the following conditions for the first time in her Closing Brief on Issue LU-11:

1. Prior to the start of construction, all proposed final plans will be jointly developed with the impacted county staff. They will be provided [the] opportunity to make recommendations prior to the start of drafting and will be provided a justification if their recommendations are not implemented.
2. Prior to the start of construction, mitigation will be determined for impacts to agricultural landowners and a formal agreement signed to address issues of increased costs and mandatory changes in procedures as a result of the project.
3. Prior to the issuance of a site certificate the developer must establish the costs associated with the impacts the development will have on agricultural landowners, the procedural changes, and specify how those costs and changes will be mitigated for impacted farm owners.

Gilbert Closing Brief on Issue LU-11 at 26-28, 41.

at 1-12. In addition, in his Closing Brief, Mr. Myers questions the mitigation for any limitations that the proposed facility may have on his ability to use an aerial applicator on his farmland. Myers' Closing Brief at 13.

Red Flag Warnings and whirlwinds. Contrary to Mr. Myers' contentions, Idaho Power adequately analyzed the risk of project-related wildfire during Red Flag warning weather conditions. Although the proposed facility is not yet under construction, Idaho Power analyzed the potential fire risk zones along the proposed route in its 2022 Wildfire Mitigation Plan.¹⁸⁷ The Company's 2022 Wildfire Mitigation Plan specifically addresses Red Flag Warning concerns as a consideration in implementing the PSPS Plan.¹⁸⁸ The PSPS plan thoroughly addresses potential weather-related risks and details Idaho Power's plans for managing its operations to address those risks.¹⁸⁹

The evidence also demonstrates that the risk of a project-related fire is very low even during Red Flag Warning conditions and/or gusty wind conditions. As Idaho Power's expert witness Dr. Lautenberger explained, 500 kV transmission lines rarely ignite fires.¹⁹⁰ Moreover, occurrences of severe fire weather near the project site are less frequent than in places like Northern California, where the largest wildfires occurred. Offshore winds that drove many of the large-loss fires in California are not a concern in Eastern Oregon or Idaho.¹⁹¹ Therefore, even if Mr. Myers is correct that large dust devils occur in Morrow County, there is little risk they would interact with a transmission line to cause a fire. The distance between phases on the project's structures, the height of the structures and the soil type along the site boundary also decrease the likelihood that a dust devil would cause sparking and ignite a fire.¹⁹²

Fire impact on soils. Mr. Myers also raised the concern that a project-related catastrophic fire could cause significant damage to his soil. He asserts that Idaho Power should have "a plan in place for immediate soil rehabilitation and compensation." Myers Closing Brief at 12-13. As discussed above (and in more detail below in the context of Issues PS-4 and PS-10), the likelihood of a catastrophic project-related wildfire during operation is very low. Fires caused by 500kV transmission lines are exceedingly rare. Moreover, historically, wildfires in the area near Mr. Myers' agricultural operations have been relatively small and quickly contained. Given the improbability of a project-related wildfire disrupting Mr. Myers' agricultural operations, there is no need for Idaho Power have a soil rehabilitation plan in place for Mr. Myers' agricultural land.

¹⁸⁷ Dockter Sur-surrebuttal Test., Ex. B at 18-19.

¹⁸⁸ *Id.*, Ex. B at 76; Dockter Cross-Exam. Test., Tr. Day 3 at 22-23.

¹⁸⁹ Dockter Sur-surrebuttal, Ex. B at 65.

¹⁹⁰ Lautenberger Direct Test. at 46-54.

¹⁹¹ Lautenberger Rebuttal Test. at 53.

¹⁹² *Id.* at 55.

Furthermore, a preponderance of the evidence also demonstrates that, if a fire were to occur at or near Mr. Myers' agricultural operations, the fire would most likely result in minimal damage to soils. As Idaho Power's soil expert Mark Madison explained, the fuel source would be mostly herbaceous, grass and grain vegetation. The low-intensity fire would likely move quickly through the fields due to winds in that area, and low intensity, fast moving fires do not cause significant damage to soils.¹⁹³ Consequently, Mr. Myers' challenge to the proposed facility's compliance with the Land Use standard on this basis is unpersuasive.

Aerial application. Finally, Mr. Myers asserts that because the proposed transmission line limits landowners' ability to utilize aerial spraying, the facility violates the Land Use standard, and Idaho Power has yet to make any effort to compensate for this permanent impact to farming practices. Myers Closing Brief at 13-14. Contrary to Mr. Myers' contention, however, the Land Use standard does not require complete avoidance or the absence of impacts to accepted farm practices. Rather, as previously discussed, the applicable law simply requires a general reduction in the intensity and frequency of an impact.¹⁹⁴

In its Agricultural Lands Assessment, Idaho Power identified aerial agricultural operations as one of the accepted farm practices on surrounding farmlands that the project may impact. Idaho Power acknowledged that the presence of transmission lines prevents aerial access to crops directly beneath the lines, may potentially decrease crop yields, and may indirectly impede aerial application of chemicals to other portions of the field depending on orientation, wind direction, and other factors.¹⁹⁵ Idaho Power has committed to minimize potential impacts to aerial spraying by siting the transmission lines as much as possible along the edges of fields, existing roadways, or natural boundaries, rather than through existing fields, which will result in less risk to the applicator and more efficiency to the producer.¹⁹⁶ Through these actions, Idaho Power will reduce the intensity and frequency of impacts to farmlands, consistent with ORS 215.275(5).

As to Mr. Myers' farmland in particular, Idaho Power acknowledged that the proposed transmission line may impact Mr. Myers' ability to use aerial applications. As discussed above, the Company will attempt to reduce potential impacts to active agricultural fields through micrositing facility components.¹⁹⁷ Moreover, although such negotiations are outside the Council's site certificate approval process, the Company will work with the landowner(s) to negotiate an easement for the right-of-way, and will minimize impacts to the extent practicable.

In sum, although the proposed project may impact Mr. Myers' agricultural operations, a

¹⁹³ Madison Rebuttal Test. at 92; *See also* Madison Rebuttal Ex. M.

¹⁹⁴ ORS 215.275(5); *see also* *Friends of Parrett Mountain v. NW. Nat. Gas Co.*, 336 Or 93, 115, (2003).

¹⁹⁵ Proposed Order, Attachment K-1, ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 8904-05 of 10016.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* page 8906 of 10016.

preponderance of the evidence demonstrates that Idaho Power sited the project in a manner that will generally reduce the intensity and frequency of impacts to farmlands, and that the Company will further minimize and mitigate the specific impacts to Mr. Myers' operations when negotiating an easement with him. Idaho Power has shown that the project complies with the Land Use standard notwithstanding the impact the project may have on Mr. Myers' farm practices.

Proposed site certificate conditions related to Issue LU-9:

In his Closing Brief, Mr. Myers proposed several site certificate conditions that he asserts are necessary to ensure compliance with the Land Use standard.¹⁹⁸ ~~Because Mr. Myers did not submit these additional proposed conditions to the ALJ in a timely manner in accordance with the schedule set in the Case Management Order, the Department and Idaho Power had no opportunity during the evidentiary phase to respond to these proposals.¹⁹⁹ Accordingly, the ALJ declines to address these untimely proposed conditions in any detail, other than to note that, Mr. Myers has not presented evidence to support ~~them~~ the proposed conditions~~ and, based on the determination on Issue LU--9 above, the proposed conditions are neither necessary nor appropriate.

Ruling Idaho Power's Motion to Strike Portions of Mr. Myers' Closing Brief, Issue LU-9:

In its Response Brief, Idaho Power moves to strike or, in the alternative, give no weight to certain statements in Mr. Myers' Closing Brief on Issue LU-9. Idaho Power challenges statements that seek to raise an issue for which Mr. Myers was not granted limited party status and/or that rely on evidence not admitted into in the record of the contested case. Specifically,

¹⁹⁸ Mr. Myers proposed the following conditions in his February 28, 2022 Closing Brief:

- Towers must be constructed to withstand 150+ mph maximum wind load speeds.
- Towers built to the 500 kV standards but only operated at 230 kV voltages.
- The entire transmission line must be powered down (turned off) at a minimum from June 15 – July 15 each year. This allows wheat harvesting (and other dryland cropping) to proceed throughout Morrow County without any possibility of electric discharge events from occurring.
- The entire transmission line must be powered down (turned off) during any Red Flag Warnings issued where B2H traverses.
- IPC must classify the ground covered by the transmission line within Morrow County as a high-risk zone in its site plan.
- IPC must compensate financially landowners/tenants for any land use restrictions (ie: harvesting, aerial spraying, cropping limitations, etc.) both during construction and operation before final project certification is issued.
- IPC must agree to \$1000 per/acre paid to landowners/tenants for soil rehabilitation costs resulting from transition line fires.

Myers Closing Brief Issue LU-9 at 15-16.

¹⁹⁹ Because Mr. Myers did not submit the proposed site certificate conditions in accordance with the set schedule, the ALJ also declines to consider Ms. Gilbert's March 30, 2022 brief filed in support of Mr. Myers' proposed conditions.

Idaho Power moves to strike: (1) portions of Mr. Myers' brief referring to testimony in *Sunrise Powerlink Transmission Line*; (2) portions of the brief referring to an article by Wei Wei Zhaolin Gu; (3) portions of the brief referring to building codes and a building code website; (4) arguments not supported by evidence in the record; and (5) arguments outside the scope of Issue LU-9. Motion to Strike for Issue LU-9 at 4-7.

Because Mr. Myers did not timely offer testimony from the *Sunrise Powerlink* matter or the article by Zhaolin Gu into the hearing record, he may not rely on this evidence in his closing argument.²⁰⁰ Accordingly, gives these statements no weight. Although official notice may be taken of Oregon Building Code provisions, it is not clear from Mr. Myers' brief the provisions on which he seeks to rely. Furthermore, to the extent Mr. Myers raises concerns about suitable wind load design for transmission towers, that matter is outside the scope of the Land Use standard and Issue LU-9. Consequently, in accordance with Idaho Power's request, the ALJ gives no weight to arguments not supported by evidence in the record and/or arguments that are outside the scope of Issue LU-9.

Noise Control Rules

The General Standard of Review, OAR 345-022-0000(1)(b), mirrors the language in ORS 469.503(3). The rule requires that, to issue a cite certificate, the Council must determine that the preponderance of evidence on the record establishes that "the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility."

To that end, the Council has historically evaluated whether a proposed facility complies with, among other regulations, the Noise Control laws, set out in ORS 467.010 *et seq.* and OAR Chapter 340, Division 035.

ORS 467.010 sets out the legislative findings and policy behind the noise control laws:

The Legislative Assembly finds that the increasing incidence of noise emissions in this state at unreasonable levels is as much a threat to the environmental quality of life in this state and the health, safety and welfare of the people of this state as is pollution of the air and waters of this state. To provide protection of the health, safety and welfare of Oregon citizens from the hazards and deterioration of the quality of life imposed by excessive noise emissions, it is hereby declared that the State of Oregon has an interest in the control of such pollution, and that a program of protection should be initiated. To carry out this purpose, it is desirable to centralize in the Environmental Quality Commission the authority to adopt reasonable statewide standards for noise emissions permitted within this state and to implement and enforce compliance with such standards.

²⁰⁰ *Second Amended List of Testimony and Exhibits* at 2 (noting that the B2H Project Record and documents listed in the Table of Additional Admitted Evidence are the only documents that the parties/limited parties may reference and/or rely upon in their closing briefs).

ORS 467.030 directs the Environmental Quality Commission (EQC) to adopt rules relating to noise control, and ORS 467.035 authorizes the EQC to adopt rules “exempt[ing] a class of activity within a category of noise emission sources from the application of a rule establishing maximum permissible levels of noise emission for that category of noise emission sources.” In determining whether to grant an exemption, ORS 467.035(2) directs the EQC to consider the following:

- (a) Protection of the health, safety and welfare of the citizens of this state;
- (b) Feasibility and cost of noise abatement; and
- (c) Past, present and projected patterns of land use and such state and local laws and regulations as are applicable thereto.

ORS 467.060 addresses variances and states in pertinent part:

(1) The Environmental Quality Commission by order may grant specific variances from the particular requirements of any rule or standard to such specific persons or class of persons or such specific noise emission source, upon such conditions as it may consider necessary to protect the public health, safety and welfare. The specific variance may be limited in duration. The commission shall grant a specific variance only if it finds that strict compliance with the rule or standard is inappropriate because:

- (a) Conditions exist that are beyond the control of the persons applying for the variance;
- (b) Special circumstances render strict compliance unreasonable, unduly burdensome or impractical due to special physical conditions or cause;
- (c) Strict compliance would result in substantial curtailment or closing down of a business, plant or operation; or
- (d) No other alternative facility or method of operating is yet available.

OAR 340-035-0035 sets out the DEQ’s Noise Control Regulations for Industry and Commerce. The rule provides, in pertinent part:

(1) Standards and Regulations:

* * * * *

(B) New Sources Located on Previously Unused Site:

- (i) No person owning or controlling a new industrial or commercial noise source located on a previously unused industrial or commercial site shall cause or permit

the operation of that noise source *if the noise levels generated or indirectly caused by that noise source increase the ambient statistical noise levels, L10 or L50, by more than 10 dBA in any one hour, or exceed the levels specified in Table 8, as measured at an appropriate measurement point, as specified in subsection (3)(b) of this rule, except as specified in subparagraph (1)(b)(B)(iii).*

(ii) The ambient statistical noise level of a new industrial or commercial noise source on a previously unused industrial or commercial site shall include all noises generated or indirectly caused by or attributable to that source including all of its related activities. * * *

* * * * *

(3) Measurement:

(a) Sound measurements procedures shall conform to those procedures which are adopted by the Commission and set forth in Sound Measurement Procedures Manual (NPCS-1), or to such other procedures as are approved in writing by the Department;

(b) Unless otherwise specified, the appropriate measurement point shall be that point on the noise sensitive property, described below, which is further from the noise source:

(A) 25 feet (7.6 meters) toward the noise source from that point on the noise sensitive building nearest the noise source;

(B) That point on the noise sensitive property line nearest the noise source.

* * * * *

(6) Exceptions: Upon written request from the owner or controller of an industrial or commercial noise source, the Department may authorize exceptions to section (1) of this rule, pursuant to rule 340-035-0010, for:

(a) *Unusual and/or infrequent events*[.]

Emphasis added.

OAR 340-035-0010 states the exceptions to the DEQ's noise rules:

(1) Upon written request from the owner or controller of a noise source, the Department may authorize exceptions as specifically listed in these rules.

(2) In establishing exceptions, the Department shall consider the protection of health, safety, and welfare of Oregon citizens as well as the feasibility and cost of

noise abatement; the past, present, and future patterns of land use; the relative timing of land use changes; and other legal constraints. For those exceptions which it authorizes the Department shall specify the times during which the noise rules can be exceeded and the quantity and quality of the noise generated, and when appropriate shall specify the increments of progress of the noise source toward meeting the noise rules.

OAR 340-035-0100, addressing variances, parrots ORS 467.060, and provides:

(1) Conditions for Granting. The Commission may grant specific variances from the particular requirements of any rule, regulation, or order to such specific persons or class of persons or such specific noise source upon such conditions as it may deem necessary to protect the public health and welfare, if it finds that strict compliance with such rule, regulation, or order is inappropriate because of conditions beyond the control of the persons granted such variance or because of special circumstances which would render strict compliance unreasonable, or impractical due to special physical conditions or cause, or because strict compliance would result in substantial curtailment or closing down of a business, plant, or operation, or because no other alternative facility or method of handling is yet available. Such variances may be limited in time.

Identification of Noise Sensitive Properties – Issue NC-1

Issue NC-1: Whether the Department improperly modified/reduced the noise analysis area in Exhibit X from one mile of the proposed site boundary to ½ mile of the proposed site boundary and whether OAR 345-021-0010(1)(x)(E) requires notification to all owners of noise sensitive property within one mile of the site boundary.

Limited parties STOP B2H and Mr. Cooper have standing on Issue NC-1. STOP B2H filed testimony and closing arguments on this issue but Mr. Cooper did not submit testimony or argument. STOP B2H contends that the Department erred in modifying the requirements of OAR 345-021-0010(1)(x)(E)²⁰¹ to require that Idaho Power provide a list of NSR property owners within a half-mile (as opposed to one mile) of the site boundary. STOP B2H also argues that OAR 345-021-0010(1)(x)(E) requires Idaho Power to notify all NSR property owners and evaluate all NSRs within one mile of the site boundary and therefore the Department's reduction of the identification area boundary violates due process rights created by the rule. STOP B2H Closing Argument at 3-5.

Modification of the requirements in OAR 345-021-0010(1)(x)(E). Both the Department and Idaho Power respond to STOP B2H's first contention by asserting that OAR 345-021-0010(1) specifically authorizes the Department to modify the contents of the ASC in the project order to fit the circumstances of the proposed project. OAR 345-021-0010(1) states as follows:

²⁰¹ As previously noted, OAR 345-021-0010(1)(x)(E) states that the applicant "must include * * * [a] list of the names and addresses of all owners of noise sensitive property, as defined in OAR 340-035-0015, within one mile of the proposed site boundary."

The project order described in OAR 345-015-0160(1) identifies the provisions of this rule applicable to the application for the proposed facility, *including any appropriate modifications to applicable provisions of this rule*. The applicant must include in its application for a site certificate information that addresses each provision of this rule *identified in the project order*.

Emphasis added.

The ALJ agrees that the Department's project order governs the application requirements applicable to the proposed facility and that the Council's rules authorize the Department to modify the provisions of OAR 345-021-0010(1). As a matter of law, the Department has the authority to modify the ASC requirements, including the authority to reduce the area referenced in OAR 345-021-0010(1)(x)(E) from one mile to one-half mile.

In its Response Brief, STOP B2H argues that although OAR 345-021-0000(4)²⁰² authorizes the Department to waive the requirements in OAR 345-021-0010 that are not applicable to the proposed facility, the Department may do so only when the applicant submits a written request for waiver or modification of the requirements. STOP B2H contends that there is no evidence in the record establishing that Idaho Power submitted such a request and no evidence of the Department's determination that the one mile requirement is not applicable, and therefore the Department acted outside its authority in modifying the requirements of OAR 345-021-0010(1)(x)(E). STOP B2H Response Brief at 2-3.

The ALJ disagrees with STOP B2H's contention that OAR 345-021-0000(4) serves to limit the Department's authority to modify the ASC content provisions. Rather, the ALJ finds that while OAR 345-021-0000(4) authorizes the Department to modify the requirements of OAR 345-021-0010 on an applicant's written request, the rule does not prohibit the Department from making appropriate modifications to the application contents in the project order on its own accord. ORS 469.330 requires the Department to "issue a project order establishing the statutes, administrative rules, council standards, local ordinances, application requirements and study requirements for the site certificate application." OAR 345-015-0160(1) directs the Department to send the applicant a project order establishing, among other things, "all application requirements in OAR 345-021-0010 applicable to the proposed facility." Thus, it is the project order that identifies the applicable provisions of the content rule, including any appropriate modifications to applicable provisions of the rule. OAR 345-021-0010(1).

The Department has the inherent authority to modify the provisions of OAR 345-021-0010(1) via the project order, including the requirements of subparagraph (1)(x)(E). The Department does not need to produce evidence of an applicant's written request for waiver or modification to justify the change. Moreover, the Department is not required to document its determination to waive or modify the application content requirements anywhere other than in

²⁰² OAR 345-021-0000(4) states: "If the applicant submits a written request for waiver or modification of requirements in OAR 345-021-0010 to the Department, the Department may waive or modify those requirements that the Department determines are not applicable to the proposed facility."

the project order.²⁰³ Consequently, in this matter, the Department lawfully reduced the property owner identification area in Exhibit X from one mile to one-half mile of the proposed site boundary.

Notification/analysis area. STOP B2H next contends that by modifying the ASC requirements, the Department also improperly reduced the project's NSR notification and/or analysis area to one-half mile from the project site boundary.²⁰⁴ However, as both the Department and Idaho Power correctly note, OAR 345-021-0010(1)(x)(E) does not establish notification requirements. All this provision requires is that the applicant provide a list of the names and addresses of all owners of noise sensitive property, which Idaho Power provided in ASC Exhibit X, Attachment X-7.²⁰⁵ The requirements for public notice of a proposed project are set out elsewhere in the Council's rules, including OAR 345-015-0110(1), OAR 345-015-0220 and OAR 345-021-0010(1)(f). Consequently, contrary to limited parties' contention, OAR 345-021-0010(1)(x)(E) does not address notice. OAR 345-021-0010(1)(x) does not require that the Department or Idaho Power provide notice of potential noise impacts to owners of noise sensitive properties within a mile of the proposed site boundary.

Similarly, OAR 345-021-0010(1)(x)(E) does not establish or define the noise analysis area. Rather, the Department established the minimum required analysis areas for potential impacts from the project in the project order (*see* Second Amended Project Order, Section IV, Table 2).²⁰⁶ In this instance, the Department acted well within its authority in setting the minimum required analysis area purposes of the Noise Control rules as the area within the site boundary and one-half mile from the site boundary, based on the linear nature of the proposed facility. The limited parties have not demonstrated any unlawful or erroneous action by the Department in this context.

Variance/Exception to the Noise Rules – Issue NC-2

Issue NC-2: Whether the Department erred in recommending that Council grant

²⁰³ In the Second Amended Project Order, with regard to Exhibit X, the Department states: "All paragraphs apply. However, *because of the linear nature of the proposed facility*, the requirements of paragraph E are modified." (Emphasis added.)

²⁰⁴ In the context of the Noise Control issues, STOP B2H presented testimony from Fuji Kreider asserting that Idaho Power's March 24, 2020 letter to landowners along the Mill Creek Route in Union County was misleading and "undermined the public participation in and the credibility of this entire process." Kreider Dec. on NC-1, 2, 3, 4 at 1. In its closing briefs STOP B2H asserts that this letter (which states, in part, that Idaho Power is pursuing the Morgan Lake Alternative instead of the Mill Creek Route) served to mislead property owners along the proposed Mill Creek Route into believing that they no longer needed to participate in the contested case process. STOP B2H Response at 4-5. The ALJ finds that STOP B2H's claims regarding Idaho Power's March 24, 2020 letter to landowners fall outside the scope of this contested case and outside the scope of the Noise Control issues in particular. Accordingly, the ALJ declines to further address this particular issue.

²⁰⁵ See ODOE - B2HAPPDoc3-41 ASC 24_Exhibit X_Noise_ASC 2018-09-28, page 334 of 371.

²⁰⁶ ODOE - B2HAPPDoc15 ApASC Second Amended Project Order 2018-07-26, page 25 of 29.

a variance/exception from the Oregon DEQ's Noise Rules, OAR 340-035-0035, and whether the variance/exception is inconsistent with ORS 467.010.

Several limited parties have standing on this issue: STOP B2H, Ms. Gilbert, Ms. Gray, Mr. Horst, Ms. Cavinato, and Mr. Myers. In challenging the Department's recommendation that Council authorize a variance and/or exception to the Noise Control rules, the limited parties' argue that: (1) neither the Department nor the Council have the authority to grant a variance; (2) even if the Council could grant a variance, Idaho Power has not demonstrated that the project meets the requirements for the variance; (3) Idaho Power is not entitled to an exception because it has not demonstrated that noise exceedances would be unusual or infrequent and; (4) Idaho Power has not demonstrated that the project is consistent with the policy in ORS 467.010. *See* STOP B2H Closing Argument; Gilbert Closing Brief on Issue NC-2; STOP B2H Response Brief.

Authority to grant the variance. Limited parties argue that the Council lacks the authority to grant a variance under the Noise Rules because, by statute, that authority rests solely with the EQC. In response, the Department and Idaho Power assert that the Council has comprehensive authority over energy facility siting matters, including the authority to apply the DEQ noise rules, assess a proposed facility's compliance with noise standards, and where appropriate, authorize an exception and/or variance.

For the reasons that follow, the ALJ agrees the Council has the jurisdiction and authority to determine whether the proposed facility meets the requirements for an exception and/or a variance from the ambient antidegradation standard, and is not required to consult with the EQC or DEQ in making its determination. First, pursuant to ORS 469.310, the very purpose of the energy facility statutes is to establish "a *comprehensive system* for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in this state." (Emphasis added.) Second, as specified in ORS 469.370(7), the Council must determine whether the proposed facility complies with "the standards adopted under ORS 469.501 *and any additional statutes, rules or local ordinances determined to be applicable to the facility by the project order, as amended.*" Emphasis added. As the Department notes, these statutes recognize that the energy facility siting process is essentially a "one-stop" permitting process because the Council's decision to approve an application binds other state agencies and local governments to the construction and operation of the facility.

Indeed, to that end, ORS 469.401 provides in pertinent part:

Subject to the conditions set forth in the site certificate or amended site certificate, any certificate or amended certificate signed by the chairperson of the council shall bind the state and all counties and cities and political subdivisions in this state as to the approval of the site and the construction and operation of the facility. After issuance of the site certificate or amended site certificate, any affected state agency, county, city and political subdivision shall, upon submission by the applicant of the proper applications and payment of the proper fees, but without hearings or other proceedings, promptly issue the permits, licenses and certificates addressed in the site certificate or amended site

certificate, subject only to conditions set forth in the site certificate or amended site certificate. * * * Each state or local government agency that issues a permit, license or certificate shall continue to exercise enforcement authority over the permit, license or certificate.

Taken together, these statutes establish the authority of the Department and the Council to evaluate whether a proposed facility complies with statutes, rules, and standards normally administered by other agencies, and that the Council's findings and determination of compliance is binding on those agencies. When assessing whether a proposed facility complies with the Noise Control rules, the Council need not obtain approval from, or consult with, the EQC or the DEQ. This is especially true since the EQC and the DEQ suspended their responsibilities for administering the noise program. As stated in OAR 340-035-0110:

[T]he Commission and the Department have suspended administration of the noise program, *including but not limited to processing requests for exceptions and variances*, reviewing plans, issuing certifications, forming advisory committees, and responding to complaints. Similarly, the public's obligations to submit plans or certifications to the Department are suspended.

(Emphasis added.)

Furthermore, as set out in the findings, when the DEQ suspended its responsibilities on noise control matters, the agency specifically contemplated that local governments and in some cases, other agencies, would take over enforcement. The DEQ also recognized that the Department and the Council would continue to review site certificate applications to ensure that proposed facilities meet the State noise requirements.²⁰⁷ Considering that the DEQ has lacked the ability to process requests for exceptions and variances to the noise standards for the last 30 plus years,²⁰⁸ it would be absurd to conclude that the Council lacks the authority to make findings and rule on an applicant's request for a variance and/or exception under ORS 467.060, OAR 340-035-0010 and OAR 340-035-0100.²⁰⁹

In short, the ALJ rejects limited parties' argument that the authority to administer the noise control program and grant a variance under ORS 467.060 and OAR 340-035-0100 rests with EQC and EQC alone. Based on the provisions of ORS Chapter 469, OAR 340-035-0110, the DEQ's interpretation of administration and enforcement authorities under the noise standards, past practice by the Council, and common sense, the ALJ finds that the Council has

²⁰⁷ Rowe Dec., Attachment 1.

²⁰⁸ The Oregon Legislative Assembly withdrew all funding for implementing and administering ORS Chapter 467 and the noise program in 1991. OAR 340-035-0110.

²⁰⁹ As the Department notes, the Council has previously recognized that it has the authority to consider a variance under ORS 467.060 and OAR 340-035-0100 if a proposed facility would not otherwise comply with the noise standards. *See In the Matter of the Request for Amendment #2 of the Site Certificate for the Stateline Wind Project*, EFSC Final Order on Amendment #2, June 6, 2003 at 100.

the authority to make findings and to approve a variance from (and/or exception to) the requirements of OAR 340-035-0035.

Basis for granting a variance. The limited parties next argue that even if the Council has authority to grant a variance, the variance is improper because the project does not meet any of the special circumstances described in ORS 467.060(1) and OAR 340-035-0100(1). STOP B2H Closing at 8-9.

In the Proposed Order, the Department set out the bases for its recommendations that the Council grant both a variance and an exception from the strict application of the DEQ's ambient antidegradation standard. With regard to Idaho Power's request for a variance, the Department found that, although an applicant only needs to establish one of the listed criteria in the rule, Idaho Power actually demonstrated multiple bases for the variance. Specifically, the Department found that the Company demonstrated that conditions where exceedances could occur along the transmission line would be beyond Idaho Power's control because the Company cannot be accountable for foul weather conditions that may cause audible corona noise.²¹⁰ The Department also found that other legal constraints involved in the siting process were beyond Idaho Power's control and constituted special circumstances rendering strict compliance with the ambient antidegradation standard unreasonable, unduly burdensome and impractical.²¹¹ Finally, the Department found that strict compliance would result in the substantial curtailment or closing down (never building) the proposed transmission line and that there is not another alternative facility available.²¹² Consequently, the Department concluded that strict compliance with the noise rules was inappropriate under all four criteria set out in the statute and rule. The Department recommended that the Council impose Recommended Noise Control Condition 5 granting a variance to compliance with the ambient antidegradation standard established in OAR 340-035-0035(1)(b)(B).²¹³

The limited parties present argument, but no persuasive evidence establishing that the Department erred in its evaluation of the requested variance and/or in its recommendation to the Council to grant the variance as set out in Recommended Noise Control Condition 5. The limited parties argue, in essence, that the project is not entitled to a variance because, on occasion, the project will exceed the ambient antidegradation standard at noise sensitive

²¹⁰ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 664 of 10016.

²¹¹ *Id.* at 664-66 of 10016.

²¹² *Id.* at 666 of 10016. The limited parties' claims that Idaho Power could have routed the transmission line to avoid exceedances or should have selected the BLM preferred route (*see, e.g.*, STOP B2H Closing Arguments at 5-2, 25) fall outside the scope of the Council's review. Moreover, routes that may have avoided NSRs presented other siting problems. As noted in the findings, in selecting the proposed and alternative route segments, Idaho Power needed to balance a myriad of competing constraints and opportunities in addition to avoiding potential exceedances at NSRs along the route. *See* Stippel Rebuttal Test. at 10-12.

²¹³ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 666-67 of 10016.

properties, especially along the Morgan Lake Alternative route. However, that is the very reason why the legislature created the variance in the first place – where special circumstances and physical conditions (such as those that exist with a linear energy facility) render strict compliance with the noise standards “inappropriate.” ORS 467.060(1). The Department’s findings, *i.e.*, that foul weather conditions are beyond Idaho Power’s control, that transmission lines are dispersed throughout a large area and common noise mitigation measures are not feasible, and that strict compliance would preclude the project from going forward, are supported by a preponderance of the evidence and justify the variance.

Basis for finding an exception. The limited parties also argue that the proposed facility is not entitled to an exception because foul weather is neither infrequent nor unusual in the region. STOP B2H Closing Argument at 7. In recommending that the Council exempt the proposed facility from the noise control standards, the Department found as follows:

Given that the policy [of the noise rules] is to protect citizens from excessive noise emissions which, under typical meteorological conditions for the region, is not expected from the proposed facility, it appears contrary not to consider foul weather events - the contributing factors of excessive noise emissions - unusual or infrequent under OAR 340-035-0035(6)(a). Therefore, based on the Department’s review, technical review and recommendations of its third-party consultant, Golder Associates, and the analysis presented above, the Department recommends Council find that exceedances of the ambient antidegradation standard during foul weather events would be infrequent or unusual under OAR 340-035-0035(6)(a) and that Council grant an exception to the proposed facility.

ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 652 of 10016.

The limited parties dispute the Department’s determination. The limited parties base their challenge to the approval of an exception on John Hector’s opinion that potential exceedances occurring 48 days per year “does not meet the criteria of unusual or infrequent.”²¹⁴ However, as both the Department and Idaho Power note, Mr. Hector’s focus on this data point is misguided because the potential exceedances would not occur throughout those 48 days, but rather for a small portion of the day. When all hours of the year are considered (8,760 hours versus 365 days per year), foul weather is predicted to occur only 1.3 percent of the time over the

²¹⁴ STOP B2H Direct Ex. 5 at 13. On this point, Mr. Hector, a retired professional engineer who managed DEQ’s noise control program between 1973 and 1986, reported as follows:

ODOE recommends an exception to the ambient degradation rule be allowed because the exceedance events would be “unusual or infrequent”. However, the proposed order indicates exceedances could occur 48 days per year. This does not meet the criteria of unusual or infrequent. Thus, the basis of the request appears to be flawed.

Id.

course of a year.²¹⁵ Moreover, Mr. Hector’s opinion has no context, no measurement criteria, nor any explanation as to what number or percentage of exceedances he would consider infrequent. Therefore, Mr. Hector’s assertion is not persuasive.

In summary, a preponderance of the evidence establishes that, because corona sound from the transmission line will result in occasional exceedances of the ambient antidegradation standard, strict compliance with the DEQ’s noise rules is not possible. However, because exceedances are only expected to occur during foul weather,²¹⁶ foul weather events are infrequent in the project area, and other circumstances need to occur simultaneously to result in an exceedance (*i.e.*, low ambient noise environment and transmission line operating at full capacity), the ALJ finds that exceedances along the transmission line will be an infrequent event (occurring less than 2 percent of the time). Even singling out the La Grande area, which has a higher frequency of foul weather conditions than Flagstaff Hill, Owyhee Ridge or Umatilla, Idaho Power’s modeling indicates that exceedances are predicted to occur only 2.66 percent of the time.²¹⁷ Furthermore, it is important to note that even during foul weather conditions, the proposed facility will not generate noise in excess of 50 dBA maximum allowable sound level for industrial sources.²¹⁸ For these reasons, the Department appropriately determined that the proposed facility is entitled to an exception under OAR 340-035-0035(6)(a).

Consistency with ORS 467.010. Finally, the limited parties contend that the proposed variance and/or exception to strict compliance with the noise rules is inconsistent with the provisions of ORS 467.010. As set out above, ORS 467.010 establishes the legislative policy behind the noise control rules, *i.e.*, “[t]o provide protection of the health, safety and welfare of Oregon citizens from the hazards and deterioration of the quality of life imposed by excessive noise emissions.”

Contrary to the limited parties’ contentions, a preponderance of the evidence demonstrates that the proposed facility will not present a threat to the environmental quality of life in this state and the health, safety and welfare of the people of Oregon. As discussed above, in the Proposed Order, in its determination whether the proposed facility was entitled to a variance and/or exception to the noise rules, the Department specifically considered the factors

²¹⁵ ASC Exhibit X, at X-24, ODOE – B2HAPPDoc3-41 ASC 24_Exhibit X_Noise_ASC 2018-09-28, page 28 of 371.

²¹⁶ Although corona sound may occur in high humidity conditions, the sound level associated with humidity-caused corona sound is significantly quieter than corona triggered by rain or foul weather, and will not result in exceedances. Bastasch Rebuttal Test. at 82. Moreover, corona sound resulting from nicks, scratches, and debris are most likely to occur during the burn-in period, which is temporary and not regarded as “typical operations” that would serve as the basis for an “infrequency” definition. *Id.*, see also Miller Cross-Exam. Test., Tr. Day 1 at 37.

²¹⁷ See ASC Exhibit X, Table X-6, ODOE - B2HAPPDoc3-41 ASC 24_Exhibit X_Noise_ASC 2018-09-28, page 28 of 371.

²¹⁸ See ASC Exhibit X, Table X-5, ODOE - B2HAPPDoc3-41 ASC 24_Exhibit X_Noise_ASC 2018-09-28, pages 24-25 of 371.

set out in OAR 340-035-0010(2): protection of public health and safety, feasibility and cost of noise abatement, land use patterns and changes, and other legal constraints.

The Department found that by developing and implementing site-specific mitigation plans (Recommended Noise Control Condition 1) and developing and implementing a complaint response plan (Recommended Noise Control Condition 2), the construction and operation of the proposed facility would not preclude the protection of health, safety, and welfare of Oregon citizens otherwise afforded through compliance with DEQ's noise control regulation.²¹⁹ Moreover, the Department's and Idaho Power's proposed revisions and amendments to Noise Control Conditions 1 and 2 (discussed below in connection with Issue NC-4) provide further protections for owners and residents of NSRs near the project.

Based on the anticipated infrequent and minimal noise impacts and the site certificate conditions meant to protect the health and safety of nearby residents, a preponderance of the evidence establishes that the project is protective of human health. The record also demonstrates that, given the nature of the proposed facility, typical noise abatement technologies are not feasible.²²⁰ Additionally, as the Department appropriately found, future land use changes are unlikely to occur at or near the relevant NSRs and other legal constraints directed the placement of the proposed transmission line with respect to NSRs.²²¹

In short, the limited parties raised arguments, but have not provided any persuasive evidence to support their position that the Department erred in recommending that the Council grant the proposed facility a variance and/or exception. A preponderance of the evidence establishes that the Department's recommendations in this regard are consistent with the legislative policy established in ORS 467.010. The construction and operation of the proposed facility does not threaten the environmental quality of life in this state and the health, safety and welfare of the people of Oregon.

Ruling on Idaho Power's Motion to Strike Portions of Ms. Gilbert's Closing Argument on Issue NC-2:

Idaho Power moves to strike, or in the alternative asks that no weight be given to, statements in Ms. Gilbert's Closing Argument on Issue NC-2 that are not relevant to, and outside the scope of, this issue including her challenges to Idaho Power's methodologies for measuring baseline noise levels and potential exceedances. Motion to Strike, Issue NC-2 at 7.

The ALJ agrees that the challenged statements in Ms. Gilbert's Closing Brief are outside the scope of Issue NC-2. Issue NC-2 asks whether the Department erred in recommending that the Council grant a variance or exception to the Noise Control Rules. Issue NC-2 does not concern Idaho Power's methods for monitoring and measuring sound. Issues NC-3 and NC-6

²¹⁹ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 655 of 10016.

²²⁰ *Id.* at page 656 of 10016.

²²¹ *Id.* at pages 656-61 of 10016.

involve challenges to Idaho Power's methodology, but Ms. Gilbert does not have standing on either of those issues. Accordingly, in resolving Issue NC-2, the ALJ gives no weight to the statements and arguments in Ms. Gilbert's brief that are not pertinent to the variance/exception question.

Ruling on Idaho Power's Motion to Strike Portions of Mr. Myers' Closing Argument on Issue NC-2:

Idaho Power moves to strike, or in the alternative asks that no weight be given to, statements in Mr. Myers' Closing Argument on Issue NC-2 that pertain to wildfire concerns and statements that rely on evidence that is not included in the evidentiary record in this contested case. Motion to Strike, Issue NC-2 at 7-8.

The ALJ agrees that the challenged statements in Mr. Myers' Closing Argument are outside the scope of Issue NC-2. As previously noted, Issue NC-2 asks whether the Department erred in recommending that the Council grant a variance or exception to the Noise Control Rules. Issue NC-2 does not concern the proposed project's potential to ignite wildfires. Accordingly, in resolving Issue NC-2, the ALJ gives no weight to the statements in Mr. Myers' brief that are not pertinent to the noise rules issue.

Methodology for the acoustical analysis – Issues NC-3 and NC-6

Issue NC-3: Whether the methodologies used for the noise analysis to evaluate compliance with OAR 340-035-0035 were appropriate and whether the ODOE erred in approving the methodology used to evaluate compliance with OAR 340-035-0035.

Limited party STOP B2H has standing on Issue NC-3. STOP B2H argues, in essence, that Idaho Power's methodology for measuring baseline ambient sound at NSRs was flawed and not appropriate for measuring the proposed facility's impacts to public health, safety, or welfare. Specifically, STOP B2H contends that: (1) MP 11 is not representative of the relevant NSRs; (2) Idaho Power's analysis did not account for conditions other than foul weather that can result in corona noise; and (3) the Department erred in approving Idaho Power's methodology and in approving an exception/variance for the entire transmission line, as opposed to particular NSRs. STOP B2H Closing Arguments at 10-15.

Both the Department and Idaho Power contend that Idaho Power's methodologies for assessing compliance with the Noise Control rules are appropriate and that the Department did not err in concurring with Idaho Power's noise analysis methods. For the reasons that follow, the ALJ also finds that Idaho Power's multi-step methodology is a reasonable and appropriate approach to evaluating the proposed facility's compliance with the Noise Control rules.

MP 11 as representative of NSRs in Union County. As noted above, STOP B2H challenges Idaho Power's choice to use MP 11 as representative of the NSRs along the Morgan Lake Alternative route. STOP B2H asserts that MP 11's proximity to I-84, Highway 30, and the Union Pacific train service means it is not representative of the quieter rural NSRs in Union

County near Morgan Lake. Based on witness testimony and Mr. Standlee's sound monitoring at Mr. Larkin's property near Morgan Lake, STOP B2H argues that Idaho Power should have assigned a much lower baseline sound level than 32 dBA to represent the NSRs along the Morgan Lake Alternative. STOP B2H Closing Argument at 11-12. STOP B2H also argues that Idaho Power's supplemental sound monitoring at MPs 100, 101, and 102 was compromised and also not representative of the baseline sound levels of NSRs near Morgan Lake. *Id.* at 12-14.

Idaho Power responds to these challenges to MP 11 by explaining that the sounds of passing trains at MP 11 are not likely to have influenced the calculation of the ambient sound level because train noise does not persist for at least 30 minutes out of each hour. Idaho Power also explains that even if there was an instance where a very long train or several trains passed close in time causing the noise spike to persist for 30 minutes or more, this would not impact the average ambient sound level. This unique sound spike would effectively be filtered out over the long-term (one month) sampling period, because the L_{50} is an average of all total hours.²²² Given this persuasive evidence, STOP B2H has not demonstrated that MP 11's proximity to train tracks distinguishes it from other NSRs in Union County and makes it an unsuitable proxy.

Furthermore, STOP B2H has not established its claim that Idaho Power's supplemental monitoring at MP 100, MP 101, MP 102 and MP 103 was faulty and/or not representative of the Morgan Lake NSRs. As set out in the findings, Idaho Power monitored and measured sound at these MPs for three weeks in October 2021.²²³ Idaho Power selected these monitoring points to represent NSRs nearer to Morgan Lake and, for MP 103, in the La Grande valley closer to I-84. Idaho Power used the same conservative approach used in its initial monitoring, and established the baseline noise levels based on the quiet late-night period of midnight to 5:00 a.m. with calm winds. In this supplemental monitoring, the mean L_{50} was 31 dBA at MP 100; 36 dBA at MP 101; 32 dBA at MP 102; and 43 dBA at MP 103.²²⁴ The one decibel difference between MP 100 and MP 11 (31 dBA vs 32 dBA) is so subtle that it is not perceivable by the human ear.²²⁵ Consequently, the sound levels measured at MP 100 do not invalidate Idaho Power's initial selection of MP 11, nor should the supplemental monitoring results impact or alter the Council's evaluation of the proposed facility's compliance with the Noise Rules.²²⁶ Rather, the results of

²²² Bastasch Rebuttal Test. at 61-63; *see also* Bastasch Cross-Exam. Test., Tr. Day 1 at 124-25.

²²³ STOP B2H faults Idaho Power for not re-monitoring ambient sound at MP 11 in its supplemental monitoring in 2021. *See* STOP B2H Surrebuttal Exhibit A. However, the purpose of this supplemental monitoring was to collect data at positions that were closer to the NSRs along the proposed routes in Union County and not to verify the results of the prior monitoring at MP 11. Bastasch Cross-Exam. Test., Tr. Day 1 at 70-71. Therefore, there was no reason for Idaho Power to re-monitor the sound levels at MP 11.

²²⁴ Bastasch Sur-surrebuttal Test Ex. I; Bastasch Cross-Exam. Test., Tr. Day 1 at 58-60.

²²⁵ Bastasch Cross-Exam. Test., Tr. Day 1 at 65.

²²⁶ As Idaho Power notes, even if the Company's initial selection of MP 11 was not reasonable, the relevant question still remains whether the 32 dBA ambient sound level that Idaho Power used to determine exceedances in the Morgan Lake area (for NSRs along both the Mill Creek and Morgan Lake Alternative routes) was in fact representative. Given the results of Idaho Power's supplemental

the supplemental monitoring serve to confirm that the 32 dBA ambient baseline measured at MP 11 is fairly representative of other NSRs in Union County.²²⁷

Mr. Standlee's monitoring at Mr. Larkin's residence is not persuasive evidence that the ambient sound levels at NSRs in the vicinity of Morgan Lake are likely 10 to 12 decibels lower than the 32 dBA measured at MP 11 (or the 31 dBA measured at MP 100). As Mr. Standlee conceded in his Surrebuttal Report (STOP B2H Surrebuttal Exhibit A at 7), the results from one night of measurements at the residence should not be used to determine representative ambient noise levels for the residence. Simply stated, the dataset from the Larkin residence is simply too small to prove anything with regard to the average ambient sound levels for NSRs along the Mill Creek or the Morgan Lake Alternative routes. Similarly, the data from the Larkin residence does not establish that Idaho Power's methodology for determining average ambient sound levels was flawed or otherwise inappropriate.

In its Closing Arguments, Idaho Power noted that because MP 100 is significantly closer to the Morgan Lake Alternative than MP 11, it is appropriate to use the MP 11 ambient sound level (31 dBA) to calculate exceedances for the NSRs along the Morgan Lake Alternative. Accordingly, Idaho Power proposed revising Recommended Noise Control Condition 1 to include the two additional potential exceedances (at NSR 118 and NSR 132), thereby requiring the Company to work with the property owners for appropriate mitigation. Idaho Power Closing Arguments, Issues NC-1, NC-2, NC-4 and NC-6 at 87-88. The ALJ accepts Idaho Power's proposal and, as discussed below, recommends revising Recommended Noise Control Condition 1 accordingly.

Other causes of corona noise. In its Closing Argument, STOP B2H also asserts that Idaho Power's analysis of frequency of exceedances did not account for other conditions that can create corona noise, such as fog, snow, humidity, condensation and physical issues, such as nicks, scrapes and debris on the conductors. STOP B2H Closing at 14-15.

As discussed above in connection with Issue NC-2, Idaho Power has acknowledged that corona noise can result from other conditions. However, a preponderance of the evidence also

monitoring (with results ranging from 31 dBA at MP 100 to 45 dBA at MP 103) a preponderance of the evidence demonstrates that Idaho Power's use of 32 dBA was reasonable and fairly representative of the NSRs in the Morgan Lake area. Furthermore, even when the ambient sound level is assumed to be 31 dBA for all NSRs in the area of Morgan Lake, the analysis results in only two more exceedances at residential NSRs along the Morgan Lake Alternative (NSR 119 and 132), and no additional exceedances along the Mill Creek Route. Bastasch Sur-surrebuttal Ex. B at 3-4; Bastasch Cross-Exam. Test., Tr. Day 1 at 62.

²²⁷ STOP B2H's claims that MP 100 is windier than other NSRs along the Morgan Lake Alternative and therefore not representative of the other NSRs are unsupported by evidence and not persuasive. Also not persuasive are STOP B2H's claims that Idaho Power's supplemental monitoring results may be invalid because of data gaps at certain locations from when the monitoring equipment temporarily shut down due to a loss of solar battery power. As Mr. Bastasch testified, there is no reason to believe these data gaps would influence the sound levels recorded late at night on subsequent dates. *See* Bastasch Cross-Exam. Test., Tr. Day 1 at 58.

establishes that corona noise from other weather conditions (such as humidity) is significantly less than corona noise caused by precipitation, and will not result in exceedances of the ambient antidegradation standard. Additionally, corona sounds that result from nicks, scratches, or debris would be a temporary issue, not regarded as typical operations and, after the burn-in period, promptly remedied with maintenance.²²⁸ Therefore, STOP B2H has not demonstrated that Idaho Power's noise analysis underestimated the number of, or potential for, exceedances of the ambient antidegradation standard.

Variance/Exception for the entire project. Finally, STOP B2H contends that the Department erred in approving Idaho Power's methodology and the request for a variance/exception for the entire line, as opposed to specified NSRs where exceedances are anticipated. STOP B2H Closing at 15-16.

On this first point, STOP B2H has presented no persuasive evidence or argument to establish that Idaho Power's methodology for assessing noise impacts was flawed or invalid, and no persuasive evidence that the Department erred or exceeded its authority in approving Idaho Power's sound measurement procedures. Indeed, OAR 340-035-0035(3)(a) expressly authorizes the reviewing agency to approve sound measurement procedures and, as explained in the Proposed Order, the Department and its noise consultants (Golder Associates) appropriately vetted and concurred with Idaho Power's methodology.²²⁹

Similarly, on the second point, STOP B2H provided no persuasive evidence or argument that the Department erred in recommending that the Council grant an exception from compliance with the ambient antidegradation standard for the entire line. As discussed in the Proposed Order, the ambient degradation standard does not address the difference between a non-linear or linear facility. However, the Council should acknowledge those differences in its evaluation of the project's compliance with the noise rules. In the Proposed Order, the Department acknowledged the extent of exceedances predicted to occur in each of the five counties crossed by the proposed facility, including alternate segments. The Department concurred with Idaho Power's request to interpret the ambient antidegradation standard under OAR 340-035-0035(1)(b)(B)(i) as applying to the transmission line as the noise source, where identified NSRs represent the appropriate measurement points for which to determine overall compliance of the transmission line.²³⁰ This is a much more practical approach than evaluating the request for an exception at each of the more than 40 identified NSR locations where exceedances could potentially occur.

In summary, a preponderance of the evidence establishes that Idaho Power's methodologies for evaluating compliance with OAR 340-035-0035 were appropriate and the Department did not err in approving Idaho Power's methodology.

²²⁸ See Bastasch Rebuttal Test. at 43.

²²⁹ ODOE - B2HAPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 634-635 of 10016.

²³⁰ *Id.* at page 650 of 10016.

STOP B2H proposed site certificate conditions related to Issue NC-3:

STOP B2H proposed that Idaho Power be required to conduct new baseline sound measurements to determine the extent of potential exceedances of the ambient antidegradation standard. *See* STOP B2H Proposed Site Conditions at 1, 3. Both the Department and Idaho Power object to this proposal as unnecessary.

The ALJ agrees with the Department and Idaho Power that a new baseline study is unnecessary. As discussed above, a preponderance of the evidence establishes that Idaho Power's methodology was appropriate and that the original and supplemental monitoring adequately represents the baseline ambient sound levels. Consequently, STOP B2H's proposed condition is rejected.

Issue NC-6: Whether Applicant's methodology to assess baseline noise levels reflect reasonable baseline noise estimates for residents of the Morgan Lake area.

Limited party Dianne Gray has standing on Issue NC-6. Like STOP B2H's arguments under issue NC-3, Ms. Gray contends that MP 11 is not representative of the NSRs near Morgan Lake, and that Idaho Power erred in using 32 dBA as its baseline ambient sound level for the Union County NSRs. Specifically, Ms. Gray asserts that measurements taken at MP 11 in 2012 should not apply to Morgan Lake area properties in 2021; that highway and train traffic near MP 11 influenced the L₅₀ measurement at that location; and that Idaho Power's supplemental monitoring sites (MPs 100, 101, 102 and 103) are not reliable or representative of Morgan Lake NSRs. Gray Closing Brief at 12-13; Gray Response Brief at 2-4.

As discussed above, a preponderance of the evidence establishes that Idaho Power's methodology for assessing baseline noise levels was appropriate and allowable under OAR 340-035-0035(3). In addition, a preponderance of the evidence establishes that Idaho Power's initial use of MP 11 (and the baseline ambient sound level of 32 dBA), as well as its supplemental consideration of MP 100 (and the baseline ambient sound level of 31 dBA) are reasonably representative of the NSRs near Morgan Lake.

Ms. Gray presents no persuasive evidence to support her assertion that measurements taken at MP 11 in 2012 should not apply to Morgan Lake area properties. On the other hand, Idaho Power has shown through its supplemental monitoring at MPs 100, 101, 102, and 103, that the measurements taken at MP 11 in 2012 are fairly representative of the NSRs near Morgan Lake. Second, Ms. Gray presents argument, but no persuasive evidence that highway and train traffic near MP 11 affected the L₅₀ noise level at that location. As discussed above in connection with Issue NC-3, the sounds of passing trains at MP 11 are not likely to have influenced the calculation of the ambient sound level because train noise does not persist for at least 30 minutes out of each hour. Furthermore, to the extent that Ms. Gray challenges Idaho Power's use of the L₅₀ standard, this statistical noise level is specifically authorized in OAR 340-035-0035 to determine exceedances of the antidegradation standard.

Finally, Ms. Gray presents no persuasive evidence to support her contention that the

results of Idaho Power's supplemental monitoring are unreliable or not representative of NSRs near Morgan Lake. For the same reasons discussed above in connection with Issue NC-3, the ALJ finds that the supplemental monitoring results serve to confirm Idaho Power's use of 32 dBA (or 31 dBA) as the ambient baseline noise level for NSRs near Morgan Lake.

Gray proposed site certificate conditions related to Issue NC-6:

In her Closing Brief, Ms. Gray proposed three site certificate conditions related to Issue NC-6.²³¹ ~~Idaho Power opposes these proposed conditions as impractical and unnecessary (Idaho Power's Response Brief and Motion to Strike for Contested Case Issues NC-1, NC-2, NC-3, NC-4 and NC-6, p. 50-52) and Council agrees. Ms. Gray's proposed Condition 1 is unsupported by Council standard or DEQ's noise control regulation – there are no legal requirements under OAR 345-035-0035 that would support Council imposing a requirement that Idaho Power conduct ambient monitoring at every NSR that could potentially be impacted by corona noise. However, because Ms. Gray did not submit these proposed conditions in connection with her direct testimony and in accordance with the schedule set by the ALJ in the Case Management Order, the Department and Idaho Power had no opportunity during the contested case hearing to present evidence in response. Because Ms. Gray did not offer these proposed conditions in a timely manner, the ALJ declines to address them.~~

~~Council rejects Ms. Gray's second proposed condition for several reasons. First, while the paragraph narrative is proposed as a condition, it is not written in condition format. Ms. Gray proposes language such as "it would be helpful" and "it would be good to know." Ms. Gray's proposed condition would require more information on the basis for selecting monitoring positions and confirmation of whether field trips were conducted to affirm the representativeness of the ambient noise conditions at the selected monitoring positions compared to ambient noise conditions of NSRs within the analysis area. This is not appropriate is a condition and ignores the findings of fact, findings of fact, and opinion included in this order for Issue NC-3, where any questions on the validity of the ambient noise monitoring positions have been fully litigated and affirmed.~~

Sufficiency of proposed mitigation – Issue NC-4

Issue NC-4: Whether the mitigation/proposed site conditions adequately protect the public health, safety and welfare.

STOP B2H has standing on Issue NC-4. On this issue, STOP B2H asserts that, in the event the site certificate is approved, the Recommended Noise Control Conditions in the Proposed Order do not go far enough to protect the public health, safety, and welfare from project-related noise. Specifically, STOP B2H contends that, as set out in the Proposed Order, Recommended Noise Control Condition 1 does not adequately protect potentially impacted NSRs or the people who reside on those properties. STOP B2H asks Idaho Power's obligation to work with all owners of NSRs where exceedances are predicted be expanded to include notification to all NSR property owners within one mile of the proposed facility. STOP B2H also requests that Idaho Power be required to update the list of NSRs in Attachment X-7. STOP B2H Closing Argument at 17-18. Additionally, STOP B2H requests revisions to Recommended Noise Control Condition 2 to improve the noise complaint procedure and response plan and revisions to Noise Control Condition 3 to include additional mitigation measures. *Id.* at 19-20.

In their respective Closing and Response briefs, both the Department and Idaho Power proposed revisions to the Recommended Noise Control Conditions incorporating many of STOP B2H's suggestions and clarifying Idaho Power's obligations for working with NSR property owners, implementing mitigation measures, and addressing noise complaints. In its Response Brief and Closing Arguments, STOP B2H also proposed revisions to each Noise Control Condition.

~~To the extent that the revisions proposed in STOP B2H's Response Brief are consistent with the proposals set out in STOP B2H's Proposed Site Conditions (filed September 17, 2021), they STOP B2H's proposed conditions are addressed below. However, to the extent that STOP B2H proposes new conditions and provisions, the ALJ declines to address them because they are untimely and the Department and Idaho Power did not~~

²³¹ In her Closing Brief, Ms. Gray proposed that Idaho Power be required to: (1) monitor every NSR where exceedances could occur; (2) provide more detailed information about the NSRs along the proposed route(s); and (3) offer noise mitigation measures (home retro-fits and window treatments) to all NSRs regardless of predicted exceedances at the location. Gray Closing Brief at 13-15.

~~have any opportunity to respond.~~

As for Issue NC-4, a preponderance of the evidence establishes that the proposed mitigation measures and the Recommended Noise Control Conditions (as amended in the section below) adequately protect the public health, safety, and welfare.

Proposed revisions to Recommended Noise Control Conditions:

Noise Control Condition 1. In its rebuttal testimony, Idaho Power proposed revisions to Recommended Noise Condition 1 to address limited parties' concerns regarding mitigation for corona noise impacts.²³² In its Closing Brief, the Department agreed that setting out the specific mitigation measures would improve Noise Control Condition 1, as would clarifying the timeline for mitigation and incorporating a dispute resolution process. The Department proposed revisions to the condition to address these concerns. ODOE Closing Brief at 112-13. In its Response Brief, Idaho Power agreed with the Department's proposals and added provisions to clarify Idaho Power's mitigation obligations. Idaho Power proposed that, as a condition of the granting of the variance and exceedance, the Company be required to offer mitigation measures to minimize the impacts of those exceedances, including exceedances that are currently predicted and new exceedances that might be established through the complaint procedure contained in Noise Control Condition 2. Idaho Power's Response at 59. In its Response Brief, STOP B2H recommended adding detail to the notice requirement and removing some specific remedies to preserve flexibility. STOP B2H Response at 24-26.

STOP B2H's proposed revisions to Noise Control Condition 1 as included in their Closing Arguments are presented below:

STOP B2H Proposed Noise Control Condition 1: "should not be limited to only those NSRs ["Noise Sensitive Receptors"] listed in the draft site certificate conditions, Attachment 1 in the PO (also in Attachment X-5).

- 1) The problems with the baseline study needs to be resolved via new monitoring study, paid for by the developer.
- 2) Those NSRs that are likely to exceed the 10 dBA ambient antidegradation standard must be notified by the developer and/or ODOE during the PRE-NC-01 phase.
- 3) Those NSRs may negotiate the site-specific Noise Exceedance Mitigation Plans. ODOE -B2HAPPDoc2-1 Proposed Order on ASC wHyperlink Attachments 2019-07-02. Page 624 of 699.
- 4) Under Site condition 1 part b., if the developer and the NSR cannot come to agreement after multiple attempts, the ODOE should attempt to mediate a plan, refer to an ADR (alternative dispute mediator), or refer to an appropriate legal jurisdiction."

Idaho Power and the Department oppose Stop B2H's proposed condition revision sub(1) above because it ignore the evaluation of Issue NC-3 and the outcome of the contested case. There is no basis to require a new monitoring study as the existing monitoring study has been supplemented and further validated through the contested case.

Idaho Power, the Department and Stop B2H agree in concept with STOP B2H's proposed Noise Control Condition 1 Sub 2; and, Idaho Power has volunteered to provide notice of the Noise Compliant Response Plan and condition requirements to all NSRs of record within 1-mile of the transmission line route selected at final design. Neither Idaho Power or the Council agree that all NSRs within 1-mile of the transmission line should be able to negotiate site-specific Noise Exceedance Mitigation Plan. Council does not have authority to require mitigation if there is no evidence of an impact – the record shows that exceedances are only predicted at 41 NSR locations. There is no evidence that would suggest all NSRs within 1-mile of the 300-mile transmission should receive the same level of mitigation as the NSRs with predicted exceedance.

The Council agrees with STOP B2H's Noise Control Condition 1 sub (4), but rather affirms that the review of any disputes of mitigation must be referred and reviewed by Council, unless the Council Chair defers the dispute review to the Department.

Based on consideration of STOP B2H's proposal and the Department's and Idaho Power's stipulations, the ALJ recommends that Noise Control Condition 1 state as follows:

Amended Recommended Noise Control Condition 1:

Prior to construction, the certificate holder will **initiate discussions** with the following 41 NSR property owners at which it has estimated exceedances of the ambient antidegradation standard may occur identified in Attachment X-5 and/or Attachment X-4 of the Final Order on the ASC (NSR: 8, 9, 10, 11, 5002, 69, 70, 5004, 46, **118**, 125, 5010, 5011, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 518, 111, 112, **132**, 133, 5008, 5009, 113, and 115) to develop mutually agreed upon Noise Exceedance Mitigation Plans, specific to each NSR location. The site-specific Noise Exceedance Mitigation Plans will include agreed upon measures that would be implemented at the NSR location to minimize or mitigate the ambient antidegradation standard noise exceedance.

a. If the certificate holder and the NSR property owner **agree upon a specific Noise Mitigation Plan**, the certificate holder will submit a signed acknowledgement from the property owner to the Department for its records.

²³² Bastasch Rebuttal Test. at 55-56.

b. If an agreement between certificate holder and NSR property owner is not obtained, the certificate holder shall concurrently notify the Department and NSR property owner of the dispute and of Council review of the dispute to occur at the next regularly scheduled Council meeting, to the extent possible, from the date of the certificate holder's notice. The notice shall explain that the NSR property owner will be given an opportunity to provide comments to the Council on the dispute, unless the Council Chair defers the dispute review to the Department. Review of the dispute will be based on the information per sub(i) below, and any other relevant facts provided by the NSR property owner and will result in a determination of the appropriate mitigation measure(s), proportional to the facility operational noise levels in excess of the ambient degradation standard, as determined to occur at the NSR property. The Council or Department's determination of appropriate mitigation is not binding on the NSR property owner or certificate holder if the NSR property owner opts not to accept the mitigation.

i. At the time of issuance of the notice per (b) above, certificate holder will submit to the Department: (1) the mitigation measures it offered the NSR property owner, the mitigation measures that the NSR property owner requested and an explanation of the dispute; (2) a list of the dates that the certificate holder communicated with, or attempted to communicate with, the NSR property owners; and (3) the names, addresses, and phone numbers of the NSR owners.

c. In working with NSR property owners under this condition, certificate holder will propose corona-noise mitigation of installation of sound-attenuating windows for residential structures as follows:

i. For NSRs where an 11 to 14 dBA sound level increase above ambient noise levels are expected, certificate holder will purchase and install sound attenuating windows with an STC rating of 25-40.

ii. For NSRs where a 15 dBA or greater sound level increase is expected, certificate holder will purchase and install sound attenuating windows with an STC rating of above 40.

iii. If an owner of an NSR where an 11 dBA or greater sound level increase is expected provides a letter from a health care provider indicating that health care provider's belief that the owner has a health condition that is exacerbated by increased sound levels, upon request, certificate holder will purchase and install sound attenuating windows with an STC rating of over 40 and would work with the NSR property owner to consider other mitigation options, as appropriate. During landowner consultations required under this condition, the certificate holder will specifically ask each landowner whether that landowner has a health condition that the landowner believes is

exacerbated by elevated sound levels.

iv. At the request of an NSR property owner, certificate holder will offer alternative mitigation proposals, such as performing air-sealing of the NSR residence, planting trees, or installing insulation.

d. Prior to operation, the certificate holder will implement the mitigation measures agreed upon with the NSR property owners and/or as determined by EFSC or the Department to be the appropriate mitigation measures.

Noise Control Condition 2. In its Closing Argument, STOP B2H proposed revisions to Noise Control Condition 2, as follows:

STOP B2H Proposed Noise Control Condition 2: “should not wait until the operation phase to develop a complaint response plan to address noise complaints.”

In its Closing Argument, the Department proposed extensive revisions to Recommended Noise Control Condition 2 to set out the processes for addressing complaints. ODOE Closing Brief at 116-18. In its Response Brief, Idaho Power agreed with the Department’s proposals, and proposed further revisions for clarification (in part to implement STOP B2H’s requests) and to ensure consistency with the other Noise Control conditions. In its Response Brief, STOP B2H also proposed changes to streamline the notification and complaint processes. STOP B2H Response at 27-30. The condition, as presented below, would require that Idaho Power prepare the Operational Noise Complaint Response Plan, prior to construction. Therefore, the condition aligns with STOP B2H’s proposed language – where they expressed a concern that the Noise Compliant Response Plan may not be developed until the operational phase – which is not the case.

Based on the parties’ stipulations, Noise Control Condition 2 should state as follows:

Amended Recommended Noise Control Condition 2.²³³

a. **After the Site Certificate has been issued and before landowner consultations contemplated in Condition 1, the certificate holder will prepare a new version of Attachment X-7, which will update landowner information and correct any errors (Updated Attachment X-7). The certificate holder will send notices to all landowners listed in Updated Attachment X-7, which notice shall inform the recipient: (a) that the recipient is the owner of an NSR; ~~and~~ (b) the requirements and condition language of Noise Control Conditions 1 and 2 as adopted by the Council; and (c) a plain summary of the steps designated Noise Control Conditions 1 and 2. In addition, prior to construction, the certificate holder shall develop and submit to the Department an operational noise complaint response plan as well as distribute a simplified operational noise complaint response plan for landowners to the landowners listed in Updated Attachment X-7.**

b. The plan shall specify that it is intended to address complaints filed by persons falling into one of the following categories: (1) the owner of an

NSR property identified in Noise Control Condition 1, and for whom has received mitigation under Noise Control Condition 1, but who believes that exceedances (as measured at their NSR property) are occurring in a manner not otherwise allowed under Noise Control Condition 4 or Noise Control Condition 5; or (2) An owner of an NSR property within one mile of the site boundary who was not identified under Noise Control Condition 1 and who has not received mitigation from the certificate holder, but who nevertheless believes that

²³³ Given the Department's extensive revisions to this condition in its Closing Brief and Idaho Power's concurrence with those revisions, the Department's revisions are in normal font and Idaho Power's subsequent changes (as set out in the Response Brief) are in bold.

exceedances above the ambient degradation standard have occurred at their NSR property.

c. The plan shall include the following: Scope of the complaint response plan, including process for complaint filing, receipt, review and response. The scope shall clearly describe how affected persons will be provided necessary information for filing a complaint and receiving a response, **and will specify the information that the complainant must include in its complaint, including the date the certificate holder received the complaint, the nature of the complaint, weather conditions of the date for which the complaint is based (including wind speed, temperature, relative humidity, and precipitation), duration of perceived noise issue, the complainant's contact information, and the location of the affected property.**

d. The plan shall require that the certificate holder notify the Department within three working days of receiving a noise complaint related to the facility. The notification shall include the date the certificate holder received the complaint, the nature of the complaint, weather conditions of the date for which the complaint is based (~~including such as~~ wind speed, temperature, relative humidity, and precipitation) as described by the complainant, duration of perceived noise issue, the complainant's contact information, the location of the affected property, and a schedule of any actions taken or planned to be taken by the certificate holder (including inspection and maintenance actions, or actions taken or planned to be taken pursuant to the processes described in subsection (e) of this condition).

e. The plan shall identify the following process if a noise complaint is received:

i. The certificate holder shall assess possible causes of the corona noise. If the complaint is received within the first 12 months of operation, the certificate holder will assess whether the corona noise is typical of noise that occurs during the transmission line "burn in period" (the first 12 months of operation) and ensure that it **already** has taken appropriate measures near that NSR to minimize corona noise that may occur during the burn in period (e.g., use conductors with a nonspecular finish/sandblasting of conductors to make them less reflective and clean them of manufacturing oils, protect the conductors to minimize scratching and nicking during construction). **If the exceedance occurs during the burn-in period, and if the certificate holder complies with the requirements of this condition, then the certificate holder will not be found to be in violation of its site certificate because of the exceedance.**

ii. If it is determined the corona noise is not typical burn in period noise, the certificate holder will assess whether the noise exceeds the ambient antidegradation standard in a manner not otherwise allowed under Noise Control Condition 4 or Noise Control Condition 5. If the complainant's noise sensitive property or properties are included in Attachment X-5 of

the Final Order on the ASC, the modeled sound level increases as presented in Attachment X-4 of the Final Order on the ASC may be relied upon to determine whether the corona noise exceeds the ambient antidegradation standard, unless the complainant voluntarily provides alternative noise data.

iii. If the complainant's NSR property or properties are not included in Attachment X-5 of the Final Order on the ASC, the certificate holder shall model the sound level increases using the methods set forth in ASC Exhibit X, unless the complainant voluntarily provides alternative noise data.

iv. If the complainant voluntarily provides alternative noise data and the data suggests an exceedance that had not previously been identified and mitigated, and/or an exceedance not otherwise allowed under Noise Control Condition 4 or Noise Control Condition 5, the complaint shall be verified through site specific sound monitoring conducted by an Oregon registered Professional Engineer, Board Certified by the Institute of Noise Control Engineering noise specialist, employed or contracted by the certificate holder, in accordance with NPCS-1 unless otherwise approved by the Department. If site specific sound monitoring is not authorized by the complainant, the certificate holder's modeling results may be relied upon to determine compliance.

v. In the event of a dispute regarding complainant's noise data and the certificate holder's data from site specific sound monitoring, certificate holder shall request that EFSC, in consultation with the Department's noise consultant, if necessary, make the final determination regarding which data will be used to determine whether corona noise exceeds the ambient antidegradation standard and/or in a manner not allowed under Noise Control Condition 4 or Noise Control Condition 5. The EFSC Chair may direct the Department to make this determination.

f. The plan shall specify that, if it is determined pursuant to the process described in subsection (e) of this condition that corona noise at the complainant's NSR property exceeds the ambient antidegradation standard in a manner not allowed under Noise Control Condition 4 or Noise Control Condition 5, and/or exceeds the ambient antidegradation standard at an NSR property that had not previously been predicted to experience exceedances under Noise Control Condition 1, the certificate holder shall work with the NSR property owner to develop a mutually agreed upon mitigation plan to include agreed upon measures that would be implemented at the NSR location to minimize or mitigate the ambient antidegradation standard noise exceedance. **To be clear, the fact that the certificate holder has received an exception or variance under Noise Control Conditions 4 and 5 does not excuse the certificate holder from providing mitigation under this condition.**

i. If the NSR property was identified in Noise Control Condition 1 and has previously received mitigation by the certificate holder, and if it has been determined that the NSR property experiences exceedances not allowed under Noise Control Condition 4 or Noise Control Condition 5, the certificate holder will work with the complainant to identify supplemental mitigation measures, which may include any of the measures discussed in **Noise Control Condition 1** or the ASC, or other measures requested by the complainant.

ii. If the NSR property was not identified in Noise Control Condition 1 and has not been provided with mitigation by the certificate holder, certificate holder will work with the NSR property owner to identify appropriate mitigation measures, which may include any of the measures discussed in **Noise Control Condition 1** or the ASC, or other measures requested by the landowner.

iii. If, through the efforts described above, the certificate holder executes an agreement with the NSR property owner, the certificate holder will submit a signed acknowledgement from the property owner to the Department for its records. If an agreement between certificate holder and NSR property owner is not obtained, the certificate holder shall concurrently notify the Department and NSR property owner of the dispute and of Council review of the dispute to occur at the next regularly scheduled Council meeting, to the extent possible, from the date of the certificate holder's notice. The notice shall explain that the NSR property owner will be given an opportunity to provide comments to the Council on the dispute, unless the Council defers the dispute review to the Department. Review of the dispute will be based on the information per (iv) below, and any other relevant facts provided by the NSR property owner and will result in a determination of the appropriate mitigation measure(s), proportional to the facility operational noise levels in excess of the ambient degradation standard, as determined to occur at the NSR property. The Council or Department's determination of appropriate mitigation is not binding on the NSR property owner or certificate holder if NSR property owner opts not to accept the mitigation.

iv. At the time of issuance of the notice per (iii) above, certificate holder will submit to the Department: (1) the mitigation measures it offered the NSR property owner, the mitigation measures that the NSR property owner requested and an explanation of the dispute; (2) a list of the dates that the certificate holder communicated with, or attempted to communicate with, the NSR property owners; and (3) the names, addresses, and phone numbers of the NSR owners.

g. The certificate holder shall provide necessary information to the complainant to

support understanding of corona noise, corona noise levels and effects, and of the process to verify actual noise levels of events resulting in complaints. If the complainant opts not to authorize the certificate holder to conduct monitoring, and it is otherwise determined pursuant to the process described in subsection (e) of this condition that corona noise does not exceed the ambient antidegradation standard, the noise complaint shall be considered fully resolved and no mitigation shall be required.

Noise Control Condition 3. Neither the Department nor Idaho Power proposed revisions to Recommended Noise Condition 3. However, STOP B2H has proposed new language clarifying mitigation measures and requiring that Idaho Power “inspect, monitor, and implement necessary maintenance throughout the operational life of the project.” STOP B2H Response at 32. In addition, STOP B2H proposed a new provision requiring that Idaho Power develop a monitoring plan for corona noise on a periodic basis for the life of the project and update noise mitigation measures as new technologies are developed. STOP B2H Response at 32-33.

The Department and Idaho Power contend that these proposed revisions/additions are unnecessary, and the ALJ agrees. Recommended Noise Control Condition 3 already requires Idaho Power to use a triple bundled conductor configuration and to protect the conductor surface to minimize scratching or nicking.²³⁴ Other recommended site certificate conditions (*e.g.*, Recommended Organizational Expertise Condition 1, addressing the Transmission Maintenance Inspection Plan)²³⁵ already require Idaho Power to inspect, monitor, and maintain the facility. Therefore, it is not necessary to add this requirement to Noise Control Condition 3. Furthermore, given the recommended revisions to Noise Control Condition 1 (noise mitigation plans) and Noise Control Condition 2 (noise complaint response plan) discussed above, and considering that exceedances of the antidegradation standard are predicted to occur only infrequently, the ALJ finds it unnecessary to require Idaho Power to monitor for corona noise at key NSRs on a periodic basis for the life of the project. For these reasons, the ALJ declines to adopt STOP B2H’s proposed revisions to Noise Control Condition 3.

Noise Control Condition 4. In its Closing Brief, the Department also proposed revisions to Noise Control Conditions 4 and 5 to clarify terms relating to the granting of the variance and the exception to the ambient antidegradation standard. ODOE Closing Brief at 101-102. In its Response Brief, Idaho Power concurred with the proposed revisions to Noise Control Condition 4 (granting an exception). Idaho Power also agreed the proposed revisions to Noise Control Condition 5 (granting a variance) with the clarification that the Company would not be in violation of the site certificate for exceedances during the burn-in period, as long as the Company is otherwise in compliance with Noise Control Condition 2. Idaho Power Response Brief at 28-29.

Based on the parties’ stipulation, the ALJ recommends that Noise Control Condition 4 be revised to state as follows:

²³⁴ ODOE - B2HAPPDoc2-1 Proposed Order on ASC w Hyperlink Attachments 2019-07-02, page 656 of 699.

²³⁵ *Id.* at page 71 of 699.

Amended Recommended Noise Control Condition 4:

During operation:

a. **Pursuant to OAR 340-035-0010**, an exception to compliance with the ambient antidegradation standard at OAR 340-035-0035(1)(b)(B) (which prohibits an increase of more than 10 dBA above ambient sound pressure levels) is granted during facility operation **when there is foul weather (a rain rate of 0.8 to 5 millimeters per hour), which Council finds constitutes an infrequent event** under OAR 340-035-0035(6)(a).

b. The ambient antidegradation standard at OAR 340-035-0035(1)(b)(B) may be exceeded by the transmission line at any time of day or night during foul weather events (**defined as a rain rate of 0.8 to 5 millimeters per hour**). [OAR 340-035-0010(2)]

c. The quantity and quality of noise generated in exceedance of the ambient antidegradation standard at OAR 340-035-0035(1)(b)(B), during foul weather events (**defined as a rain rate of 0.8 to 5 millimeters per hour**), shall not be more than 10 dBA (i.e., ambient plus 20 dBA). [OAR 340-035-0010(2)]

Finally, considering the parties' stipulations and acknowledging Idaho Power's clarification,²³⁶ the ALJ recommends that Noise Control Condition 5 be amended as follows:

Amended Recommended Noise Control Condition 5:

During operation:

a. A variance to compliance with the ambient antidegradation standard at OAR 340-035-0035(1)(b)(B) (which prohibits an increase of more than 10 dBA above ambient sound pressure levels) is granted pursuant to OAR 340-035-0100(1) for the transmission line **at any time of day or night during foul weather events (defined as a rain rate of 0.8 to 5 millimeters per hour)**.

b. The quantity and quality of noise generated in exceedance of the ambient antidegradation standard shall not be more than 10 dBA (i.e., ambient plus 20 dBA), as measured at any NSR location.

Public Services Standard: Traffic Safety concerns – Issues PS-1 and PS-6

As pertinent to Issues PS-1 and PS-6, the Public Services Standard requires that Council find that “the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to the ability of public and private providers within

²³⁶ As set out above in Amended Recommended Noise Control Condition 2, the ALJ recommends incorporating into Noise Control Condition 2 the following clarification: “If the exceedance occurs during the burn-in period, and if the certificate holder complies with the requirements of this condition, the certificate holder will not be found to be in violation of its site certificate because of the exceedance.”

the analysis area * * * to provide * * * traffic safety.” OAR 345-022-0110(1).

Issue PS-1: Traffic Safety: Whether Applicant was required to evaluate traffic safety impacts from construction-related use of Morgan Lake Road.

Limited party Susan Badger-Jones has standing on Issue PS-1, and bears the burden of producing evidence to support her claim. Ms. Badger-Jones did not file any written direct testimony or exhibits in support of her position on Issue PS-1, nor did she submit written closing argument regarding this issue. Because Ms. Badger-Jones failed to submit evidence and/or argument in support of her contention that Idaho Power was required to evaluate traffic safety impacts from construction-related use of Morgan Lake Road, the ALJ considers the claim unsubstantiated.²³⁷ The findings in the Proposed Order pertaining to this issue constitute *prima facie* evidence of Idaho Power’s compliance with the traffic safety requirements under the Public Services Standard.

Issue PS-6: Whether Applicant adequately evaluated the potential traffic impacts and modifications needed on Hawthorne Drive and Modelaire Drive (the Hawthorne Loop).²³⁸

Limited parties Dale and Virginia Mammen, Joe Horst and Anna Cavinato have standing on Issue PS-6. The limited parties contend that Idaho Power did not adequately evaluate the potential traffic impacts on the paved portion of Hawthorne Drive and Modelaire Drive (the Hawthorne Loop) and the unpaved, privately owned portion of Hawthorne Drive.²³⁹ Specifically, the limited parties contend that Idaho Power’s evaluation is inadequate given the roadway characteristics (road widths, grade, curves and blind corners) and the geologic hazards in the area (potentially unstable soils). *See* Horst Closing Statement at 2-6; Mammen Closing Brief at 1-8. In addition, the limited parties assert that Idaho Power’s Traffic Plan does not provide adequate safety measures to protect pedestrians and pet animals. *See* Horst Closing Statement at 4-5, 8.

First, it is important to distinguish between the roads comprising the Hawthorne Loop (Modelaire Drive and the paved portion of Hawthorne Drive) and the unpaved, private access portion of Hawthorne Drive. The Hawthorne Loop roads are paved and maintained by the City

²³⁷ Because Issue PS-1 is deemed unsubstantiated, there is no need to address the merits of the claim in this order. *See Ruling on Motion to Dismiss* at 11.

²³⁸ As noted previously, although Issue PS-6, as written, references “the Hawthorne Loop” (*i.e.*, the paved portion of Hawthorne Drive and Modelaire Drive), this issue also includes the limited parties’ challenge to Idaho Power’s evaluation of traffic impacts on the unpaved, private access portion of Hawthorne Drive.

²³⁹ In his Closing Statement on Issue PS-6, Mr. Horst also challenges Idaho Power’s selection of the Mill Creek Route, arguing that the La Grande City Council strongly opposes this proposed route, that Idaho Power did not sufficiently coordinate and consult with the City regarding this route, and that the Company did not provide sufficient site-specific information in the ASC. Horst Closing Statement at 2-4. These arguments fall outside the scope of Issue PS-6. Further, Idaho Power’s route selection falls outside Council’s jurisdiction.

of La Grande. Although these existing roads may be used to access construction sites, the roads comprising the Hawthorne Loop are outside the site boundary and Idaho Power does not propose any modifications to these roads.

Because the Hawthorne Loop roads are outside the project site boundary, the Council does not have jurisdiction or authority to address the limited parties' claims that these roads will require substantial modification for safety (such as sidewalks) and/or are inadequate for construction vehicle use because of geological hazards. See *In re the Application for a Site Certificate for the Wheatridge Wind Energy Facility*, Final Order, April 28, 2017 at page 7, n. 22 ("It is the Council's responsibility to review, evaluate and issue orders either approving or denying ASCs as put forth by an applicant; the Council does not have authority to propose alternatives[.]").²⁴⁰ *Boardman to Hemingway Transmission Line Proposed Order* at page 51, n. 58 ("The Council does not have jurisdiction over matters that are not included in and governed by the site certificate or amended site certificate.")²⁴¹

Additionally, as to the limited parties' claims that traffic resulting from the construction and operation of the facility presents a safety risk to pedestrians and animals in the Hawthorne Loop neighborhood, Idaho Power's Traffic Plan (required by Recommended Public Services Condition 2) adequately addresses these concerns. Idaho Power proposes using traffic control measures such as pilot vehicles, traffic control flaggers, warning signs, lights, and barriers during construction to ensure safety, minimize localized traffic congestion, and avoid accidents due to limited visibility.²⁴² After final route selection and prior to construction of the transmission line, these safety measures will be fully vetted by the Department, in consultation with Union County and the City of La Grande where applicable.²⁴³

As to the limited parties' concerns regarding the unpaved, privately owned portion of Hawthorne Drive, Idaho Power has shown that substantial modifications (modifications involving repairs to more than 20 percent of the road surface area) may potentially be, but are not likely to be, necessary to support construction vehicle traffic.²⁴⁴ The evidence persuasively

²⁴⁰ See also, *Wheatridge Final Order* at 31:

It is the Council's responsibility to review, evaluate and issue orders either approving or denying ASCs submitted by an applicant. *The Council does not have authority to evaluate structures that are not proposed by the applicant. An amendment to the site certificate would be required if a certificate holder proposes related and supporting facilities to the energy facility not included in or evaluated in the ASC.*

Emphasis added.

²⁴¹ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 58 of 10016.

²⁴² Grebe Rebuttal Test. at 38.

²⁴³ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 8460 of 10016 (Road Classification Guide and Access Control Plan at 10).

²⁴⁴ Grebe Rebuttal Test. at 39.

establishes that the width, slope and curves of this gravel road are within typical construction vehicle parameters,²⁴⁵ and therefore it is unlikely that substantial modifications such as widening the road or reinforcing the slope will be necessary. The road meets the minimum requirements for width and turning surface, and does not exceed the maximum grade for construction vehicles.²⁴⁶ Idaho Power determined that this portion of roadway would likely need non-substantial maintenance activities such as blading to maintain the surface and water to mitigate dust emissions,²⁴⁷ but not substantial modification. Furthermore, if necessary to avoid tight turning conditions and possible traffic congestion issues, Idaho Power could and likely would air-lift materials and equipment by helicopter.²⁴⁸

As noted above, Idaho Power's Traffic Plan (required by Recommended Public Services Condition 2) adequately addresses traffic safety concerns. Idaho Power's proposal to use traffic control measures such as pilot vehicles, traffic control flaggers, warning signs, lights, and barriers during construction is completely appropriate and reasonable to protect other traffic, pedestrians and pets. Finally, if it is later determined that the roadway needs substantial modification in connection with the proposed facility construction or operation because of potential geologic hazards in the area, Idaho Power has committed to protect public safety. Idaho Power will, prior to construction or road modification, complete appropriate engineering due diligence and consult with a licensed civil engineer to ensure that the design of the road modification accounts for these potential hazards and protects the public.²⁴⁹

In summary, the preponderance of the evidence establishes that Idaho Power adequately evaluated the potential traffic impacts and modifications needed on the Hawthorne Loop as well as the unpaved, private-access portion of Hawthorne Drive. The limited parties have failed to provide persuasive evidence or testimony supporting their claims.

Proposed site certificate conditions related to Issue PS-6:

In their Closing Argument, the Mammens propose a site certificate requiring Idaho Power to "complete engineering due diligence before moving forward with any construction" in the Hawthorne Loop/Hawthorne Drive area. Mammens Closing Argument at 8-9. The Mammens did not submit this proposed condition in a timely manner in accordance with the schedule set in the *Case Management Order*.

Notwithstanding the untimeliness of the proposed condition, Idaho Power has, as discussed above, agreed that, prior to construction or road modification in a geologic hazard

²⁴⁵ Grebe Rebuttal Test. at 39-41.

²⁴⁶ *Id.* at 26-29; *see also* Grebe Rebuttal Exs. B and D.

²⁴⁷ Grebe Rebuttal Test. at 27, 32, 41.

²⁴⁸ Grebe Rebuttal Test. at 26-27.

²⁴⁹ Grebe Rebuttal Test. at 42.

zone, it will consult with a licensed civil engineer to assess the proposed construction or road design in relation to potential geologic hazards.²⁵⁰ In its Response Brief on Issue PS-6, Idaho Power also proposed a new Public Services Condition to formalize this agreement:

Prior to construction or road modification in any area designated as a geologic hazard zone by Oregon Department of Geology and Mineral Industries (DOGAMI) data and maps (e.g., as landslide or debris flow fan), or by relevant local zoning ordinances and maps, the site certificate holder and/or its construction contractors will consult with a licensed civil engineer to assess the proposed construction or road design in relation to potential geologic hazards.

Idaho Power's Response Brief and Motion to Strike for Contested Case Issues PS-1 and PS-6 at 22.

Ruling on Idaho Power's Motion to Strike portions of the Mammens' Closing Argument:

In its Response Brief for Issue PS-6, Idaho Power moves to strike, or in the alternative give no weight to, the portions of the Mammens' Closing Argument that reference or rely upon Mammen Exhibit 5, as this document was excluded from the evidentiary record pursuant to the *Rulings on Objections to Direct Testimony and Exhibits*, issued October 15, 2021.²⁵¹ The ALJ acknowledges that Mammen Exhibit 5 is not part of the evidentiary record,²⁵² and that the Mammens' concerns about slope instability in the Hawthorne Loop area are not directly relevant to Issue PS-6, which focuses on the evaluation of potential traffic impacts in that area. While the ALJ finds it inefficient and unnecessary to strike the challenged portions of the Mammens' Closing Argument referencing or relying upon Mammen Exhibit 5, these statements are not material to this issue. Therefore, the ALJ grants Idaho Power's alternative request and gives these statements no evidentiary weight.

Idaho Power also moves to strike portions of the Mammens' Closing Arguments that reference and rely on a June 22, 2021 letter from Scott Hartell, Union County Planning Director, because this document is not part of the evidentiary record.²⁵³ For the reasons stated above, the ALJ declines to strike this portion of the Mammens' brief. However, because the statements are not pertinent to the resolution of Issue PS-6 they have no evidentiary weight in this context.

²⁵⁰ Grebe Rebuttal Test. at 42-43.

²⁵¹ Mammen Exhibit 5 is a June 2021 study/report by Barlow Environmental Consulting and a letter dated October 8, 2018 from Mark Stokes to the La Grande City Manager and others. In the *Rulings on Objections to Direct Testimony and Exhibits*, the ALJ found that these documents were not relevant or material to Issue PS-6 and excluded them from the evidentiary record.

²⁵² As set out in Appendix 2, Mammen Exhibit 5 is, however, part of the administrative record as a document submitted in opposition to Idaho Power's Motion for Summary Determination on Issue SS-4.

²⁵³ As set out in Appendix 2, this letter is part of the administrative record as Mammen Response Exhibit 3, a document submitted in opposition to Idaho Power's Motion for Summary Determination on Issue SS-4.

Ruling on Idaho Power’s Motion to Strike portions of Mr. Horst’s Closing Argument:

Idaho Power also moves to strike a statement in Mr. Horst’s closing brief asserting that the project does not help Oregonians’ energy supply as unsupported and outside the scope of Issue PS-6. While the ALJ declines to strike this statement for logistical reasons, the claim is unsupported, outside the scope of Issue PS-6, and entitled to no weight.

Ruling on Idaho Power’s Motion to Strike Portions of Mr. Horst’s Response Brief regarding Issue PS-6:

In the motion, Idaho Power moves to strike, or in the alternative give no weight to, statements in Mr. Horst’s Response Brief pertaining to granting Idaho Power access to his property as unsupported by evidence in the record. Motion at 11. The ALJ agrees that this portion of Mr. Horst’s brief is testimonial in nature, unsupported by evidence in the record, and not material to Issue PS-6. Therefore, the challenged statements are given no weight.

Public Services Standard: Fire Protection concerns – Issues PS-2, PS-3, PS-4, PS-5, PS-8, PS-9 and PS-10

As pertinent to Idaho Power’s Issues PS-8 and PS-9, and limited parties’ Issues PS-2, PS-3, PS-4, PS-5, and PS-10, the Public Services Standard requires that Council find that “the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to the ability of public and private providers within the analysis area * * * to provide * * * fire protection.” OAR 345-022-0110(1).

Applicant’s Issues – Issues PS-8 and PS-9

Issue PS-8: Whether Department-proposed revisions to Public Services Condition 7 are redundant with Attachment U-3 and existing condition requirements.

Idaho Power raised this issue to clarify certain provisions of Recommended Public Services Condition 7, which requires the Company provide its Wildfire Mitigation Plan to the Department and affected counties prior to and annually during facility operations. Idaho Power contends that some of the language in the recommended condition is redundant. As set out in the Proposed Order, Recommended Public Services Condition 7(a) requires that the Wildfire Mitigation Plan “address facility and emergency contacts, agency coordination and responsibilities, necessary fire-fighting equipment, and long-term agreements with service providers, as needed.”²⁵⁴ However, these same requirements are already addressed elsewhere in Recommended Public Services Condition 7 and in the draft FPS Plan. Recommended Public Services Condition 7(c) requires Idaho Power to “provide to each of the fire districts and rural fire protection a contact phone number to call in the event a district needs to request an outage as part of a fire response.”²⁵⁵ Section 1.4 of the draft FPS Plan addresses agency coordination and

²⁵⁴ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 590 of 10016,

²⁵⁵ *Id.*

responsibilities, necessary fire-fighting equipment, and long-term agreements with service providers.²⁵⁶ Idaho Power proposed revisions to Recommended Public Services Condition 7, specifically deletion of the last sentence of paragraph 7(a) to address these redundancies.

The Department agrees that the challenged portion of Recommended Public Services Condition 7 is redundant of other provisions and therefore should be removed.²⁵⁷ Given the parties' stipulation on this issue, the ALJ finds a preponderance of the evidence supports removal of the redundant language (the second sentence of paragraph 7(a)) from Department Recommended Public Services Condition 7. Consequently, in the final order, Public Services Condition 7 should state as follows:

Amended Recommended Public Services Condition 7: The certificate holder shall:

- a. Prior to operation, provide a copy of its Wildfire Mitigation Plan to the Department and each affected county which provides a wildfire risk assessment and establishes action and preventative measures based on the assessed operational risk from and of wildfire in each county affected by the facility.
- b. During operation, the certificate holder shall update the Wildfire Mitigation Plan on an annual basis, or frequency determined acceptable by the Department in consultation with the Oregon Public Utilities Commission.
- c. During operation, for the service territories the facility would be located within, the certificate holder shall provide to each of the fire districts and rural fire protection a contact phone number to call in the event a district needs to request an outage as part of a fire response.
- d. Any Wildfire Mitigation Plan required by the Oregon Public Utilities Commission shall be considered by EFSC as meeting the requirements of this condition.

Issue PS-9: Whether Department-proposed revisions to the Fire Prevention and Suppression Plan (Public Services Condition 6, Proposed Order Attachment U-3) incorrectly reference applicability to facility operations.

Idaho Power raised Issue PS-9 in response to revisions the Department made to the draft FPS Plan in the Proposed Order. In the Proposed Order, the Department added Section 1.4, Fire Response Agreements, to the draft FPS Plan. This new section requires that Idaho Power attempt to negotiate agreements with relevant fire response organizations or federal agencies outlining communication and response procedures for potential fires within their boundaries during facility construction and operation. While Idaho Power agrees that this requirement is

²⁵⁶ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 9780 of 10016.

²⁵⁷ ODOE Rebuttal to Direct Testimony, Evidence and Response to Proposed Site Certificate Conditions at 89; ODOE Closing Brief at 135.

appropriate during the construction phase of the project, the Company disagrees that the same obligations should apply during operation, because the risk of fire is much lower and Idaho Power will generally not have personnel on site to respond to a fire more quickly than fire response organizations in the area. Idaho Power proposed revisions to Section 1.4 of the draft FPS Plan to address the Company's concern.

In light of the persuasive expert testimony explaining that a 500 kV transmission line is unlikely to cause wildfires and therefore the risk of a project-related fire during operation is very low, the Department agreed with Idaho Power's proposed revisions to Section 1.4 of the draft FPS Plan. The Department agreed that the actions Idaho Power will take to ensure fire protection in areas outside designated fire districts, along with the low risk of a project-related fire during operation, were sufficient to ensure that the project would not result in a significant adverse impact to the ability to provide fire protection services within the analysis area.²⁵⁸ The Department also recommended a revision to Recommended Public Services Condition 6 to clarify that the condition and the FPS Plan apply during construction and operation of the proposed facility.²⁵⁹ Idaho Power agrees with this recommendation.

Given the parties' stipulation, the ALJ finds a preponderance of the evidence supports Idaho Power's proposed revisions to Section 1.4 of the draft FPS Plan and the Department's proposed revision to Public Services Condition 6. Accordingly, Section 1.4 of the draft FPS Plan should state as follows (revisions in bold):

1.4 Fire Response Agreements

In areas not covered by a fire response organization or located on federal land, the certificate holder will attempt to negotiate an agreement with the relevant fire response organization or federal agencies as presented in Table 2 above, outlining communication and response procedures for potential fires within their boundaries during facility construction and operation. In those areas not covered by a fire response organization and not located on federal land, the certificate holder will attempt to negotiate an agreement with nearby fire response organizations or the federal agencies to provide fire response. If no such agreements can be reached **during construction**, the certificate holder will propose alternatives such as contracting with a private fire response company or providing additional firefighting equipment at those sites. **If no such agreements can be reached during operation, the certificate holder will consult with the local dispatch centers and report to the ODOE the dispatch center's procedures for responding to wildfires in those areas without fire district coverage.** The certificate holder shall provide documentation to the Oregon

²⁵⁸ ODOE Rebuttal to Direct Testimony, Evidence and Response to Proposed Site Certificate Conditions at 97; ODOE Closing Brief at 136.

²⁵⁹ The Department recommended the following revision (in bold) to paragraph 6(c): All work must be conducted in compliance with the approved plan during construction **and operation, as applicable**, of the facility. ODOE Rebuttal at 98; ODOE Closing Brief at 137.

Department of Energy, demonstrating the final agreements or alternative contract agreements for fire response, or dispatch center procedures as applicable.

Furthermore, Public Services Condition 6, paragraph 6(c) should be revised as follows (revisions in bold):²⁶⁰

c. All work must be conducted in compliance with the approved plan during construction **and operation, as applicable**, of the facility.

Limited parties' Fire Protection Issues – Issues PS-2, PS-3, PS-4, PS-5 and PS-10

Issue PS-2: Fire Protection: Whether the site certificate should require that the public have the opportunity to review and comment on the final Wildfire Mitigation Plan; whether the Wildfire Mitigation Plan should include remote cameras to detect wildfire, safety procedures during red flag conditions, and the requirement that firefighting equipment be present on-site during construction.

Limited parties Miller and Carbiener, acting in both his personal capacity and as a representative of OCTA, and have standing on Issue PS-2. Mr. Carbiener filed direct testimony on this issue, combined with Issue PS-3. Neither Ms. Miller nor Mr. Carbiener filed closing briefs. In his direct testimony, Mr. Carbiener argues that Idaho Power has not been aggressive in its proposed wildfire prevention plans and have not incorporated remote cameras or weather stations in its Wildfire Mitigation Plan. Carbiener Direct Test. at 5. Mr. Carbiener does address the claim regarding public review and comment on the Wildfire Mitigation Plan in his testimony.

Idaho Power developed its Wildfire Mitigation Plan to comply with Public Utility Commission rules, not the Council's siting rules.²⁶¹ As both the Department and Idaho Power note, no applicable statute or rule requires Idaho Power to submit its Wildfire Mitigation Plan for public review and comment as part of the Council's ASC review process. Therefore, there is no need for a site certificate condition requiring such a process. ORS 469.402 authorizes the Council to delegate the approval of a future action and plan finalization to the Department. Furthermore, OAR 345-025-0016 requires that a certificate holder develop proposed monitoring and mitigation plans in consultation with the Department and, as appropriate, other state agencies, local governments and tribes. Consistent with those requirements, Recommended Public Services Condition requires Idaho Power to submit the Wildfire Mitigation Plan to the Department and the affected counties.²⁶² Although Idaho Power is also required to submit the

²⁶⁰ As discussed *infra* under Issue PS-4, the Department proposed additional amendments to Recommended Public Services Condition 6 to inform the scope of review during the agency finalization process of the FPS Plan.

²⁶¹ Dockter Direct Test. at 2-3. As set out in the findings, the primary objectives of the Wildfire Mitigation Plan are to identify and implement strategies that reduce wildfire risk associated with Idaho Power's transmission and distribution facilities and improve Idaho Power's transmission and distribution system's resiliency to any wildfire event, independent of the fire's ignition source. Dockter Direct Ex. A at. 11.

²⁶² See ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 590 of 10016.

Plan to the OPUC for approval under ORS 757.963, that process falls outside the Council's jurisdiction.

As to the second part of Issue PS-2, Mr. Carbiener has presented no evidence or persuasive legal argument in support of his contention that the Wildfire Mitigation Plan should include provisions requiring the installation of cameras, firefighting equipment on-site during construction and/or specific safety procedures during red flag conditions. Furthermore, as discussed in the findings, Idaho Power's 2022 Wildfire Mitigation Plan specifically addresses Red Flag Warnings as a consideration in the PSPS Plan. If the Company determines a combination of critical conditions indicate the transmission and distribution system at certain locations is at an extreme risk of being an ignition source and wildfire conditions are severe enough for the rapid growth and spread of wildfire, then it will initiate a power shutoff plan.²⁶³

In summary, there is no requirement under the Council's review process that the public have the opportunity to review and comment on the final Wildfire Mitigation Plan. Furthermore, there is no requirement under the Council's rules that the Wildfire Mitigation Plan include specific fire protection or fire suppression tools, such as remote cameras, a shut off plan, and on-site firefighting equipment and personnel during construction. As the Department notes in its Closing Arguments, the evidence in the record coupled with the recommended conditions in the Proposed Order requiring finalization and implementation of the FPS Plan, the Vegetation Management Plan, the Right of Way Clearing Assessment, and the Wildfire Mitigation Plan provide a preponderance of evidence to support a Council finding of compliance with OAR 345-022-0110.²⁶⁴

Proposed site certificate conditions related to Issues PS-2 and PS-3:

In his direct testimony, Mr. Carbiener timely proposed two site certificate conditions related to Issues PS-2 and PS-3.

Carbiener Proposed Fire Protection Condition 1: Prior to the start of construction, Idaho Power will complete any Wildfire Prevention Plan or Wildfire Mitigation Plan even if the Public Utilities Commission has not yet developed their plan requirements. If OPUC rules are completed, then Idaho Power must obtain acknowledgement from OPUC that they are acceptable.

Both the Department and Idaho Power oppose this condition as unnecessary. The ALJ agrees. First, since Mr. Carbiener proposed this condition on September 1, 2021, Idaho Power has submitted both its 2021 and 2022 Wildfire Mitigation Plans into the contested case record. Second, as noted above, the recommended conditions in the Proposed Order require Idaho Power to finalize and implement its FPS Plan, Vegetation Management Plan, Right of Way Clearing Assessment, and Wildfire Mitigation Plan, which will further minimize the risk of a project-related fire and the potential impacts to public and private fire protection providers under OAR

²⁶³ Dockter Sur-surrebuttal Test., Ex. B at 75.

²⁶⁴ See ODOE Closing Brief at 121. See also ODOE Response Brief at 91.

345-022-0110. Therefore, this proposed condition is denied.

Carbiener Proposed Fire Protection Condition 2: Prior to the start of Operation (2026), Idaho Power will conduct and publish for all to know, an analysis of their potential investment in cameras and weather stations and other preventive wildfire solutions.

Both the Department and Idaho Power also oppose this condition as unnecessary. Again, the ALJ agrees. First, as discussed above, Mr. Carbiener has provided no persuasive evidence or argument to establish why an applicant must invest in cameras, weather stations, and other preventive wildfire solutions to establish compliance with the Public Services standard. Furthermore, while in the future OPUC may require utilities to include such information in their Wildfire Mitigation Plans, that requirement is a matter outside the scope of the Council's ASC review. Accordingly, this proposed condition is denied.

Issue PS-3: Fire Protection: Whether Council's reliance on the Wildfire Mitigation Plan (Public Services Condition 7) prepared by Applicant for the Oregon Public Utility Commission (OPUC) is adequate to address wildfire response consistent with the Public Services standard.

As with Issue PS-2 above, limited parties Miller and Carbiener, acting in both his personal capacity and as a representative of OCTA, have standing on Issue PS-3. Mr. Carbiener filed direct testimony on this issue. Neither limited party filed closing briefs. In his direct testimony, Mr. Carbiener notes, "it appears the OPUC plans will be general in nature and not specific to B2H." Carbiener Direct Test. Issues PS-2 and PS-3 at 4. He also challenged the fact that, in an OPUC meeting, Idaho Power only identified two areas along the project route as potential fire risk. *Id.* at 3.

As the Department notes in its brief on Issue PS-3, the Public Services standard is not a wildfire or risk assessment standard. It is a standard that evaluates whether the level of demand for services by a proposed facility would significantly impact service providers' ability to continue providing their services. For fire protection service providers, the standard involves an assessment of whether the proposed facility is located within the fire service provider's service territory and whether the proposed facility would significantly impact the provider's level of service (demand) and resources (employees, volunteers and equipment) in the event fire protection services are required during facility construction and operation.

A Wildfire Mitigation Plan is not an essential element of compliance with the Public Services standard. To the extent that Idaho Power's Wildfire Mitigation Plan (which, as discussed above, was developed to satisfy OPUC rules), reduces the proposed facility's potential to cause or contribute to the spread of a wildfire, this reduced potential can be applied to the potential resource demand of the proposed facility under the Public Services standard. However, whether the Wildfire Mitigation Plan is adequate to address wildfire response is not relevant to the Council's determination of whether the proposed facility complies with the Public Services standard.

Mr. Carbiener is correct that the Wildfire Mitigation Plan is general in nature and not specific to the project (although the 2022 Plan discussed the wildfire risk along the proposed project route). However, that is because the Plan's objective is to reduce wildfire risk for Idaho Power's entire transmission and distribution system, and not just the proposed project. For purposes of the proposed project, the evidence in the record, coupled with the recommended conditions requiring implementation of the FPS Plan, the Vegetation Management Plan, the Right of Way Clearing Assessment and Wildfire Mitigation Plan provide a preponderance of evidence to support a Council finding of compliance with the Public Services standard. In other words, the Council may rely on Public Services Condition 7 and the OPUC-approved Wildfire Mitigation Plan, along with conditions requiring implementation of other mitigation and management plans, to find that that construction and operation of the facility are not likely to result in significant adverse impact to fire protection services within the analysis area.

Issue PS-4: Fire Protection: Whether Applicant adequately analyzed the risk of wildfire arising out of operation of the proposed facility and the ability of local firefighting service providers to respond to fires.

Limited parties Cooper and Winters have standing on Issue PS-4. Mr. Cooper filed testimony and argument in support of his position on this issue. Mr. Winters did not submit either. Mr. Cooper contends that Idaho Power did not adequately analyze the risk of a project-related wildfire and that the Company seriously understated the response times of local fire protection agencies to respond to a project-related fire, especially the ability of the La Grande Rural Fire Protection District (LGRFPD) to respond to such a fire. Cooper Closing Brief on Issue PS-4; Cooper Response Brief on Issue PS-4.

Idaho Power responds that it has adequately analyzed the risk of wildfire during operation of the facility and has presented substantial evidence establishing that the risk of a project-related fire is extremely low. Idaho Power also asserts that it has adequately analyzed the response capabilities of fire response organizations near the project site. The Department agrees that Idaho Power adequately analyzed the risk of a project-related wildfire and that the proposed facility is not likely to result in a significant adverse impact to public and private firefighters' ability to provide fire protection service. However, to address concerns about the accuracy of the response time information presented in ASC Exhibit U, Table U-10, the Department recommended amendments to Recommended Public Services Condition 6. ODOE Rebuttal to Direct Testimony at 84; ODOE Closing Brief at 127; ODOE Response Brief at 98.

Risk of project-related fire. Mr. Cooper argues that Idaho Power has not established compliance with OAR 345-022-0110 because: (1) 500 kV transmission lines can ignite, and have ignited, fires; (2) the La Grande area in Union County has a history of catastrophic fires; and (3) the winds, weather conditions, topography, and vegetation in the region already pose a significant fire threat, which the proposed facility will only exacerbate.²⁶⁵ Cooper Closing Brief

²⁶⁵ To the extent Mr. Cooper argues that portions of the transmission line should be buried underground (see, e.g., Cooper Closing Brief on Issue PS-4 at 2, 26-27; Cooper Response Brief on Issue PS-4 at 10), the argument falls outside the scope of Issue PS-4 and outside of the Council's jurisdiction. This is because the Council does not have the authority to evaluate structures and alternative routes that are not

on Issue PS-4 at 1-15. For the reasons that follow, Mr. Cooper's challenges are not persuasive.

First, it is important to note that Idaho Power does not need to prove that the proposed facility cannot or will not cause a fire. Rather, to demonstrate compliance with the Public Services standard, the Company needs to show by a preponderance of the evidence that the proposed facility is not likely to result in a significant adverse impact to public and private firefighters' ability to provide fire protection service. OAR 345-022-0110(1). On this record, Idaho Power has provided substantial evidence demonstrating that 500 kV transmission lines are much less likely to ignite fires than lower voltage lines.²⁶⁶ Idaho Power has also shown that the winds, weather conditions, topography, and vegetation along the project route (including the Mill Creek and Morgan Lake Alternative segments) do not significantly increase the risk of a large, project-related wildfire.²⁶⁷ The persuasive evidence establishes that although fires are not uncommon in the project area, the fire protection agencies are able to contain the fires quickly, while they are still small.²⁶⁸ Moreover, the FSP Plan, the Right of Way Clearing Assessment, and the Vegetation Management Plan all include measures the Company will take to minimize the risk of project-related fires.

The fire history data for the project area demonstrates that, although fires occur in the area frequently, the fire protection agencies are able to contain those fires at small sizes. The fact that there has been two large wildfires near La Grande in the last 150 years (one in 1858 and the Rooster Peak fire in 1973), is not an adequate predictor of the likelihood of a large project-related fire in the future. Putting aside the very low probability of the proposed facility igniting a fire in Union County or elsewhere along the route, both fire prevention measures and firefighting capabilities have improved over the past 50 years. Indeed, there is now an aerial firefighting dispatch center located at the La Grande Airport.²⁶⁹ Mr. Cooper has not overcome the persuasive evidence demonstrating that the proposed facility is not likely to result in a significant adverse impact public and private firefighters' ability to provide fire protection service.

Local agency response times. As noted above, Mr. Cooper maintains that Idaho Power understated the response times of local fire agencies in general, and in particular the response time of the LGRFPD. Mr. Cooper asserts that it would take the LGRFPD significantly longer than four to eight minutes to respond to a fire in the area Morgan Lake Park, because of the time needed to muster a crew and the travel time to the area. Cooper Closing Brief at 15-18; Cooper Response Brief at 8-9.

Although Mr. Cooper is correct that it would likely take the LGRFPD more than four to

included in, and governed by, the site certificate application. *See In re the Application for a Site Certificate for the Wheatridge Wind Energy Facility*, Final Order, April 28, 2017, page 7 n.22.

²⁶⁶ Lautenberger Direct Test. at 54; Lautenberger Rebuttal Test. at 58-62.

²⁶⁷ Lautenberger Rebuttal Test. at 25-27.

²⁶⁸ Lautenberger Rebuttal Test. at 25-27.

²⁶⁹ Dockter Sur-surrebuttal Exhibit B; Dockter Cross-Exam. Test., Tr. Day 3 at 17.

eight minutes to respond to a fire near Morgan Lake, that does not change the analysis of the proposed facility's compliance with OAR 345-022-0110(1). In ASC Exhibit U, Idaho Power acknowledged that response times to fires in the analysis area will vary depending on the time of day, the priority of the emergency/call and the location of the emergency and the type of available access.²⁷⁰ In ASC Exhibit U, Table U-10, Idaho Power provided a response time of four to eight minutes for the LGRFPD based on information provided by the LGRFPD. At the time LGRFPD provided this information (in 2017), neither Morgan Lake Park nor surrounding properties were within the district's protection jurisdiction.²⁷¹

Furthermore, although LGRFPD has since added several properties in the vicinity of Morgan Lake to its protection area, the fact remains that the LGRFPD has mutual aid agreements with both the City of La Grande and the ODF. The City and the ODF are primarily responsible for the Morgan Lake area. They are located closer to Morgan Lake than the LGRFPD and would likely respond more quickly to the area than the LGRFPD.²⁷² Moreover, in the event of a large wildfire in the Morgan Lake area, there are other resources, including aerial resources, available to deploy to combat the fire.²⁷³

In summary, a preponderance of the evidence establishes that Idaho Power adequately analyzed both the risk of wildfire arising out of operation of the proposed facility and the ability of local firefighting service providers to respond to fires in or near the project area. Mr. Cooper has not demonstrated otherwise.

Proposed site certificate conditions related to Issue PS-4:

In his direct testimony for Issue PS-4, Mr. Cooper timely proposed a fire protection site certificate condition. He requested that the line be "undergrounded through all five counties in Oregon, since they are categorized as Fire Weather Hazard 3." Cooper Direct Test. Issue PS-4 at 16. This proposed condition is inappropriate because it falls outside the Council's jurisdiction. Idaho Power did not propose an underground transmission line and the Council cannot require that the project be constructed underground. Therefore, this proposed condition is denied.

In his closing brief for Issue PS-4, Mr. Cooper proposes additional site certificate conditions, including a request that Idaho Power "fully fund a Multi-Agency Fire and Emergency Response Station to be located at the Baker City Municipal Airport." ~~Cooper Closing Brief on Issue PS-4 at 28. Because Mr. Cooper did not submit this proposed condition in a timely manner, the ALJ declines to address its necessity or appropriateness. Council rejects Mr. Cooper's proposed condition as unnecessary and outside the Council's jurisdiction. Council does not have the authority to require, wholesale, that an applicant such as Idaho Power provide compensation and or funding to create a fire and response station in order to satisfy the Public Services standard. This proposed condition is neither appropriate or necessary.~~

As noted above, the Department recommended amending Recommended Public Services Condition 6 to address concerns about the accuracy of the response time information presented in

²⁷⁰ ODOE - B2HAPPDoc3-38 ASC 21_Exhibit U_PublicServices_ASC 2018-09-28, page 20 of 143.

²⁷¹ Kretschmer Dep. at 6-8, 31, 40, Cooper Direct Ex. 6.

²⁷² Dockter Cross-Exam. Test., Tr. Day 3 at 17.

²⁷³ *Id.*

ASC Exhibit U, Table U-10. Specifically, the Department recommended adding a provision requiring Idaho Power to:

Identify specific seasonal work restrictions, onsite fire-fighting equipment and necessary fire protection resources based on: 1) documented evaluation of reasonably available sources related to wildfire risk and sensitive seasonal conditions such as high temperatures, drought and high winds; and, 2) updated information obtained from the LGRFPD on the number of full-time and volunteer employees, number and type of equipment/vehicles, and response times to the facility. Response time must consider LGRFPD crew mobilization time and access limitations (e.g., road condition, level of service and impact of multi-users from Morgan Lake Park, residents and emergency services).

ODOE Closing Brief at 127.

Idaho Power maintains this revision to Recommended Public Services Condition 6 is not necessary because the seasonal work restrictions, onsite fighting equipment, and fire protection considerations are already addressed in the FPS Plan. Idaho Power notes that Section 2.2 of the draft FPS Plan requires the Company to restrict construction operations in specified locations during fire season at the direction of a land-management agency. Idaho Power also notes that it already identified the firefighting equipment it will keep onsite during construction and will coordinate with land-management agencies to implement any additional measures required to allow construction to continue. In addition, Idaho Power asserts that additional fire prevention measures based on fire protection districts' response times is unnecessary because the Company's FPS Plan, including the requirement to take additional precautions during periods of high fire risk, will adequately address the potential fire risk, thereby ensuring that the project does not result in a significant adverse impact to the ability of public and private providers to provide fire protection. Idaho Power Closing Argument at 43-46; Idaho Power Response Brief at 30-31.

In its Response to Closing Arguments, the Department notes that the Public Services standard is neither a risk assessment nor wildfire mitigation standard. The purpose and legal parameters of the Public Services standard is to evaluate the proposed facility's demand on existing service capacity, and not forecast the project's potential demand based on wildlife risk assessment. Upon considering Idaho Power's objections to the proposed amendments to Recommended Public Services Condition 6, the Department acknowledged that Idaho Power's contentions have merit. The Department agreed that land-management agencies such as the ODF and/or the BLM must be given deference during the finalization of the Company's FPS Plan as to the factors that should be considered, work restrictions and process for establishing high-fire risk/no-work days and type of fire-fighting equipment that Idaho Power should have onsite during construction. ODOE Response to Closing Arguments at 95-97.

The Department proposed further revisions to Recommended Public Services Condition 6 to clarify its position regarding the scope of review during finalization of the FPS Plan. The Department proposed clarifying language to allow consideration of the listed factors, while also allowing flexibility for the land management agencies that participate in the finalization process

to weigh in and determine the factors to be addressed in the FPS Plan, particularly in the lands the agencies manage. The Department proposed a Second Amended Recommended Public Services Condition 6 as follows (revisions in bold):

Second Amended Recommended Public Services Condition 6: Prior to construction of a facility phase or segment, in accordance with the OAR 345-025-0016 agency consultation process outlined in the plan (Attachment U-3 of the Final Order on the ASC), the certificate holder shall submit final Fire Prevention and Suppression Plan(s) to the Department. **The plan finalization process shall consider (a)(i) and (a)(ii) unless otherwise identified by a land management agency or other participating review agency:**

a) The protective measures as described in the draft Fire Prevention and Suppression Plan as provided in Attachment U-3 of the Final Order on the ASC **and:**

i. Wildfire training for onsite workers and facility personnel be conducted by individuals that are National Wildfire Coordination Group and Federal Emergency Management Agency certified.

ii. **Specific seasonal work restrictions, onsite fire-fighting equipment and necessary fire protection resources based on: 1) documented evaluation of reasonably available sources related to wildfire risk and sensitive seasonal conditions such as high temperatures, drought and high winds; and 2) update Table PS-9 of the Proposed Order based on information obtained from the LGRFPD on the number of full-time and volunteer employees, number and type of equipment/vehicles, and response times to the facility. Response time must consider LGRFPD crew mobilization time and access limitations (e.g., road condition, level of service and impact of multi-users from Morgan Lake Park, residents and emergency services).**

b) A description of the fire districts and rural fire protection districts that will provide emergency response services during construction and copies of any agreements between the certificate holder and the districts related to that coverage.

c) All work must be conducted in compliance with the approved plan during construction **and operation** of the facility.

The ALJ finds the Department's proposed revisions to Recommended Public Services Condition are necessary and appropriate to meet the requirements of the Public Services standard. Therefore, the ALJ recommends that, in the Final Order, the Council modify this condition accordingly.

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Ruling Mr. Cooper's Motion to Strike Portions of Idaho Power's Response Brief on Issue PS-4:

Following receipt of Idaho Power's Response Brief, Mr. Cooper moved to strike the following assertion in Idaho Power's brief: "Mr. Cooper's testimony demonstrates that firefighters in La Grande had to rely on bucket brigades to fight the Rooster Peak Fire."²⁷⁴ Cooper Motion to Strike at 1. Mr. Cooper asserts that this assertion is false, or at the very least misleading, because the evidence actually demonstrates that in 1973, firefighters used a variety of measures, including helicopters and air tanker drops, to combat the Rooster Peak Fire. *Id.* at 1-2.

The ALJ declines to strike the statement from Idaho Power's brief. The ALJ notes, however, the evidence shows that about 300 firefighters fought the lightning-caused Rooster Peak fire with the assistance of approximately 1500 community volunteers, and using a variety of fire suppression measures, including bucket brigades, digging fire lines, helicopter water drops, and airplane flame retardant drops.²⁷⁵ Consequently, to the extent Idaho Power's argument suggests that firefighters had to rely solely on bucket brigades to fight the 1973 fire, the contention is given no weight.

Issue PS-5: Fire Protection: Whether the Wildfire Mitigation Plan is adequately developed and includes sufficient detail to allow for public participation.

Ms. Gilbert has standing on Issue PS-5, and bears the burden of producing evidence to support her challenges to the Wildfire Mitigation Plan. Ms. Gilbert did not timely file any written direct testimony or exhibits in support of her position on Issue PS-5, nor did she submit written closing argument on this issue. Because Ms. Gilbert failed to submit evidence and/or argument in support of her claim, the ALJ considers the claim unsubstantiated.²⁷⁶ The findings in the Proposed Order constitute *prima facie* evidence of Idaho Power's compliance with the Public Service standard as it relates to Issue PS-5.

Issue PS-10: Whether the draft Fire Prevention and Suppression Plan (Attachment U-3) is adequate and whether local service providers would be able to respond to a facility-related fire.

Limited parties Charles Lyons and Stacia Webster have standing on Issue PS-10. In his direct testimony, Mr. Lyons argues that the FPS Plan is inadequate because Idaho Power seriously underestimates the risk of fires caused by 500 kV transmission lines in the Blue Mountain and Morgan Lake Alternative segments of the proposed facility. Lyons Direct Test. at

²⁷⁴ Idaho Power's Response Brief for Issue PS-4 at 15, citing Cooper Direct Test. Issue PS-4 at 6.

²⁷⁵ See, e.g., Cooper Direct Test. at 3-6; Cooper Direct Ex. 3.

²⁷⁶ See *Ruling on Motion to Dismiss* at 12-13 ("absent timely filed written closing argument from Ms. Gilbert, the ALJ will consider the claim asserted as unsubstantiated, and will not address the merits of Issue PS-5 in the Proposed Contested Case Order.").

2-4. Mr. Lyons also contends the draft PPS Plan lacks clear criteria for emergency de-energizing the proposed line, that it fails to mitigate fire danger by burying portion of the line, and that it does not provide specific information about points of access for firefighters along the route nor contingency plans for emergencies when resources are scarce.²⁷⁷ *Id.* at 5-6.

In her testimony, Ms. Webster offers evidence of the 1973 Rooster Peak wildfire in the forested mountains west of La Grande. Ms. Webster argues that the draft FPS Plan misstates local fire protection agencies' ability to respond to a project-related fire and the estimated response times. Webster Direct Test. at 3-6. Ms. Webster also contends that the draft FPS Plan should incorporate an amended version of Proposed Order Table PS-9, setting out the fire protection agencies and associations within the analysis area and accurate estimates of the agencies' response times to a project-related fire in their service area. *Id.*

First, as discussed above in connection with Issue PS-4, persuasive evidence in the record belies the limited parties' claims that Idaho Power has seriously underestimated the risk of a project-related fire. A preponderance of evidence in the record establishes that 500 kV power lines are unlikely to ignite a fire, that operation of the proposed facility will not significantly increase the risk of wildfire in the project area,²⁷⁸ and that the construction and operation of the facility will not result in significant adverse impact providers' ability to provide fire protection. The evidence also demonstrates that, in the unlikely event of a project-related fire, fire response agencies would be able to promptly respond to and suppress the fire.

Local agency response. Both Mr. Lyons and Ms. Webster raised concerns that local agencies would be delayed in their response until Idaho Power de-energized the line. However, the record establishes that the Company will be able to de-energize the line remotely in a matter of seconds. Therefore, any delay in this regard would be minimal.²⁷⁹ Ms. Webster also argued that local agency response times are incorrect in the Proposed Order Table PS-9²⁸⁰ because they do not include time that may be needed to muster a crew of volunteers. However, the record demonstrates that local fire districts and adjacent fire protection agencies have established mutual aid agreements to pool resources, ensure cooperation between these entities, and prevent

²⁷⁷ In his Closing Brief, Mr. Lyons mistakenly asserts that the Wildfire Mitigation Plan is an update to the draft FPS Plan. He then questions the sufficiency of the Wildfire Mitigation Plan under the Council's standards and the Oregon PUC's rules. Lyons Closing Brief on Issue PS-10. First, the FPS Plan and the Wildfire Mitigation Plan are separate plans that serve different purposes. The latter is not a replacement for, or update of, the former. Second, Mr. Lyons' challenges to the Wildfire Mitigation Plan fall outside the scope of Issue PS-10. Issue PS-10 is limited to the adequacy of the draft FPS Plan and the ability of local service providers to respond to a facility-related fire. Because Mr. Lyons does not have standing to challenge Idaho Power's Wildfire Mitigation Plan, the ALJ declines to address these arguments in any substantive manner.

²⁷⁸ Lautenberger Rebuttal Test. at 25-27, 54-62.

²⁷⁹ Dockter Rebuttal Test. at 13.

²⁸⁰ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 579-581 of 10016.

fires on a county and state level instead of isolating efforts to local districts.²⁸¹ Therefore, in the unlikely event that a local volunteer fire response organization needed several minutes to muster a crew to respond to a project-related fire, other agencies in the area would respond in accordance with the mutual aid agreements.

Ms. Webster also questions whether local fire responders have been adequately trained to fight transmission line fires. However, there is no evidence indicating such specialized training is necessary.²⁸² The evidence establishes that the response to a project-related fire would be similar to a wildland fire, because a fire's cause of ignition does not lead to different fire behavior or require different suppression methods to contain the fire perimeter.²⁸³ Finally, Mr. Lyons asserts that Idaho Power has not adequately assessed access points for first responders to reach the project but, as Idaho Power notes, the Company identified vehicle access points for all routes in the ASC.²⁸⁴

In summary, notwithstanding the limited parties' evidence and argument, a preponderance of evidence in the record establishes that the draft FPS Plan is adequate and that local services providers would be able to respond to and suppress a facility-related fire. In addition, as required by OAR 345-022-0110(1), a preponderance of the evidence demonstrates that the construction and operation of the facility will not result in significant adverse impact providers' ability to provide fire protection.

Proposed site certificate conditions related to Issue PS-10:

Mr. Lyons proposed two site certificate conditions related to fire protection for the first time in his Closing Brief.²⁸⁵ ~~For the reasons previously explained, the ALJ declines to address~~

²⁸¹ ODOE - B2HAPPDoc3-38 ASC 21_Exhibit U_PublicServices_ASC 2018-09-28, page 20 of 143.

²⁸² Moreover, as provided in the draft FPS Plan, Idaho Power offers a training course for emergency responders that addresses potential hazards involving electricity and necessary guidelines that help ensure the safety of responders and the general public. ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 9785 of 10016.

²⁸³ Dockter Rebuttal Test. at 19-20.

²⁸⁴ See generally Proposed Order, Attachment B-5, Road Classification Guide and Access Control Plan, ASC Exhibit B, Attachment B-5, ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 8504-8646 of 10016.

²⁸⁵ Mr. Lyons proposed the following:

- (1) Before siting can be approved, Idaho Power should consult with each county along the proposed route about their wildfire protection plans and meet with local forestry, government, and fire authorities in order to revise their fire risk assessment to conform to that specified in OAR 860-300-0002, and to insure that county and industry risk ratings are in agreement; and

~~these late submitted proposed conditions, other than to summarily note that,~~ Based on the findings herein, the proposed conditions are unnecessary.

The Department's proposed amendments to Recommended Public Services Condition 6, Attachment U-3 of the Proposed Order (addressing finalization of the draft FPS Plan), are addressed above in connection with Issue PS-4.

Ruling on Idaho Power's Motion to Strike portions of Mr. Lyons' Closing Brief on Issue PS-10:

In the motion, Idaho Power moves to strike, or alternatively give no weight to, portions of Mr. Lyons' Closing Brief challenging the adequacy of the Wildfire Mitigation Plan on the grounds that Mr. Lyons' arguments fall outside the scope of Issue PS-10. Motion to Strike at 3. Mr. Lyons opposes Idaho Power's motion as procedurally inappropriate. Lyons Opposition to Motion to Strike at 1.

The ALJ agrees that Mr. Lyons does not have standing to challenge the sufficiency of the Wildfire Mitigation Plan and therefore his arguments in that regard fall outside the scope of Issue PS-10. Accordingly, as noted above, the ALJ grants Idaho Power's alternative request and declines to consider Mr. Lyons' statements and arguments regarding the sufficiency of the Wildfire Mitigation Plan.

Recreation Standard

As pertinent here, OAR 345-022-0100, the Recreation standard states:

(1) [T]o issue a site certificate, the Council must find that the design, construction and operation of a facility, taking into account mitigation, are not likely to result in a significant adverse impact to important recreational opportunities in the analysis area as described in the project order. The Council shall consider the following factors in judging the importance of a recreational opportunity:

- (a) Any special designation or management of the location;
- (b) The degree of demand;
- (c) Outstanding or unusual qualities;
- (d) Availability or rareness;
- (e) Irreplaceability or irretrievability of the opportunity.

Recreation activities at Morgan Lake Park – Issue R-1

Issue R-1: Whether Applicant adequately evaluated the potential adverse impact

(2) If reliable fire ratings then indicate high fire risk in the Morgan Lake area, the proposed transmission line should be buried underground through the area of elevated risk, or re-routed, preferably to the original BLM-approved route.

Lyons Closing Brief at 11-12.

of the proposed facility on recreational opportunities at Morgan Lake Park.

Limited party Colin Andrew has standing on Issue R-1. Mr. Andrew provided direct testimony in support of his claim that Idaho Power did not adequately evaluate the potential adverse impacts the proposed facility will have on recreational opportunities at Morgan Lake Park. Mr. Andrew asserts that Idaho Power did not evaluate the visual impacts of a proposed communication station near Morgan Lake Park, viewers' subjective perceptions, or potential noise impacts to users near the edge of Twin Lake.²⁸⁶ Andrew Direct Test. at 7-11. Mr. Andrew also submitted testimony from other La Grande residents, frequent visitors to Morgan Lake Park, who testified to their belief that construction and operation of the proposed transmission line will destroy the beauty and serenity of Morgan Lake Park and have an adverse impact their ability to use and enjoy recreation opportunities at the Park.²⁸⁷ Mr. Andrew did not file closing argument on this issue.

As set out in the findings, Idaho Power evaluated potential impacts to Morgan Lake Park under the Recreation standard because the park is an important recreational opportunity within the project analysis area. Morgan Lake Park is not a scenic resource described in the Scenic Resources standard or a protected area under the Protected Areas standard, and therefore Idaho Power was not required to evaluate the park under those standards. Contrary to Mr. Andrew's claims, a preponderance of the evidence in the record establishes that, taking into account mitigation, the proposed facility is not likely to result in a significant adverse impact to the recreational opportunities at Morgan Lake Park.²⁸⁸ More specifically, a preponderance of the evidence establishes that, with the proposed design modifications set out in Recommended Recreation Condition 1, the proposed Morgan Lake Alternative route will have a less than significant visual impact to the recreational opportunities at Morgan Lake Park.²⁸⁹

²⁸⁶ Mr. Andrew also contends that the proposed site boundary for the Morgan Lake Alternative route runs through Morgan Lake Park. Andrew Direct Test. at 5-6. This is incorrect. Idaho Power does not propose any project facilities within the Park boundary, and no portion of the site boundary overlaps with the Park boundary. Stippel Rebuttal Test. at 1; Kling Rebuttal Test. at 86. In addition, Mr. Andrew asserts that Morgan Lake Park is a State Game Refuge. Andrew Direct Test. at 3. There is no persuasive evidence in the record establishing that the park is currently designated as a wildlife refuge. However, even if the park was so designated, that fact would not invalidate Idaho Power's analysis of the project's impacts on recreational opportunities at the park. Finally, Mr. Andrew contends that the project would "ruin" stargazing opportunities at the junction of Morgan Lake Road and the park entrance road. Andrew Direct Test. at 2. This argument falls outside the scope of Issue R-1 because the referenced junction is not within the park boundaries and the road itself is not an important recreational opportunity subject to review under the Recreation standard. *See* OAR 345-022-0100(1) (discussing factors to be considered in judging the importance of a recreational opportunity).

²⁸⁷ *See* Carper Direct Test., Edvalson Direct Test., Griffith Direct Test., Jones Direct Test., McAllister Direct Test., and Witek Direct Test.

²⁸⁸ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 530-31 of 10016.

²⁸⁹ *Id.*

As demonstrated by ASC Exhibit T, Idaho Power’s November 2019 supplemental analysis of impacts at Morgan Lake Park, and the November 2021 Revised Supplemental Analysis,²⁹⁰ Idaho Power has adequately evaluated the potential adverse impacts of the proposed facility on the recreational opportunities at Morgan Lake Park. Contrary to Mr. Andrew’s contention, Idaho Power was not required to collect data on how the “typical visitor” to Morgan Lake Park would perceive the facility as part of its impact assessment. The evidence establishes that recreational opportunities will continue in a natural setting throughout a vast majority of the park, because no project component will be visible from approximately 84 percent of the park area.²⁹¹ Rather, high-intensity visual impacts will only occur in about 16 percent of the park, mostly in the southern portion, where the project will be close to the park and vegetation will provide little or no screening.²⁹² Nevertheless, although visible from certain locations within the park, the project will not preclude recreational opportunities and recreation will continue to occur in a natural setting throughout the vast majority of the park.²⁹³ The project’s potential visual impacts to Morgan Lake Park will be less than significant, as that term is defined by Council rule.

In addition, contrary to Mr. Andrew’s assertions, a preponderance of the evidence establishes that Idaho Power adequately evaluated the potential noise impacts on recreation resources at Morgan Lake Park. As detailed in the Morgan Lake Park Revised Supplemental Analysis, Idaho Power analyzed potential noise impacts resulting from construction and operation by discussing the predicted noise levels at various camping and recreation locations in the park.²⁹⁴ Idaho Power found that noise impacts during construction would be short-term. During facility operation, noise impacts would come from periodic vegetation maintenance, inspections, and corona noise from the transmission line. Noise from maintenance and inspections would be short term, occurring about once a year. Corona noise from the transmission lines would be low-level, exceed ambient levels only infrequently during foul weather events, and would not preclude recreational opportunities. Accordingly, the proposed facility will result in a less than significant noise impact to recreation at Morgan Lake Park.²⁹⁵ Mr. Andrew has not presented any persuasive evidence demonstrating otherwise.

Visual impacts at Morgan Lake Park – Issues R-2, R-3, and R-4

Issue R-2: Whether the visual impacts of the proposed facility structures in the viewshed of Morgan Lake Park are inconsistent with the objectives of the Morgan

²⁹⁰ Kling Rebuttal Ex. E.

²⁹¹ Kling Rebuttal Test. at 102.

²⁹² *Id.* at 102; Kling Rebuttal Ex. E at 17.

²⁹³ *Id.*

²⁹⁴ Kling Rebuttal Ex. E at 3-5.

²⁹⁵ Kling Rebuttal Ex. E at 6.

Lake Park Recreational Use and Development Plan and should therefore be reevaluated.

Limited parties Lois Barry and Michael McAllister have standing on Issue R-2. The limited parties provided direct testimony asserting that the construction and operation of the proposed transmission line will have an adverse impact on visitors' ability to use and enjoy recreation opportunities at the Morgan Lake Park. In her Closing Argument on Issue R-2, Ms. Barry asserts that the Morgan Lake Plan "should prevail" and that Idaho Power erred rating the proposed facility's visual impacts to Morgan Lake Park as less than significant. L. Barry Closing Argument at 28-30. In his Closing Brief, Mr. McAllister argues that, in evaluating Morgan Lake Park as an important recreational resource, Idaho Power did not give sufficient weight to the management objectives of the Morgan Lake Plan. Mr. McAllister asserts that, had Idaho Power given sufficient weight to the Park Plan's objectives of minimum development to preserve the maximum natural setting, it would have determined that the proposed facility will result in a significant adverse visual impact.²⁹⁶ McAllister Closing Brief at 4-6.

As set out in the findings, the Policy Statement in the Morgan Lake Plan states, in pertinent part:

Morgan Lake Park shall be managed and improved in a manner consistent with the objective of providing a quality outdoor recreational experience harmonious with a natural forest and lake area (as opposed to typical city park activities). Example activities consistent with this objective include fishing, bird watching, nature study, boating, but do not include baseball, motorbike trails, hunting, shooting, or playground activities using swings, merry-go-rounds, slides, etc.

McAllister Ex. 4 at 6. The limited parties contend that Idaho Power did not sufficiently consider the proposed facility's visual impacts on recreational opportunities in undeveloped areas of the park and should have given more weight to the Morgan Lake Plan's policy of preserving the park's natural forest and lake setting.

First, the record establishes that Idaho Power is not required to demonstrate compliance with the Morgan Lake Plan for purposes of the Seenie Recreation Resources standard because there are no proposed project components located within the park boundary. Second, the record demonstrates that Idaho Power did consider the objectives and values of the Morgan Lake Plan in its analysis.

²⁹⁶ Mr. McAllister makes several arguments in his Closing Brief that are outside the scope of Issue R-2. Because these arguments are outside the scope of Issue R-2 and Mr. McAllister's standing in this matter, they are not considered. For example, Mr. McAllister argues that the project site boundary crosses into Morgan Lake Park. McAllister Closing Brief at 6-10. Not only is this claim outside the scope of Issue R-2, but a preponderance of the evidence establishes otherwise. Mr. McAllister also argues that Idaho Power's assessment of the proposed facility's impact on Morgan Lake Park, including the November 2021 Revised Supplemental Analysis is "deeply flawed and based on unsupported assumptions." McAllister Closing Brief at 10-22. Issue R-2 asks whether the proposed facility's visual impacts should be reevaluated because they are *inconsistent with the objectives of the Morgan Lake Park Plan*, and not whether Idaho Power's impact assessment was flawed in other respects. Furthermore, that contention is

addressed above in connection with Issue R-1.

In all three evaluations (ASC Exhibit T, the November 2019 supplemental analysis, and the November 2021 Revised Supplemental Analysis), Idaho Power referenced the Morgan Lake Plan's goals and objectives. In its November 2019 supplemental analysis, Idaho Power noted that although Morgan Lake Park is an important recreation opportunity, the Morgan Lake Plan did not identify any specific scenic views or values as particularly important providing a quality outdoor recreational experience.²⁹⁷ In the Proposed Order, the Department included Recommended Recreation Condition 1 to mitigate the overall potential visual impacts to visitors Morgan Lake Park and users of the park's recreational opportunities.²⁹⁸

In response to the limited parties' ongoing claims that Idaho Power did not sufficiently consider the proposed facility's potential impact to recreational opportunities in the undeveloped areas in the park, the Company revisited its impact analysis of the park. Idaho Power provided additional evidence of the project's potential adverse impacts to Morgan Lake Park in Kling Rebuttal Exhibits E, F and G.²⁹⁹ Idaho Power specifically addressed disbursed recreation opportunities in undeveloped areas of the park such as bird watching and nature study (both of which are referenced in the Morgan Lake Plan Policy Statement). The Revised Supplemental Analysis acknowledged that scenery is a valued attribute of the recreational opportunities at Morgan Lake Park.³⁰⁰ The Revised Supplemental Analysis also recognized that the proposed facility would be visible from approximately 16 percent of the park, primarily from the access road and day-use parking areas located to the south of Morgan Lake, and undeveloped areas west and south of Little Morgan Lake. Idaho Power acknowledged that in those areas of the park, where the towers are not screened, the visual contrast will be high. Idaho Power also acknowledged that at certain observation points within that 16 percent area of visibility, scenic integrity would be reduced to low and viewer perception could be high.³⁰¹ Nevertheless, Idaho Power concluded (and the Department concurred³⁰²) that impacts to the park *overall* would be less than significant, and that the proposed mitigation (including the proposal to expand use of the H-frame structures to all tower locations between mileposts 5 to 8) would further reduce the potential visual impacts in that 16 percent of the park.

To summarize, Issue R-2 asks, in essence, whether the proposed facility's visibility from certain vantage points within the boundary of Morgan Lake Park are inconsistent with the

²⁹⁷ See ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 7702 of 10016.

²⁹⁸ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 530-31 of 10016.

²⁹⁹ Exhibit E is the Revised Morgan Lake Park Supplemental Analysis (Nov. 12, 2021); Exhibits F1, F2, and F3 are video simulations of potential visual impacts in Morgan Lake Park; and Exhibit E is a study of tree heights and locations at Morgan Lake Park.

³⁰⁰ Kling Rebuttal Ex. B at 17.

³⁰¹ *Id.* at 14-17.

³⁰² See ODOE Response to Closing Arguments at 109.

Morgan Lake Plan and whether Idaho Power should reevaluate those visual impacts. A preponderance of the evidence establishes that, although the proposed facility will not be built within the park boundaries, the park is nevertheless an important recreational opportunity in the project's analysis area. For that reason, Idaho Power looked to the objectives and values of the Morgan Lake Plan to determine that scenery is a valued attribute of Morgan Lake Park. The Company incorporated that determination in its analysis of the proposed facility's potential impacts to the park. Contrary to the limited parties' contentions, the Revised Supplemental Analysis confirms that, taking into account mitigation, the proposed facility's impact on recreational opportunities at Morgan Lake Park will be less than significant. Indeed, as the Department notes, the Recreation standard does not require the Council to find that there will be *no* impact on a recreational opportunity, only that there is sufficient mitigation to ensure that impacts will be avoided, minimized, corrected or compensated so the impact is less than significant.³⁰³

Ruling on Mr. McAllister's Request to Exclude Kling Rebuttal Exhibit E:

In his Closing Brief, Mr. McAllister asks that the ALJ strike Idaho Power's Revised Supplemental Analysis (Kling Rebuttal Ex. E) from the evidentiary record because it is a "new study and opinion" to which the limited parties were "denied the opportunity to respond." McAllister Closing Brief at 20. As explained below, Mr. McAllister's argument is not persuasive and his request to exclude the exhibit is denied.

Idaho Power timely submitted the Revised Supplemental Analysis (Kling Rebuttal Exhibit B) in support of its position on Issues SR-2, SR-3, SR-7, R-1, R-2, R-3, and R-4. The limited parties with standing on those issues had the opportunity to object to this evidence following its filing in November 2021,³⁰⁴ but did not do so. The limited parties also had the opportunity to respond to the substance of the revised analysis in their surrebuttal testimony and the opportunity to question Ms. Kling about the revised analysis during the cross-examination hearing.³⁰⁵ Kling Rebuttal Ex. E was properly admitted into the evidentiary record (*see* Appendix 1, Table of Additional Admitted Evidence) and is properly considered herein. Therefore, the ALJ denies the request to strike or exclude this evidence.

Ruling on Idaho Power's Motion to Strike Portions of Mr. McAllister's Closing Arguments on Issue R-2:

Idaho Power moves to strike, or in the alternative requests that the ALJ give no weight to, statements in Mr. McAllister's closing arguments that address issues outside the scope of Mr. McAllister's standing on Issue R-2 and/or that were already addressed and resolved on summary determination. Specifically, Idaho Power challenges:

³⁰³ *Id.*

³⁰⁴ *See Second Case Management Order* at 10 (setting November 22, 2021 as the deadline for filing objections to rebuttal testimony).

³⁰⁵ Ms. Barry timely filed a request to cross-examine Ms. Kling regarding Issue R-2. Mr. McAllister did not file a similar request.

1. All statements relating to Idaho Power's development of the Morgan Lake Alternative;
2. Mr. McAllister's arguments that Idaho Power was required to survey subjective evaluations of visual impacts to Morgan Lake Park;
3. Mr. McAllister's argument that a portion of the Project site is located within the boundaries of Morgan Lake Park;
4. All statements relating to the route analyzed in the federal National Environmental Policy Act ("NEPA") process, including any assertions that Idaho Power identified the Proposed Route as the same route analyzed in the federal process;
5. Mr. McAllister's arguments that Idaho Power must analyze wetlands located within Morgan Lake Park as Habitat Category 1; and
6. Mr. McAllister's statements regarding compliance with Oregon's Wildlife Diversity Program, the 1986 Emergency Wetlands Resources Act, and/or Oregon's Comprehensive Outdoor Recreation Plan.

Idaho Power's Motion to Strike, Issue R-2 at 9. Mr. McAllister filed an opposition to the motion, asserting that the motion is procedurally improper and substantively incorrect. McAllister Opposition to Motion to Strike, Issue R-2 at 1-4.

Although the *Case Management Order* does not address motions to strike, the Council's procedural rules specifically allow parties, including limited parties, to submit motions seeking an order or other relief. OAR 345-015-0054(1). Therefore, the ALJ rejects Mr. McAllister's procedural challenge to the motion. The ALJ also agrees with Idaho Power that Mr. McAllister's closing brief includes arguments that fall outside the scope of Issue R-2, outside the scope of Mr. McAllister's standing in this matter, and/or outside the Council's jurisdiction.³⁰⁶

As discussed above, Issue R-2 asks whether the proposed facility's visibility from certain vantage points within the boundary of Morgan Lake Park are inconsistent with the Morgan Lake Plan and whether Idaho Power should reevaluate those visual impacts. Mr. McAllister's assertion that Idaho Power did not adequately study the Morgan Lake Alternative falls outside the narrow scope of Issue R-2. Mr. McAllister's challenge to Idaho Power's methodology for assessing visual impacts and his claim that the Company should have surveyed typical visitors to

³⁰⁶ Mr. McAllister appears to acknowledge as much in his Closing Brief, where he states:

It bears mention that the narrow issue R-2 as articulated by this body does not accurately reflect the issue Petitioner McAllister raised in public comment and his Petition for Party Status: the failure to conduct site certificate review in a manner consistent with federal agency review[.] * * * Petitioner McAllister was precluded from challenging this core issue—properly raised during public comment—during the contested case. Petitioner McAllister intends to appeal the exclusion of this issue at the conclusion of the contested case.

McAllister Closing Brief at 3.

Morgan Lake Park is also outside the narrow scope of Issue R-2.³⁰⁷ Additionally, Mr. McAllister's claims regarding the project site boundary in relation to Morgan Lake Park were conclusively resolved on summary determination. Mr. McAllister's arguments regarding federal agency review and the BLM's recommended preferred route are not only outside the scope of Issue R-2 but also outside Council's jurisdiction. Finally, Mr. McAllister's arguments pertaining to the Morgan Lake Alternative and compliance with the Fish and Wildlife Habitat standard are outside the scope of Issue R-2. The arguments were already resolved on summary determination (Issue FW-13). Accordingly, in the context of Issue R-2, the ALJ grants Idaho Power's alternate request and gives the challenged statements no weight.

Issue R-3: Whether the mitigation proposed to minimize the visual impacts of the proposed facility structures at Morgan Lake Park (\$100,000 for recreational facility improvements) is insufficient because the park's remote areas will not benefit from the proposed mitigation.

Limited parties Lois Barry, Peter Barry, Colin Andrew, Kathryn Andrew, and Irene Gilbert have standing on Issue R-3. Lois Barry and Peter Barry filed written testimony and exhibits in support of their positions on the issue, along with closing arguments. The limited parties argue that Idaho Power's agreement with the City of La Grande to pay \$100,000 for park improvements as further mitigation for potential impacts to Morgan Lake Park is insufficient because the offered funds will not address impacts to the undeveloped areas in the park.³⁰⁸ L. Barry Direct Test.; P. Barry Direct Test. Ms. Barry and Mr. Barry also contend this proposed mitigation is inadequate because the project will still be visible from certain areas of the park. *Id.* In her Closing Arguments, Ms. Barry asserts that the agreement is improper because the La Grande City Council did not comply with the Morgan Lake Plan and did not consult with the Morgan Lake Advisory Committee and/or the Director of City Parks and Leisure. L. Barry Closing Arguments at 14.

First, it is important to note that the MOA agreement between Idaho Power and the City of La Grande is a matter outside of the siting process and therefore outside the Council's jurisdiction and scope of review. As the Department explained in the Proposed Order, the MOA is only material to the Council's review under the Land Use standard, because Idaho Power's commitment to provide \$100,000 for improvements to the facilities at Morgan Lake Park (if the Company selects the Morgan Lake Alternative route) provides evidence of the project's compliance with Goal 8 (Recreation Needs).³⁰⁹ The promised payment of \$100,000 to the City is not designed or intended to provide mitigation for the project's visual impacts at Morgan Lake Park under the Recreation standard. Rather, as discussed above, the proposed mitigation for the project's visual impacts at the park is Recommended Recreation Condition 1, requiring the use

³⁰⁷ However, this same argument is addressed above in the context of Issue R-1.

³⁰⁸ Ms. Barry also argues that undergrounding the project segment near Morgan Lake Park is the only acceptable mitigation for visual impacts. L. Barry Direct Test. at 2. Not only is this argument outside the scope of Issue R-3 but also, as discussed elsewhere in this order, undergrounding is outside the Council's jurisdiction in this matter, because Idaho Power did not propose to underground any facility segments.

³⁰⁹ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 250 of 10016.

of smaller, H-frame towers along the visible segment.

Because Idaho Power and the City of La Grande executed the MOA outside of the Council's site certificate review process, the limited parties' challenges to the City's actions or the agreement itself are outside the Council's purview. Idaho Power has committed to pay the funds for recreational improvements to the park (if the Company selects the Morgan Lake Alternative route), but how the funds are used, *i.e.*, the improvement projects selected, are the City's prerogative. The City may choose to improve the developed areas, refresh the natural areas, or do both. Neither Idaho Power nor the Council have any say in that matter.

Moreover, because the MOA is not intended as mitigation for visual impacts, it is immaterial whether the park's remote areas will benefit from these funds. As previously discussed, to mitigate for the potential visual impacts Idaho Power has proposed micro-siting so that project components are not visible from the vast majority of the park and, for those components that will be visible from certain remote areas in the park, the Company has proposed design changes to minimize the visible impact. Also as previously discussed, the Recreation standard does not require the Council to find that the project will have no impacts to Morgan Lake Park, only that overall the project has a less than significant impact on the recreational activities at the park. Here, a preponderance of the evidence supports Idaho Power's conclusion (and the Department's concurrence) that, with Recommended Recreation Condition 1, the impacts from the proposed facility at Morgan Lake Park will be less than significant.

Ruling on Mr. Barry's Motion to Strike the ASC:

In the context of his standing on Issue R-3, on March 30, 2022, Mr. Barry filed a letter requesting that the ALJ strike the entire ASC. In the letter, Mr. Barry argues that the ASC is flawed, does not comply with the Council's standards, and therefore should be discarded. Mr. Barry also asserts that the citizens of Oregon oppose the project and the ALJ should give this opposition significant weight in evaluating the ASC.

For the following reasons, Mr. Barry's request is denied. First, Mr. Barry's general request to strike, discard, or deny the ASC exceeds the scope of Issue R-3, and Mr. Barry's standing as a limited party in this matter. As set out in the *Amended Order on Party Status*, Mr. Barry's participation in the contested case is limited to the discrete issue of proposed mitigation for visual impacts at Morgan Lake Park. Second, even if Mr. Barry had standing to challenge the ASC in its entirety, he does not identify or reference any specific evidence in support of his contentions. Finally, as set out in the *Case Management Order*, the ALJ's authority and obligations in this contested case are governed by the Model Rules of Procedure for Contested Cases (OAR 137-003-0000 through 137-003-0092) and the Council's procedural rules governing site certificate contested case hearings (OAR 345-015-0001 through OAR 345-015-0240). The ALJ must apply the burden of proof and standards of evidence in accordance with these rules. In other words, and contrary to Mr. Barry's request, it is not appropriate or acceptable for the ALJ to "weigh the efforts and arguments heavily on the side of the citizens"³¹⁰ simply because the applicant is an energy corporation.

³¹⁰ P. Barry March 30, 2022 Letter to Judge Webster at 1.

Issue R-4: Whether Applicant’s visual impact assessment for Morgan Lake Park adequately evaluates visual impacts to the more than 160 acres of undeveloped park land and natural surroundings, as visual simulations were only provided for high-use areas.

Lois Barry has standing on Issue R-4. Ms. Barry provided written testimony and exhibits in support of her contentions along with written argument. In response to Ms. Barry’s claim that Idaho Power did not provide a sufficient visual impact analysis of the remote, undeveloped areas in the park, Idaho Power conducted an additional analysis of potential visual impacts in both the developed and undeveloped areas of the park where visitors engage in dispersed recreation activities. Idaho Power submitted its Revised Supplemental Analysis of Morgan Lake Park as Kling Rebuttal Exhibit E.

In her closing argument, Ms. Barry argues that the visual impact assessment of the natural and undeveloped areas of Morgan Lake Park is incomplete and inadequate. She contends that the valued natural scenery near Little Morgan Lake “would be the most intensely impacted” and that, even if the project would be visible from only 16 percent of the park in the undeveloped natural areas, these natural areas are nevertheless worth protecting. L. Barry Closing Arguments at 2-3. Ms. Barry also argues that Idaho Power’s methodology for assessing visual impacts is flawed because the Company: (a) developed its own methodology (instead of using the USFS SMS); (b) did not consider constituent information; and (c) did not specifically assess visitors’ enjoyment of the park. *Id.* at 3-11. As explained below, Ms. Barry’s challenges to Idaho Power’s evaluation of impacts to Morgan Lake Park are not persuasive. Furthermore, Ms. Barry’s challenges to Idaho Power’s methodology for assessing visual impacts fall outside the scope of Issue R-4.

As explained in the Revised Supplemental Analysis, Idaho Power used a video simulation model to assess potential impacts of the project from undeveloped areas where visitors may engage in dispersed recreation opportunities. The Company’s evaluation showed potentially high intensity impacts in areas where there is no vegetation screening, and that there would be low or no visibility of the project from areas where trees will screen views of the towers.³¹¹ Idaho Power acknowledged in its analysis that there could be high magnitude impacts in areas south of Morgan Lake and Little Morgan Lake due to the project’s proximity and the lack of screening.³¹² The Company determined that “viewer perception will range from low to high throughout Morgan Lake Park” and that because of this range, “viewer perception for the park as a whole will be medium.”³¹³

Although Ms. Barry does not agree with Idaho Power’s analysis of and conclusions regarding the project’s potential impacts to recreation opportunities at Morgan Lake Park, she

³¹¹ Kling Rebuttal Ex. E at 11.

³¹² *Id.* at 12.

³¹³ *Id.* at 15.

has not demonstrated that the analysis is inadequate, incomplete, or that it fails to demonstrate the proposed facility's compliance with the Recreation standard.³¹⁴ Ms. Barry argues, in essence, that because the project will have a high-intensity viewer perception in some areas of the park, the project will have a significant adverse impact on the enjoyment of those who engage in recreation activities at the park. However, as previously stated, the Recreation standard does not require finding that the project will have no or only minimal impacts on recreational opportunities at Morgan Lake Park. Rather, the standard requires the applicant to demonstrate that, with mitigation, the impacts on recreational opportunities will be less than significant. As discussed above in connection with Issues R-1 and R-2, Idaho Power has provided a preponderance of evidence to establish that, with the proposed mitigation (design features) the project will have a less than significant adverse impact to recreational opportunities at Morgan Lake Park.

Ms. Barry also argues that Idaho Power should have applied the USFS SMS to assess the magnitude of impact and/or should have surveyed visitors to Morgan Lake Park to determine viewer perception. As noted above, Ms. Barry's challenges to the methodology for assessing visual impacts fall outside the scope of Issue R-4. Issue R-4 asks whether Idaho Power adequately evaluated visual impacts "to the more than 160 acres of undeveloped park land and natural surroundings." In other words, this issue concerns the scope of the Morgan Lake Park evaluation and the Company's conclusions regarding magnitude of impact, but it does not encompass challenges to Idaho Power's methodology for assessing impacts to visual resources. Moreover, the ALJ previously considered and rejected these same contentions in the *Ruling and Order on Summary Determination of Issue SR-6*.³¹⁵ While not addressed in connection with Issue SR-6, Ms. Barry's assertions that Idaho Power's methodology was inappropriate and not properly vetted or peer-reviewed also exceed the scope of Issue R-4.³¹⁶

In summary, Idaho Power's supplemental analysis of Morgan Lake Park adequately evaluates the proposed project's visual impacts in the undeveloped areas of the park. A preponderance of evidence establishes that although the project will result in long-term visual impacts of varying intensity in Morgan Lake Park, these visual impacts will not preclude visitors from engaging in recreational opportunities in the park. Hence, the project's impacts to the park will be less than significant.

³¹⁴ Like Mr. McAllister, Ms. Barry argued that Idaho Power provided the Revised Analysis "late in the game," thereby denying the limited parties the opportunity to assess its validity. L. Barry Response to Closing Arguments at 3. However, as previously discussed, Idaho Power properly offered the Revised Analysis, video simulations, and tree study as evidence in response to limited parties' claims that the Company did not adequately evaluate the park's undeveloped areas. The evidence was admitted without objection; it is relevant and material to the Council's review under the Recreation standard and is entitled to evidentiary weight.

³¹⁵ In the *Ruling and Order on Summary Determination of Issue SR-6*, the ALJ found that the Council's rules do not require an applicant to employ a specific methodology to assess visual impacts and do not require that the applicant collect constituent information. *Ruling on Issue SR-6* at 12-13.

³¹⁶ Furthermore, even if Ms. Barry had standing to raise these other challenges to Idaho Power's visual impact assessment methodology, she has not demonstrated that the methodology is flawed, incomplete or insufficient to establish the project's compliance with the Council's siting standards.

Proposed site certificate condition related to Issue R-4:

In her Closing Arguments, Ms. Barry asserts the proposed mitigation for visual impacts (lower H-frame towers with a natina finish) is inadequate. She proposes, as a site certificate condition, that Idaho Power “bury the parts of the transmission line that would in any way obstruct the irreplaceable top-of-the-world views from the Park” or that the Company select the BLM Preferred Route instead of the Morgan Lake Alternative route. L. Barry Closing Argument at 20.

Ms. Barry’s proposed condition is ~~both untimely and~~ inappropriate. ~~The proposed condition is untimely because Ms. Barry did not submit it in accordance with the established schedule.~~ It is inappropriate because the Council cannot consider other routes or the undergrounding of segments that Idaho Power did not propose in the ASC. Accordingly, the proposed condition is denied.

Ruling on Idaho Power’s Motion to Strike Portions of Ms. Barry’s Closing Arguments on Issue R-4:

Idaho Power moves to strike, or in the alternative requests that the ALJ give no weight to, statements in Ms. Barry’s closing arguments on Issue R-4 that address issues outside the scope of Ms. Barry’s standing in this contested case and/or issues that were already addressed and resolved on summary determination.³¹⁷ Specifically, Idaho Power challenges Ms. Barry’s assertions that the Company should have applied the USFS SMS to assess visual impacts and should have surveyed visitors to the park to determine viewer perception. Motion to Strike, Issues R-2, R-3 and R-4 at 6-7. Ms. Barry filed an opposition to the motion.

As noted above, in the *Ruling and Order on Summary Determination of Issue SR-6*, the ALJ determined that the fact that Idaho Power did not collect constituent information in accordance with the USFS SMS did not invalidate the Company’s chosen methodology for assessing visual impacts. *Ruling on Issue SR-6* at 12-13. Insofar as Ms. Barry argues, in connection with Issue R-4, that Idaho Power should have applied the USFS SMS and should have surveyed visitors to Morgan Lake Park to determine viewer perception, the ALJ agrees that these legal arguments were already considered and rejected in connection with Issue SR-6. Consequently, in the context of Issue R-4, the ALJ gives Ms. Barry’s arguments regarding the USFS SMS methodology no weight.

Retirement and Financial Assurance Standard

OAR 345-022-0050, the Retirement and Financial Assurance standard provides:

To issue a site certificate, the Council must find that:

- (1) The site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or

³¹⁷ See Idaho Power’s Motion to Strike, Issue R-4, Attachment B.

operation of the facility.

(2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition.

Bond amount – Issue RFA-1

Issue RFA-1: Whether the \$1 bond amount adequately protects the public from facility abandonment and provides a basis for the estimated useful life of the facility.

Limited parties Carbiener, in his personal capacity and on behalf of the OCTA, and Gilbert have standing on this issue. They both challenge the recommended phased-in bonding approach described in the Proposed Order and the Department’s recommendation to reduce the bond/letter of credit to \$1 during the first 50 years of operation (Recommended RFA Conditions 4 and 5). The limited parties assert that the \$1 bond amount does not protect the public from the likelihood of facility abandonment. They also challenge the Department’s finding that it is highly unlikely the proposed facility will be decommissioned any time in the first 50 years of operation. Both Mr. Carbiener and Ms. Gilbert propose that Idaho Power be required to secure a bond for the full retirement/restoration cost of \$140 million for the life of the facility. (Carbiener Direct Test. at 3; Gilbert Opening Argument on Issue RFA-1 at 10-15; Gilbert Closing Brief on Issue RFA-1.)

In the Proposed Order, based on information presented in the ASC, the Department found that a 100-year lifetime is a reasonable estimated useful life for the proposed facility. The Department also found that, while some level of risk exists, the likelihood that Idaho Power would abandon the proposed facility during the first 50 years of operation is very low. The Department agreed that the risk of facility abandonment or retirement will increase after the first 50 years, as future unforeseen technological and electricity market changes could affect Idaho Power’s financial condition or the facility’s continued viability.³¹⁸ The Department also agreed that Idaho Power’s proposed financial assurance methodology, *i.e.*, incrementally increasing the bond/letter of credit on an annual basis after the facility has been in service for 50 years, is a reasonable approach to accounting for the possibility that the facility may eventually be retired. Furthermore, as provided in Recommended RFA Condition 5, and to account for conditions that could impact the facility’s viability in the first 50 years of operation, the Department adopted Idaho Power’s proposal to report on the facility’s continued viability and the Company’s financial condition on the fifth anniversary of the in-service date and every five years thereafter.³¹⁹

The limited parties have presented no evidence to support their claims that the \$1 bond for the first 50 years of facility operation is insufficient, that the facility is likely to become

³¹⁸ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 309 of 10016.

³¹⁹ *Id.*, pages 307-311 of 10016.

obsolete or unnecessary in that time frame, and/or that Idaho Power will become insolvent during that time. They have not countered Idaho Power's evidence that a 500 kV transmission line is an extremely valuable asset and the Company is developing and constructing the facility with the expectation that it will operate in perpetuity.³²⁰ The limited parties also have not shown that Wells Fargo's letter of willingness (updated as of October 2021 for a period not to exceed five years) to arrange a syndicated letter of credit in an amount up to \$141 million during the construction phase fails to satisfy the Council's RFA requirements.³²¹ Furthermore, to the extent the limited parties compare the financing and operation of the proposed transmission line to recent solar projects (*i.e.*, Bakeoven Solar and Obsidian Solar Center), these comparisons are misplaced. As Idaho Power's expert Randy Mills testified, the financial and operational risks associated with these solar facilities are entirely distinct from those associated with a major transmission line proposed by a regulated utility.³²²

Additionally, Ms. Gilbert's legal challenge to the proposed phased-in bonding approach misconstrues the Council's rules. Ms. Gilbert argues that, under OAR 345-022-0000(3)(c), the Council lacks the ability to apply a balancing determination to the RFA standard, there is no room for flexibility, and therefore the Council must require Idaho Power to maintain a bond for the full amount of restoration costs throughout construction and the operational life of the facility. Gilbert Opening Argument on Issue RFA-1 at 3; Gilbert Closing Brief on Issue RFA-1 at 7.

Contrary to Ms. Gilbert's contention, the Council's rules require the certificate holder to have a bond/letter of credit "in a form and amount satisfactory to the Council" to restore the site. OAR 345-022-0050(2); OAR 345-025-0006(8). Accordingly, the rules give the Council the discretion to approve a bond/letter of credit in an amount less than the full cost of site restoration as long as that amount is *satisfactory to the Council*. The plain text of the rules allows the Council to exercise reasonable judgment in determining the appropriate form and amount of the bond/letter of credit. Indeed, OAR 345-025-0006(8) (Mandatory Condition 8), specifically authorizes the Council to "specify different amounts for the bond or letter of credit during construction and during operation of the facility." Had the Council intended to require that a certificate holder maintain a bond/letter of credit for the full decommissioning cost at all times, then it could and would have so stated in its rules.

Furthermore, while the General Standard of Review prohibits the Council from applying "the balancing determination"³²³ to the RFA standard (*see* OAR 345-022-0000(3)(c)), the

³²⁰ *See* Ellsworth Rebuttal Test. at 4-7.

³²¹ Mills Rebuttal Test., Ex. B.

³²² *See* Mills Rebuttal Test. at 7-13 (explaining why the Bakeoven and Obsidian solar projects differ from the B2H project and are not comparable to B2H in organizational expertise, financing, and likelihood of retirement).

³²³ Under OAR 345-022-0000(2), the Council may issue a site certificate for a facility that does not meet one or more applicable Council standards "if the Council determines that the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by the applicable standards the facility does not meet. * * *."

discretion granted to the Council under the RFA standard to determine the appropriate form and amount of the bond/letter of credit is not the same as the balancing determination. Also, a balancing determination is not necessary here because, as explained in the Proposed Order, Idaho Power has met the RFA standard by demonstrating a reasonable likelihood of obtaining a bond/letter of credit in an amount sufficient to restore the site to a useful, non-hazardous condition.³²⁴

In short, limited parties Carbiener and Gilbert stated concerns, but they provided no evidence or persuasive legal argument to contradict the findings in the Proposed Order and the testimony of Idaho Power's expert witnesses explaining why it is highly unlikely that the facility would be retired before the end of its useful life. The limited parties also provided no evidence that Idaho Power would be unable to bear the costs of decommissioning the facility and restoring the site to a useful, non-hazardous condition. Idaho Power, on the other hand, persuasively explains why it is not necessary, and in fact inappropriate, to require that it maintain a bond/letter of credit at the full decommissioning cost (approximately \$141 million) for the life of the project.³²⁵

A preponderance of the evidence establishes that the proposed \$1 bond amount for the first 50 years of operation, with a phased-in increase over the next 50 years of operation until the bond covers the full decommissioning cost, adequately protects the public from facility abandonment and provides a basis for the estimated useful life of the facility.

Proposed site certificate conditions related to Issue RFA-1:

Mr. Carbiener timely proposed two conditions, which are addressed below. Ms. Gilbert also timely proposed a conditions related to Issue RFA-1 also addressed below.³²⁶ ~~In her closing argument on Issue RFA-1, Ms. Gilbert proposed three new conditions purportedly related to compliance with OAR 345-022-0050.³²⁷ Because Ms. Gilbert did not submit these latter proposed conditions to the ALJ in a timely manner in accordance with the schedule set in the~~

³²⁴ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 305-06 of 10016.

³²⁵ As set out in ASC Exhibit M, Idaho Power estimates that the cost to maintain a bond/letter of credit to guarantee the full decommissioning cost would be approximately \$880,000 annually, based on 2018 interest rates and market conditions. Because Idaho Power is a regulated utility, the cost incurred by Idaho Power to maintain such a bond/letter of credit would be built into the rates of the Company's utility customers and would be in addition to the decommissioning costs that are normally built into utility rates. See ODOE - B2HAPPDoc3-21 ASC 13_Exhibit M_Financial Capability_ASC 2018-09-28, page 8 of 19.

³²⁶ Another condition proposed by Ms. Gilbert related Idaho Power's financial ability to pay for construction costs, but not directly related to Issue RFA-1, is addressed *infra* under the heading, *Gilbert Additional Proposed Site Certificate Conditions*.

³²⁷ See Gilbert Closing Brief on Issue RFA-1 at 9-11.

~~Case Management Order,³²⁸ the ALJ declines to address their necessity or appropriateness.~~

Carbiener Proposed RFA-1 Condition 1: During the four years of construction Idaho Power will secure a bond for the full estimated amount of \$140 million.

Carbiener Proposed RFA-1 Condition 2: When [the facility is] operational, Idaho Power will provide full amount of bond, \$140 million.

Carbiener Direct Test. 3.

Both the Department and Idaho Power oppose Mr. Carbiener's proposed conditions as unnecessary. Although the Council could impose these conditions, the Council's rules do not require that it do so.

As discussed above, the RFA standard requires that Idaho Power produce evidence that it can obtain a bond or letter of credit in an "amount satisfactory to the Council." OAR 345-022-0050(2). The standard does not require that the certificate holder obtain a bond or letter of credit for the full amount of decommissioning/site restoration. As discussed above, Idaho Power proposed, and the Department approved, the phased-in approach to the bond/letter of credit. As a practical matter, there is no need for Idaho Power to secure a bond for the full decommissioning cost at the outset of construction. Furthermore, given the very low risk that the facility would be retired after construction and before 50 years of service, there is no need for a bond/letter of credit for the full amount of decommissioning/site restoration during that period. Consequently, Mr. Carbiener's proposed RFA conditions are denied.

Gilbert Proposed RFA-1 Condition: Prior to acceptance of a bond in an amount less than the amount identified in OAR 345-02[5]-0006(9), Idaho Power will document that they have established dedicated additional funds which combined with the bond amount will equal the amount identified as being required to restore the site to a useful, non-hazardous condition based upon the calculations in the site certificate and annual adjustments. These funds will be placed in trust and dedicated specifically for use in the restoration of the transmission line site and will not be made available for other uses including those resulting from bankruptcy or actions of Ida-Corp.

Gilbert Proposed Retirement and Financial Assurance Condition 3: In order to replace the mitigation previously provided through a bond the following site certificate condition is necessary to comply with OAR 345-022-0030: 'Idaho Power will provide mitigation for the risk of farm landowners being required to assume the cost of removing the transmission line structures and wires from their property by paying the landowners the estimated cost of them purchasing insurance to protect them from this risk for the 100 years the development is planned to exist.'

Gilbert Proposed Retirement and Financial Assurance Condition 4: Idaho Power must provide documentation that they have the financial resources available to construct and run their share of the Boardman to Hemingway Transmission line without making customers vulnerable to financial collapse.

Gilbert Opening Arguments Regarding Issue RFA-1 at 16.

~~Both the Department and Idaho Power~~Council oppose ~~these~~is condition as unnecessary. First, there is no obligation under the Council's rules for the certificate holder to document that it has established dedicated additional funds to cover the full cost of site restoration in addition to a bond/letter of credit in a satisfactory amount. Second, as Idaho Power notes, the Council rules

³²⁸ Pursuant to OAR 345-015-0085(1), "parties shall submit proposed site certificate conditions to the hearing officer in writing according to a schedule set by the hearing officer." In this matter, the deadline for submitting written direct testimony, evidence, and any proposed site certificate conditions was September 17, 2021. *Case Management Order* at 16, 18.

do not contemplate placing decommissioning funds in escrow and there is no precedent for such a requirement. Third, Ms. Gilbert offered no evidence to support her proposals. Because there has been no showing that ~~this-these~~ proposed RFA conditions ~~is-are~~ necessary or appropriate, the proposed conditions ~~is-are~~ denied.

Removal of concrete footings – Issue RFA-2

Issue RFA-2: Whether, in the event of retirement of the proposed transmission line, removal of concrete footings to a depth of one foot below the surface is sufficient to restore the site to a useful, non-hazardous condition.

Mr. Carbiener, on his own behalf and on behalf of OCTA, has standing on Issue RFA-2. He asserts that, in the event the facility is retired, Idaho Power should be required to remove the foundations for each support structure (concrete tower footings) to a depth of three feet below ground, because one foot is insufficient to restore the soil to a useful, non-hazardous condition. Mr. Carbiener contends that three feet below ground is necessary because remaining fragments of concrete can damage soil. (Carbiener Direct. Test on Issue RFA-2 at 4.)

Mr. Carbiener presents no evidence in support of his contention that removal of concrete foundations to a depth of three feet on non-EFU land is necessary to protect soils and return the land to a useful non-hazardous state. Idaho Power, on the other hand, presented testimony establishing that, except within EFU zones, removal of concrete footings to a depth of one foot below grade is appropriate. Jared Ellsworth, a licensed professional engineer, explained that it is more environmentally impactful to remove the concrete footings than it is to leave in place the portion of the footing below a one-foot depth. Increasing the removal depth from one foot to three feet would result in significantly more disturbance to the surrounding ground.³²⁹ Mr. Ellsworth also explained the exception for EFU zoned land, because removing the footings to three feet below ground allows sufficient clearance for farming equipment and installation of irrigation.³³⁰

In the Proposed Order, the Department included Recommended RFA Condition 2, requiring that, if Idaho Power permanently ceases construction or operation of the facility, then it must retire the facility in accordance with a Council-approved retirement plan. The Department also concurred with Idaho Power's retirement plan proposal of removing the footings to a depth of three feet below grade in EFU zoned lands, and to one foot below grade, depending on ground slope, on all other lands. Mr. Carbiener has not shown that Idaho Power must remove all concrete footings to a depth of three feet below ground surface to restore the site to a useful, non-hazardous condition.

Proposed site certificate conditions related to Issue RFA-2:

Carbiener Proposed RFA-2 Condition 1: The completed application and

³²⁹ Ellsworth Rebuttal Test. at 38-39.

³³⁰ *Id.* at 39.

project order will remove tower concrete footings to a depth of three feet below surface of ground. This will be included in EFSC Retirement Plan for action 100 years from today or sooner.

Both the Department and Idaho Power oppose this proposed condition. The Department asserts this condition is unnecessary, because in the unlikely event of facility retirement Recommended RFA Condition 4 will ensure that Idaho Power restores the site to a useful, non-hazardous condition. Idaho Power asserts that the proposal is both unnecessary and inappropriate, because (as discussed above) requiring that concrete footings be removed to a depth of three feet below ground surface on all lands will result in excessive disturbance of existing ground surrounding the footings.

Mr. Carbiener has not provided any evidence indicating that Idaho Power would fail to restore the project site to a useful, non-hazardous condition unless it removed all footings to a depth of three feet below ground surface. Idaho Power has explained why such a requirement is problematic and unnecessary. Accordingly, this proposed condition is denied.

Carbiener Proposed RFA-2 Condition 2: Idaho Power will clean the surrounding soil from any remaining concrete contamination.³³¹

Both the Department and Idaho Power oppose this proposed condition. The Department notes that this proposal is outside the scope of Issue RFA-2, which is limited to the appropriate depth for foundation removal. Idaho Power asserts that, in the event of facility retirement, it will perform concrete footing removal in accordance with industry standards and a Council-approved final retirement plan as required by OAR 345-025-0006(9).

Mr. Carbiener has not provided evidence showing that this proposed condition is necessary or appropriate under the Council's RFA standard. Idaho Power has explained why the proposed condition is unnecessary. Accordingly, this proposed condition is also denied.

Ruling on Idaho Power's Motion to Strike Portions of Mr. Carbiener's Response Brief on Issue RFA-2: In its motion, Idaho Power moves to strike statements in Mr. Carbiener's Response Brief for Issue RFA-2 relating to the process of removing reinforced concrete pillars. Motion at 15-16. The ALJ agrees that the challenged statements are not supported by evidence in the record. Accordingly, in lieu of striking this portion of Mr. Carbiener's argument, the ALJ gives the unsupported statements no evidentiary weight.

Scenic Resources and Protected Areas Standards

OAR 345-022-0080, the Scenic Resources standard, states in pertinent part:

³³¹ In his March 30, 2022 Response Brief on Issue RFA-2, at page 2, Mr. Carbiener changed the wording of this proposed condition to "Idaho Power will remove the surrounding soil from any remaining concrete contamination." This new version is substantively the same as the prior version, and does not change the determination.

[T]o issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to scenic resources and values identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area described in the project order.

Also, as pertinent here, OAR 345-022-0040, the Protected Area standard, states: “To issue a site certificate * * * the Council must find that, taking into account mitigation, the design, construction and operation of the facility are not likely to result in significant adverse impact to the [listed protected areas].”³³²

Feasibility of undergrounding – Issue SR-2

Issue SR-2: Whether Applicant satisfied the Scenic Resources and Protected Area standards at Flagstaff Hill/NHOTIC and whether Applicant adequately analyzed the feasibility of undergrounding the transmission line as mitigation for potential visual impacts.

Limited parties Miller and Carbiener, in his personal capacity and on behalf of the OCTA, have standing on Issue SR-2. Mr. Carbiener provided evidence and argument in support of his position on this issue. Mr. Carbiener challenges Idaho Power’s visual impact assessment at the Flagstaff Hill/NHOTIC ACEC and the sufficiency of the Company’s visual depictions (photo simulations) of the proposed facility components in that area. Specifically, he argues that the visual depictions prepared by his witness, Ms. Lingenfelter, demonstrate that the proposed facility will have a significant adverse impact to the scenic resource. In addition, Mr. Carbiener argues that the Company did not adequately assess the feasibility of undergrounding the transmission line as mitigation for its visual impacts to the Flagstaff Hill/NHOTIC area. Carbiener Direct Test. Issue SR-2 at 3-12; Carbiener Closing Brief Issue SR-2 at 2-7.

Both Idaho Power and the Department contend that Idaho Power has provided sufficient evidence for the Council to find that the proposed facility, taking into account the proposed mitigation, will comply with the Scenic Resources and Protected Area standards. Ms. Lingenfelter’s video does not establish otherwise, *i.e.*, that the facility will have a significant adverse impact at the Flagstaff Hill/NHOTIC ACEC. Additionally, both the Department and Idaho Power noted that Idaho Power was not required to propose, nor the Council required to consider additional mitigation, including undergrounding the transmission line. Department Closing Brief at 181-188; ODOE Response Brief at 122-23; Idaho Power Closing Brief at 29-44; Idaho Power Response Brief at 29-36.

Extent of adverse impact. Mr. Carbiener asserts that Idaho Power’s video simulation of the proposed facility at the Flagstaff Hill/NHOTIC ACEC are inaccurate, not based on actual

³³² The Protected Areas standard is addressed in this section with the Scenic Resources standard because the Oregon Trail ACEC-NHOTIC parcel is a protected area located 123.4 feet NE of the project’s proposed route. ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 281 of 10016.

photographs of the area, and “all make believe.” Carbiener Closing Brief Issue SR-2 at 2. Mr. Carbiener also asserts that Idaho Power’s photo simulations showing the proposed project in relation to the existing 230 kV towers actually show that the proposed project would dominate the landscape. *Id.* at 3. He contends that Ms. Lingenfelter’s model also demonstrates that the proposed project would significantly impact the view from NHOTIC and the Oregon Trail. *Id.* at 4.

Contrary to Mr. Carbiener’s contention, Ms. Lingenfelter’s video simulations do not invalidate or outweigh the other evidence in the record demonstrating that, with the proposed mitigation, the proposed project will have a less than significant adverse impact on the scenic value of the NHOTIC and surrounding area. As the Department notes in its Response Brief, both Ms. Lingenfelter’s and Idaho Power’s video simulations have strengths and weaknesses. Both video models help to better understand the proposed project’s potential visual impact at the NHOTIC, but neither realistically depicts the existing landscape and other context necessary to assess the visual impact of the proposed facility in the Flagstaff Hill/NHOTIC area.³³³

The Scenic Resource standard requires Idaho Power to demonstrate that, taking into account mitigation, no significant impacts are likely to result at the NHOTIC. As explained in the findings, Idaho Power developed its own methodology specifically to apply the Council’s definition of “significant.” To be considered significant, a potential impact must: (1) be high intensity; (2) preclude the impacted resource’s ability to provide the scenic value for which the resource was designated or recognized in the applicable land management plan; and (3) last for a duration of at least 10 years.³³⁴

As for the Flagstaff Hill/NHOTIC area, Idaho Power has demonstrated (and the Department concurred) that the visual impacts of the proposed project would be less than significant. Taking into account mitigation via tower design (H-frame towers with a weathered steel finish) the impact would be of medium intensity and would not preclude the resource’s ability to provide the scenic value for which the resource was designated or recognized.³³⁵ In applying its methodology, Idaho Power assumed that viewer sensitivity would be high. However, taking into consideration other characteristics and the landscape context (other developments and the already existing transmission line), the project will be co-dominant with the existing viewshed.³³⁶ Consequently, with mitigation, both viewer perception and the

³³³ Also, as Idaho Power notes in its Response Brief, Ms. Lingenfelter’s model (which includes 129-foot tall towers spaced 900 feet apart) is not an accurate depiction of the proposed project. Near NHOTIC Idaho Power will use towers that range in height from 105 feet to 129 feet, will vary the spans between towers and will microsite tower locations to further reduce the magnitude of visual impacts. Idaho Power Response Brief at 33-34; *see also* Kling Rebuttal Test. at 107-08.

³³⁴ Kling Rebuttal Test. at 49.

³³⁵ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 283-87 of 10016.

³³⁶ As Ms. Kling explained, codominance is not simply a question of the size of the transmission towers relative to other features in the landscape. The project is codominant with other features because, as the viewer looks out on the landscape, the viewer is seeing all of the features as a collective. The viewer’s

resource change would be medium.³³⁷

Undergrounding. Mr. Carbiener also argues that Idaho Power did not sufficiently consider undergrounding the transmission line in the area of NHOTIC and that doing so would make the visual impact less than significant. Carbiener Closing Brief Issue SR-2 at 5-7. As both the Department and Idaho Power correctly note, Idaho Power did not propose undergrounding the transmission line as mitigation for visual impacts at Flagstaff Hill/NHOTIC. The Council is tasked with determining whether the facility, as proposed by Idaho Power, complies with applicable standards, laws and rules. Idaho Power proposed design modifications to mitigate the visual impact of the facility in that area. Because Idaho Power did not propose undergrounding the transmission line, the question of whether undergrounding is a better mitigation option is outside the Council’s jurisdiction and, accordingly, outside the scope of this contested case.³³⁸

eye is not selecting one feature, *i.e.*, the proposed facility, to the exclusion of the others in the landscape. Kling Cross-Exam. Test., Tr. Day 6 at 160-163.

³³⁷ Kling Rebuttal Test. at 66-69.

³³⁸ In the Proposed Order, in addressing the visual impact assessment of the Oregon Trail ACEC-NHOTIC parcel, the Department noted that, in response to comments and concerns about the visual impacts at NHOTIC, Idaho Power provided an engineering report and cost estimate for undergrounding the transmission line in this area. The study concluded that the costs would be very high (approximately \$100 million more than the traditional overhead configuration) and that the ground disturbance for installation would be substantially greater than for an above ground line. ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 285-86 of 10016. The Department also noted that information about undergrounding is not required in the ASC and, “more importantly,” Idaho Power did not propose undergrounding any portion of the facility as an alternative or as potential mitigation to reduce visual impacts. *Id.* at page 286 of 10016. The Department acknowledged that the Council is not authorized to evaluate alternatives not proposed by the applicant, but then addressed whether the Council could impose undergrounding as a mitigation measure, even if not proposed by the applicant. The Department concluded as follows:

Undergrounding could be considered as “minimizing” impacts of the action if it was found that undergrounding did, in fact, minimize the visual impact of the proposed facility to the extent that the mitigation reduced a potentially significant adverse impact to a level that was less than significant, in compliance with an applicable Council standard.

However, to the extent that undergrounding is viewed as mitigation for potentially significant adverse visual impacts at NHOTIC, the Department emphasizes that the technology and infrastructure needed to underground a transmission line would themselves create visual impacts as well as potential impacts to other resources protected under the Council’s standards and not evaluated in the ASC. As described here, therefore, the Department does not find that undergrounding, if a viable mitigation option, is necessary for the proposed facility to comply with the Council’s Protected Areas standard. For the reasons described here, the Department does not conclude that the visual impacts of the proposed facility (including recommended Scenic Resources Condition 3) to NHOTIC are significant, and does not find that additional mitigation in the form of undergrounding are necessary to comply with the Council’s Protected Area standard.

Proposed site certificate conditions related to Issue SR-2:

In his direct testimony, Mr. Carbiener timely proposed two site certificates related to Issue SR-2.³³⁹

Carbiener Proposed Scenic Resources Condition 1: During construction certificate holder will not construct any new roads or improve any existing roads between Flagstaff Gulch and Highway 86. Access to tower sites will be performed by wide-balloon tired vehicles. Materials (re-bar and concrete) will be delivered by helicopter, tower and conductor placement will be by helicopter. In front of ACEC, no cuts into hillsides, and tower footings made to hill contour. All above ground tower footings to have concrete colored to match sage, or light grey.

Both the Department and Idaho Power object to this proposed condition as unnecessary. The ALJ agrees. First, Mr. Carbiener did not present any evidence or argument in support of these proposed construction-related provisions. Second, the proposed condition is not necessary because any new and/or improved roads will not result in significant visual impacts and Idaho Power's design already includes light grey concrete footings. Accordingly, this proposed condition is denied.

Carbiener Proposed Scenic Resources Condition 2: Idaho Power will provide compensation in the amount of \$3.5 million due to permanent visual impact to the National Historic Oregon Trail and Flagstaff Hill Interpretive Center to comply with the required mitigation as described by the Energy Facilities Siting Council in their site certificate at Attachment S-9; HPMP, p, 22.

Both the Department and Idaho Power also object to this proposed condition as unnecessary. Again, the ALJ agreed with this assessment. This proposed condition is not necessary because a preponderance of the evidence in the record establishes that the design, construction, and operation of the proposed facility, with the mitigation proposed to reduce visual impacts, will have a less than significant adverse impact to the scenic resource and protected area, and therefore satisfies the Scenic Resources and Protected Area standards. Consequently, this proposed condition is also denied.

NHOTIC/Oregon Trail visual impact assessment – Issues SR-3 and SR-7

Issue SR-3: Whether Applicant adequately assessed the visual impact of the proposed project in the vicinity of the NHOTIC and properly determined the impact would be “less than significant.”

Id. pages 286-87 of 10016.

³³⁹ Carbiener Direct Test at 12-13.

Limited party Deschner has standing on Issue SR-3. Mr. Deschner provided direct testimony and signed statements in support of his position that the proposed facility would have a significant adverse visual impact at the NHOTIC. Deschner Direct Test. at 4. Mr. Deschner argued that the proposed mitigation via design features (including shorter, H-frame towers) is insufficient because the project will still be visible from the NHOTIC parcel. *Id.* at 5-10. In addition, Mr. Deschner challenged the Council’s definition of the term “significant” in OAR 345-001-0010(52)³⁴⁰ and Idaho Power’s methodology for assessing visual impacts. *Id.* at 7-8.

Both the Department and Idaho Power contend that Idaho Power used the appropriate definition of “significant” in evaluating visual impacts at the NHOTIC, and that Idaho Power appropriately applied that definition in its visual impact assessment. In addition, as discussed above with regard to Issue SR-2, the Department and Idaho Power assert that the evidence in the record is sufficient for the Council to determine that the proposed facility, taking into account the proposed mitigation, will comply with the Scenic Resources and Protected Area standards. ODOE Closing Brief at 196-97; Idaho Power Closing Arguments at 45-54.

Definition of “significant.” Contrary to Mr. Deschner’s contention, the Council’s definition of “significant” does not muddy the meaning of the word. Where, as here, the Council has provided a specific definition for a term used in its rules, it is not appropriate to look to a dictionary to interpret that term. Indeed, OAR 345-001-0010 specifically states, “the following definitions apply unless the context requires otherwise or a term is specifically defined within a division or rule.” With regard to the phrase “significant adverse impact” as used in the Scenic Resources standard, the Protected Areas standard, and other standards, the context does not require a different definition of “significant” than what is set out in the Council rule.

Furthermore, the evidentiary record belies Mr. Deschner’s claim that Idaho Power bent or manipulated the meaning of “significant” to justify the proposed facility’s placement in the area of the NHOTIC. The evidence establishes that the Company refined its impact assessment approach in response to the Department’s request to consider the Council’s definition of significant in its analysis.³⁴¹ Idaho Power also submitted its refined methodology to the Department for review and approval. In the Proposed Order, the Department set out its reasons for concurring with the Company’s methodology for assessing visual impacts and recommended

³⁴⁰ OAR 345-001-0010(52) states:

“Significant” means having an important consequence, either alone or in combination with other factors, based upon the magnitude and likelihood of the impact on the affected human population or natural resources, or on the importance of the natural resource affected, considering the context of the action or impact, its intensity and the degree to which possible impacts are caused by the proposed action. Nothing in this definition is intended to require a statistical analysis of the magnitude or likelihood of a particular impact.

³⁴¹ ODOE - B2HAPPDoc3-35 ASC 18_Exhibit R_Scenic Resources_ASC 2018-09-28, page 140 of 570.

that the Council do the same.³⁴² Consequently, Mr. Deschner has not shown that Idaho Power and/or the Department misconstrued the meaning of significant in evaluating the proposed facility's visual impacts.

Extent of adverse impact. Also contrary to Mr. Deschner's claim, Idaho Power has demonstrated, and the Department properly found, that the proposed facility's visual impacts at Flagstaff Hill/NHOTIC will be "less than significant." First, the fact that the proposed facility will be visible from the NHOTIC parcel does not, in and of itself, mean the proposed facility runs afoul of the Council's siting standards. Idaho Power does not need to demonstrate that the project is not likely to result in *any* adverse impact to scenic resources, only that with mitigation, the project is not likely to have a significant adverse impact. See OAR 345-022-0080(1); OAR 345-022-0040(1).

Second, as discussed above in connection with Issue SR-2, a preponderance of the evidence establishes that, taking into account mitigation, the proposed facility is likely to result in a medium adverse impact, rather than a significant adverse impact. After assessing potential impacts of the project at the NHOTIC parcel, taking into account the baseline conditions including the prior development within the landscape, Idaho Power determined that, absent mitigation, the project's visual impacts could potentially be significant.³⁴³ However, taking into account the proposed mitigation in the form of design changes (required by recommended Scenic Resources Condition 3),³⁴⁴ micro-siting and tower placement, these potential impacts will be reduced to less than significant.

In summary, Idaho Power accurately assessed the visual impact of the proposed project in the vicinity of the NHOTIC and properly determined that the impact would be medium, meaning less than significant as defined by Council rule.

Ruling on Idaho Power's Motion to Strike Portions of Mr. Deschner's Closing Arguments:

In its Response Brief, Idaho Power moves to strike, or in the alternative, give no weight to certain statements and arguments in Mr. Deschner's Closing Argument on Issue SR-3. Idaho Power challenges portions of the brief that rely on evidence not in the record and/or that address an issue on which Mr. Deschner does not have standing. Specifically, Idaho Power challenges statements regarding the Company's visual impacts assessment methodology and statements relying on Idaho Power's Response to Mr. Deschner's Discovery Request No. 4. Idaho Power Motion to Strike for Issue SR-3 at 7-9.

Because Mr. Deschner did not timely offer Idaho Power's response to Discovery Request

³⁴² ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 279-280 of 10016.

³⁴³ ODOE - B2HAPPDoc3-35 ASC 18_Exhibit R_Scenic Resources_ASC 2018-09-28, page 122 of 570.

³⁴⁴ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 424 of 10016.

No. 4 into the evidentiary record, he may not rely on it as evidence in his closing argument. Furthermore, the ALJ agrees that Mr. Deschner's challenges to Idaho Power's visual assessment methodology are outside the scope of Issue SR-3, because Mr. Deschner did not raise the issue in his comments on the DPO.³⁴⁵ Consequently, in accordance with Idaho Power's request, the ALJ gives no weight to those statements in Mr. Deschner's closing brief that are not supported by evidence in the record and/or arguments that are outside the scope of Issue SR-3.

Issue SR-7: Whether the methods used to determine the extent of an adverse impact of the proposed facility on scenic resources, protected area and recreation along the Oregon Trail were flawed and developed without peer review and/or public input. Specifically, whether Applicant erred in applying numeric values to the adverse impact and whether Applicant used unsatisfactory measurement locations/observation points in its visual impact assessment.

Limited parties Lois Barry and STOP B2H have standing on Issue SR-7. In her direct testimony, Ms. Barry challenged Idaho Power's methodology for assessing the proposed facility's visual impacts at scenic resources. She argued that Idaho Power did not follow the procedures and methods in the USFS 1995 publication, *Landscape Aesthetics: A Handbook for Scenery Management (SMS)*, and did not consider constituent users' subjective evaluations of the resource. STOP B2H/Barry Direct Test. at 1-2. In the Closing Argument, STOP B2H also argued that Idaho Power's visual impact assessment for the NHOTIC fails to meet the requirements of the Scenic Resources and Protected Areas standards. STOP B2H asserts that Idaho Power's methodology was flawed because it did not include any constituent information and/or consider the impact on the affected human population. STOP B2H Closing Argument at 22. STOP B2H further argues that the Department "has not been appropriately attentive" in its review and erred in approving Idaho Power's methodology for assessing visual impacts.³⁴⁶ *Id.* at 23-24.

The Department and Idaho Power assert that Idaho Power used acceptable methods to assess visual impacts to scenic resources, protected areas, and recreation resources. Idaho Power adds that, contrary to the limited parties' contention, the Company could not apply the SMS methodology under the Council's standards, because the Department specifically requested that the Company use a methodology that applied the Council's definition of "significance." Idaho Power Response Issue SR-7 at 17.

For the reasons that follow, the ALJ finds that methods Idaho Power used to determine the extent of adverse impact of the proposed facility on scenic resources, protected areas, and recreation along the Oregon Trail were reasonable and appropriate. First, the Council's rules do

³⁴⁵ The ALJ notes that other limited parties' challenges to Idaho Power's visual assessment methodology are addressed in the *Ruling and Order on Motion for Summary Determination of Contested Case Issue SR-6* as well as Issue SR-7 below.

³⁴⁶ Neither STOP B2H nor Ms. Barry submitted evidence or argument in support of the second part of Issue SR-7, *i.e.*, whether Idaho Power used unsatisfactory key observation points in its visual impact assessment. Because the limited parties did not present evidence or argument on their challenge to the sufficiency of the selected KOP locations, the ALJ considers this sub-issue waived.

not require that an applicant employ a specific methodology for assessing visual impacts. The Council's standards simply require that the applicant demonstrate that the proposed facility is not likely to result in significant adverse impacts to identified resources. Therefore, Idaho Power had no legal obligation to collect constituent information in accordance with the SMS to demonstrate compliance with the Scenic Resources, Protected Areas, and/or Recreation standard.

Second, and contrary to STOP B2H's assertion, Idaho Power explained its methodology for assessing visual impacts in detail in ASC Exhibit R, Attachment R-1. As discussed above, Idaho Power developed this methodology following the Department's request that Idaho Power consider the Council's definition of significant in assessing visual impact.³⁴⁷ In the ASC, Idaho Power explained that its methodology incorporated relevant elements from the SMS to assess the baseline scenic conditions in forested areas and elements from the BLM's VRM to assess baseline scenic conditions in non-forested areas. Idaho Power also incorporated the BLM visual "sensitivity level" criterion and the SMS visual "concern" criterion into its methodology, both of which measure the degree to which viewers subjectively value a visual resource.³⁴⁸ Instead of collecting data on viewers' subjective perceptions of the proposed facility's potential impacts, Idaho Power assumed that all viewers (including all visitors to the NHOTIC) would be highly sensitive to the resource change.

The ALJ finds that because Idaho Power attached the highest viewer sensitivity value to all of the resources evaluated, data collection on viewers' subjective evaluations is unnecessary. Indeed, because Idaho Power assumed a high sensitivity among all viewer groups, additional constituent information would not add to, but could potentially reduce, the value that Idaho Power attributed to the affected resources. By assuming the highest viewer sensitivity, Idaho Power's methodology adequately addressed the impacts "on the affected human population" as required by OAR 345-001-0010(53). Consequently, contrary to the limited parties' contentions, Idaho Power's methodology for assessing the project's visual impacts does not run afoul of the Council's Scenic Resources, Protected Areas, and Recreation standards.

To the extent the limited parties assert that Idaho Power's methodology is "a self-serving piecemeal approach," and that the Company manipulated the methodology to yield desired results, the ALJ notes that, with regard to the Oregon Trail ACEC – NHOTIC parcel, the Company's assessment determined that *without mitigation*, the project could result in potentially significant visual impacts at various points.³⁴⁹ However, Idaho Power also determined, and the

³⁴⁷ ODOE - B2HAPPDoc3-35 ASC 18_Exhibit R_Scenic Resources_ASC 2018-09-28, page 140 of 570.

³⁴⁸ *Id.* at page 147 of 570.

³⁴⁹ *See* ODOE - B2HAPPDoc3-35 ASC 18_Exhibit R_Scenic Resources_ASC 2018-09-28, pages 122 and 228-232 of 570. In ASC Exhibit R, Idaho Power stated as follows:

In evaluating various alternatives for Project siting, IPC concluded that potentially significant visual impacts from facility structures located directly west of the NHOTIC (corresponding to the Flagstaff Alternative) could result. To address potential impacts, IPC analyzed three design options aimed at reducing adverse impact to less than significant: To address potential impacts, IPC analyzed three design options aimed at reducing adverse impact to less than significant: (1) applying a natina finish to the lattice

Department concurred, that *with mitigation*, visual impacts to the NHOTIC will be medium intensity, resulting from both medium resource change and viewer perception.³⁵⁰

Finally, the limited parties have not shown that the Department was “inattentive” in its review of Idaho Power’s methodology for determining the extent of the proposed facility’s impacts on scenic, protected, or recreational resources. As discussed above, the Department thoroughly reviewed Idaho Power’s methodology for consistency with the Council’s standards and provided feedback, asking that the Company consider the Council’s definition of significant in its analysis. In the Proposed Order, the Department outlined the methodology, expressed concurrence with the methodology, and stated the reasons for its concurrence.³⁵¹ There is no Council rule that requires an applicant to have its impact assessment methodologies peer reviewed and/or subjected to public input during development. As the Department noted in its Closing Brief, although the limited parties may have preferred that Idaho Power adopt a different methodology to assess visual impacts of the proposed facility, the Council’s standards do not require that the Company do so.

In summary, the methodology Idaho Power used to determine the extent of adverse impact of the proposed facility on scenic resources, protected areas, and recreation along the Oregon Trail was reasonable and appropriate. The limited parties have not shown that the methodology was flawed, that Idaho Power erred in applying numeric values to the adverse impact, and/or that the Company used unsatisfactory measurement locations/observation points in its visual impact assessment.

Proposed site certificate conditions related to Issue SR-7:

In its Closing Argument on Issue SR-7, STOP B2H proposes a site certificate condition requiring Idaho Power to underground the transmission line for 1.7 miles in the area the NHOTIC as a mitigation measure to ensure compliance with the Scenic Resources standard. ~~Because STOP B2H did not submit this proposed condition in accordance with the set schedule, it is untimely. Moreover, even if STOP B2H had submitted this proposal in a timely fashion, #The proposed condition~~ is neither necessary nor appropriate. As discussed above in connection with Issue SR-2, the Council lacks jurisdiction to require Idaho Power to underground the project segment near the NHOTIC. Consequently, this proposed site certificate condition is denied.

structure; (2) using an H-frame structure with galvanized finish; or, (3) using an H-frame structure with a natina finish. These mitigation strategies were considered for six transmission tower structures located directly west and within 1,200 feet of the NHOTIC boundary. Because of the terrain backdrop, IPC selected the H-frame structure with the weathered steel surface treatment, as it was expected to reduce the visual contrast below that of the standard galvanized structures.

Id. at 122-23 of 570.

³⁵⁰ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 283-84 of 10016.

³⁵¹ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 279-280 of 10016.

Ruling on Idaho Power's Motion to Strike Portions of STOP B2H's Closing Arguments on Issue SR-7:

In its Response Brief, Idaho Power moves to strike, or in the alternative, give no weight to certain statements in STOP B2H's Closing Argument on Issue SR-7. Idaho Power challenges portions of the brief that address an issue outside the scope of Issue SR-7 and/or that seek to relitigate an issue already resolved through summary determination. Specifically, Idaho Power challenges statements asserting that the Company should have applied federal scenic resource inventorying methods to assess visual impacts and all statements asserting that Idaho Power was required to survey visitor's subjective evaluations of visual impacts. Idaho Power Motion to Strike for Issue SR-7 at 3-6. In opposing the motion, STOP B2H asserts that the heart of Issue SR-7 is whether Idaho Power's methodology for evaluating scenic resources was flawed, and therefore the challenged statements are within the scope of the issue. STOP B2H Opposition at 1-2.

As discussed above, there is significant overlap between Issue SR-6,³⁵² which was resolved in Idaho Power's favor, and Issue SR-7. Both issues boil down to the same question—whether the Council's standards require that Idaho Power incorporate viewers' subjective evaluation of their resources. The ALJ agrees with STOP B2H that Issue SR-7 includes a challenge to the validity of Idaho Power's methodology for assessing visual impacts. Because the challenged statements in STOP B2H's closing arguments fall within the scope of Issue SR-7, Idaho Power's motion to strike these statements is denied.

Soil Protection Standard

OAR 345-022-0022, the Soil Protection standard, states:

To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in a significant adverse impact to soils including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills.

Issue SP-1: Whether the Soil Protection Standard and General Standard of Review require an evaluation of soil compaction, loss of soil structure and infiltration, and loss of stored carbon in the soil and loss of soil productivity as a result of the release of stored carbon in soils.

³⁵² Issue SR-6 asked, in part, “whether Applicant’s visual impact assessments are invalid because Applicant did not incorporate Oregonians’ subjective evaluation of their resources.” In the *Ruling and Order on Motion for Summary Determination of Contested Case Issue SR-6*, the ALJ found that: (1) the Council’s rules do not require an applicant to employ a specific methodology for assessing visual impacts and (2) the lack of specific constituent information (the failure to incorporate viewers’ subjective evaluations) does not invalidate the visual impact assessments.

Limited parties Dr. Suzanne Fouty and STOP B2H have standing on Issue SP-1.³⁵³ Dr. Fouty contends that the Soil Protection standard is broader in scope than impacts to soils from erosion and chemical factors and that the Council’s rules require that the applicant do an in-depth, detailed analysis of the project’s impacts on soil productivity.³⁵⁴ She also argues that Idaho Power’s analysis of the project’s impacts to soil is insufficient to demonstrate compliance with the Soil Protection standard and that Idaho Power has failed to show the effectiveness of its proposed mitigation strategies. Fouty Closing Brief at 2-3, 14, 29, 40, 45-50.

Both the Department and Idaho Power maintain that the Council’s review under the Soil Protection standard is not as broad, or as granular, as Dr. Fouty asserts. Both the Department and Idaho Power contend that Dr. Fouty is demanding more information and analysis than what is required under the Council’s rules.³⁵⁵ Both the Department and Idaho Power also assert that Idaho Power has presented in ASC Exhibit I sufficient evidence and information to demonstrate that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in a significant adverse impact to soils.³⁵⁶ Additionally, Idaho Power asserts that, in her Closing Brief, Dr. Fouty raises other concerns that are outside the scope of Issue SP-1.³⁵⁷ For the reasons that follow, the ALJ agrees with the Department and Idaho Power. The Council’s standards do not require the impact evaluations proposed by Dr. Fouty.

Scope of the Soil Protection standard. Dr. Fouty argues that “the intent of the Soil Protection standard is to protect soil productivity” and therefore the standard requires an applicant to address any and all impacts that may adversely impact soils. Fouty Closing Brief at 22. However, contrary to Dr. Fouty’s contention, the purpose of the Soil Protection standard is not to protect soil productivity. Rather, the standard requires the Council to find that, taking into account mitigation, the design, construction and operation of the proposed energy facility are not likely to result in a significant adverse impact to soils.

Dr. Fouty argues that because the Soil Protection standard states “significant adverse impacts to soils *including, but not limited to, * * **” the Council must evaluate any and all types of impacts the proposed facility may potentially have on soils within the analysis area. However, there is no support in law or in fact for Dr. Fouty’s broad reading of OAR 345-022-0022. Where, as here, the text of a statute or rule includes a list that begins with “including, but not

³⁵³ In lieu of filing duplicative documents, STOP B2H adopted Dr. Fouty’s testimony and arguments as its own with regard to Issue SP-1. *See, e.g.*, STOP B2H Coalition: Notice of Adoption of Testimony on Issue SP-1, filed September 17, 2021 and December 3, 2021.

³⁵⁴ Dr. Fouty asserts that other impacts to soil that can have a significant adverse impact to the productivity of a soil are soil compaction, loss of stored carbon, and loss of topsoil. *See* Fouty Closing Brief at 2-3, 10-11; *see also* Fouty Direct Test. at 10.

³⁵⁵ *See* ODOE Response to Closing Arguments at 128-31; Idaho Power’s Closing Argument on Issue SP-1 at 2, 9-29; Idaho Power’s Response Brief at 33-34.

³⁵⁶ ODOE Closing Brief at 203-05; Idaho Power’s Closing Argument on Issue SP-1 at 6-9.

³⁵⁷ Idaho Power’s Response Brief at 14-34.

limited to,” a court tasked with interpreting that statute or rule should look to the listed examples that follow to find a common characteristic in defining the scope of the general term.³⁵⁸ Therefore, in this context, the scope of “impact to soils” must be considered in light of basic characteristics of the specific examples that follow that term, *i.e.*, erosion and deposition or application of chemical substances. In other words, applying accepted principles of statutory construction, the Soil Protection standard requires the Council to evaluate “impacts to soils” that are typically assessed and addressed as part of the construction and operation of energy facilities. Those impacts include wind and rain erosion resulting from ground disturbing construction activities, application of effluent on surrounding soils during facility operation, chemical or hazardous substance spills, and salt deposition from cooling towers.

While the Department or the Council *may* request in the project order that an applicant provide information and evaluations of other impacts to soil (such as soil compaction, loss of structure and infiltration, loss of stored carbon, and/or loss of productivity), the plain language of the Soil Protection standard does not require the applicant to provide such detail and analysis in every site certificate application.³⁵⁹ Indeed, OAR 345-021-0010(1)(i) simply directs the applicant to provide “information from reasonably available sources regarding soil conditions and uses in the analysis area.” Neither the ASC content rule nor the Soil Protection standard require that the applicant present the highest level of detail, from the most current sources, or the best available science. The Council rules also do not require the applicant provide site-specific mitigation in the ASC.

Sufficiency of ASC Exhibit I and Idaho Power’s analysis of impacts to soil. Dr. Fouty makes three arguments in challenging the sufficiency of ASC Exhibit 1. First, she contends that Idaho Power incorrectly identified the soil analysis area to minimize the facility’s impacts. Fouty Closing Brief at 16-18. Second, she asserts that Idaho Power incorrectly used STATSGO (as opposed to SSURGO) as its primary database for identifying soil types. *Id.* at 18-20. Third, she argues that Idaho Power failed to identify and analyze the dynamic soil properties of the soil that would be disturbed and describe the mitigation needed to restore the soil to preconstruction condition. *Id.* at 20-21, 33-38.

Contrary to Dr. Fouty’s contention, Idaho Power correctly identified the soil analysis area for purposes of ASC Exhibit 1 as the area within the site boundary in accordance with the Project Order. The areas of disturbance, *i.e.*, the soil potentially impacted by the construction and

³⁵⁸ See, e.g., *State v. Kurtz*, 350 Or 65, 75-76 (2011); *Schmidt v. Mt. Angel Abbey*, 347 Or 389, 404-06 (2009) (“when using the principle of *eiusdem generis*, the court seeks to find, if it can, a common characteristic among the listed examples. We then determine whether the conduct at issue, even though not one of the listed examples, contains that characteristic and, thus, falls within the intended meaning of the general term.”)

³⁵⁹ Indeed, in the Second Amended Project Order, the Department directed Idaho Power to “[d]escribe all measures proposed to maintain soil productivity during construction and operation” and to include the required evidence related to the NPDES 1200-C permit application. ODOE - B2HAPPDoc15 ApASC Second Amended Project Order 2018-07-26, page 14.

operation of the facility, are subsets within the site boundary/soil analysis area.³⁶⁰ Second, there is nothing in the Council’s rules requiring the applicant to use a specific methodology for identifying soil types within the analysis area. In ASC Exhibit 1, Idaho Power explained its methods for identifying soil properties and its use of the STATSGO database to characterize soil erosion and soil reclamation properties.³⁶¹ Idaho Power also explained its use of the SSURGO soils data to identify soils within the analysis area the potential for agricultural use. Idaho Power acknowledged that SSURGO data includes more detailed soil properties information based on smaller map units than the STATSGO data; however the SSURGO data did not provide complete coverage of the site boundary. Idaho Power also explained that it used the SSURGO database only if similar data were not available in STATSGO.³⁶² On this record, Dr. Fouty has not demonstrated that Idaho Power was required to use the SSURGO database to determine soil properties and/or that the Company failed to use information from reasonably available sources to identify and describe the major soil types in the analysis area.

Dr. Fouty also has not shown that Idaho Power’s soil data analysis was flawed because the Company did not identify and analyze the dynamic properties of the soil that would be disturbed and describe the mitigation needed to restore the soil to preconstruction condition. As previously discussed, the ASC content rule requires the “identification and description of the major soil types in the analysis area.” OAR 345-021-0010(1)(i)(A). In ASC Exhibit 1, Idaho Power not only identified and described the major soil types per county within the analysis area, but also presented soil mapping units along the entire transmission line corridor within the analysis area.³⁶³ Furthermore, in response to Dr. Fouty’s request, Idaho Power provided an updated Table I-2-1, presenting soils information by county with the soil order, soil ID, soil name, acreage, percent and acreage of disturbance area, and soil properties.³⁶⁴ Nothing in the Council’s rules or in the Project Order requires Idaho Power to provide a more granular description and analysis of soil properties to demonstrate compliance with the Soil Protection standard.

Sufficiency of proposed mitigation. Finally, Dr. Fouty argues that Idaho Power has not shown the proposed mitigation will be “effective and rapid” in returning the disturbed soil to preconstruction condition.³⁶⁵ She asserts that Idaho Power must provide site-specific mitigation

³⁶⁰ See Madison Cross-Exam. Test. Tr. Day 2 at 31, lines 1-2, explaining, “the construction area is a subset of the site boundary.”

³⁶¹ ODOE - B2HAPPDoc3-16 ASC 09a_Exhibit I_Soil_ASC_Part 1 2018-09-28, page 7 of 115.

³⁶² ODOE – B2HAPPDoc3-16 ASC 09a_Exhibit I_Soil_ASC_Part 1 2018-09-28, pages 7-12 of 115.

³⁶³ ODOE - B2HAPPDoc3-16 ASC 09a_Exhibit I_Soil_ASC_Part 1 2018-09-28, pages 42-68 of 115; see also ODOE - B2HAPPDoc3-17 ASC 09b_Exhibit I_Soil_ASC_Part 2 2018-09-28, pages 69-72 of 88 (original Table I-2-1, showing the soil mapping units per county).

³⁶⁴ Madison Rebuttal Test. at 52-53; Madison Rebuttal Exhibit D.

³⁶⁵ More specifically, Dr. Fouty argues that for the Council to find that, with mitigation, the facility is not likely to result in significant adverse impacts to soils, Idaho Power must demonstrate that the proposed mitigations “will be effective and rapid (*i.e.* seeding, ripping, soil amendments, etc.)” *Id.* at 46. She

information and a specific timeframe for reclamation. She also contends that Idaho Power's reliance on vegetative recovery is not an appropriate measure of soil productivity recovery. Fouty Closing at 22-24, 41-47, 58-59.

As an initial matter, Idaho Power responds, and the ALJ agrees, that these mitigation concerns are beyond the scope of Issue SP-1. Issue SP-1 focuses on the extent to which the Council's standards require an evaluation of soil properties and not on the nature or quality of proposed mitigation measures. Nevertheless, for the Council's benefit, the ALJ briefly addresses Dr. Fouty's concerns.

The Soil Protection standard does not prohibit impacts to soils, whether the soil is productive or non-productive. Nor does the standard require an applicant to establish a specific timeframe for recovery or to establish quantitative measures for soil reclamation to demonstrate compliance with the Soil Protection standard. Rather, the standard requires that an applicant demonstrate that it has evaluated the potential impacts to soils from proposed facility construction and operation and that it has methods to mitigate adverse impacts to less than significant. As discussed above, the ASC content rule requires that the applicant submit information from reasonably available sources *describing* any measures the applicant proposes to avoid or mitigate adverse impacts to soils. OAR 345-021-0010(1)(i)(D). The Soil Protection standard specifically allows consideration of an applicant's proposed mitigation to make findings of compliance, but it does not require the applicant to provide proof that the mitigation will be rapid and completely effective.

In ASC Exhibit A, Idaho Power described its proposed mitigation measures, which include the following: avoidance of sensitive soils; minimizing impacts with BMPs; minimizing impacts of spills; reseeding and watering to mitigate for wind erosion; applying BMPs to mitigate for soil compaction; replacing topsoil and reestablishing vegetation as appropriate for the locations; cooperating and consulting with agencies and landowners; applying BMPs to control weeds; and adhering to federal agency land use plans on impacted federal lands.³⁶⁶ Notwithstanding Dr. Fouty's arguments, it is reasonable, and consistent with industry standards, for Idaho Power to rely on agency-issued BMPs to mitigate adverse impacts. The Department reviewed ASC Exhibit I and concluded that it sufficiently described Idaho Power's avoidance and mitigation measures and that the described measures are not likely to result in a significant adverse impact to soils.³⁶⁷ Dr. Fouty has not established otherwise.

Moreover, the recommended site certificate conditions in the Proposed Order related to soil protection and the various mitigation plans addressed within those conditions require that

contends that Idaho Power did not provide documentation of the effectiveness of its proposed mitigations to recover lost soil productivity. *Id.*

³⁶⁶ ODOE - B2HAPPDoc3-16 ASC 09a_Exhibit I_Soil_ASC_Part 1 2018-09-28, pages 28-36 of 115; Madison Rebuttal Test. at 23-34.

³⁶⁷ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 109-10 of 10016.

Idaho Power provide site-specific mitigation information and that the Company have in place various finalized plans designed to ensure that temporary adverse impacts to soil are minimized. For example, Recommended Soil Protection Condition 1 requires Idaho Power to obtain a NPDES 1200-C permit and to have and comply with an approved Erosion and Sediment Control Plan. Recommended Soil Protection Conditions 2 and 3 require Idaho Power to have and comply with an approved SPCC Plan for construction and, if necessary, operation. Other recommended conditions require Idaho Power to have and comply with an approved Blasting Plan, to monitor and inspect facility components for soil impacts, and to have and comply with an approved Agricultural Impacts Mitigation Plan and an approved Reclamation and Revegetation Plan.³⁶⁸

The Department appropriately concluded that the mitigation plans that apply to agricultural restoration, revegetation and restoration, combined with the DEQ 1200-C permit, are more than adequate to ensure that appropriate measures are implemented pre- and post-construction to ensure soil restoration. Again, Dr. Fouty has not demonstrated otherwise.

*Proposed site certificate condition related to the Soil Protection Standard.*³⁶⁹

In her Closing Brief, Dr. Fouty proposed a site certificate condition requiring that “prior to approval of the site application a project level soils analysis must be done and then evaluated for compliance with the Soil Protection standard.”³⁷⁰ ~~Dr. Fouty did not timely submit this proposed condition with her direct testimony, in accordance with the schedule set in the Case-Management Order. Because the submission is untimely, there is no need to address the necessity or appropriateness of the proposed condition. That said, however, Bbased on the discussion of Issue SP-1 above, it is evident that the proposed condition is unnecessary for compliance with the Soil Protection standard.~~

Ruling on Idaho Power’s Motion to Strike portions of Dr. Fouty’s Closing Brief on Issue SP-1:

As part of its Response Brief, Idaho Power moves to strike, or in the alternative asks that the ALJ give no weight to, statements from Dr. Fouty’s Closing Brief that are testimonial in

³⁶⁸ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 104-109 of 10016; *see also* Madison Rebuttal Test. at 23-29.

³⁶⁹ In its Rebuttal to Direct Testimony, the Department recommended a new soil protection condition (ODOE Proposed Soil Protection Condition XX) requiring Idaho Power to, at least 12 months prior to construction, develop and submit a Soil Impact Mitigation Protocol specific to temporary disturbance areas. ODOE Rebuttal to Direct Testimony at 116. However, in its Closing Brief, the Department withdrew this proposed condition and instead proposed that language be adopted into the draft Reclamation and Revegetation Plan designed to further support successful restoration of temporary soil impacts. *See* ODOE Closing Brief at 202-203. Because the Department withdrew its previous recommended condition, it is not addressed herein.

³⁷⁰ Dr. Fouty also proposed specific elements and methodology for the soils analysis. Fouty Closing Brief at 61.

nature and/or reference documents not admitted into the evidentiary record. Specifically, Idaho Power moves to strike: (a) statements referencing and relying on National Resources Conservation Services (NRCS) data that is not part of the evidentiary record; (b) statements referencing and relying on Federal Resource Management Plans (the 1990 Wallowa-Whitman National Forest Land Resource Management Plan, the 1989 BLM Baker Resource Management Plan Record of Decision, and the 2002 BLM Southeastern Oregon Resource Management Plan and Record of Decision) that are not part of the evidentiary record; and (c) statements of opinion or analysis that are not included in or supported by Dr. Fouty's direct or surrebuttal testimony.³⁷¹

Dr. Fouty filed an opposition to Idaho Power's motion, asserting that the motion was not authorized and without merit because (with the exception of Figure 1 in the brief) all the challenged information in her Closing Brief is accessible, fixed, and relevant to Issue SP-1 and the Soil Protection standard. Fouty Opposition to Late Motion to Strike at 1-2.

The ALJ rejects Dr. Fouty's procedural challenge to Idaho Power's motion. As previously discussed, the applicable procedural rules authorize parties, including limited parties, to submit motions seeking an order or other relief. OAR 345-015-0054(1). On the substance of the motion, the ALJ agrees that with Idaho Power the challenged portions of Dr. Fouty's Closing Brief are testimonial in nature and/or reference documents not admitted into the evidentiary record. The Table of Additional Admitted Evidence (Appendix 1), sets out the additional evidence admitted into the hearing evidentiary record as of January 31, 2022. The NRCS data and the Federal Resource Management Plans referenced in Dr. Fouty's Closing Brief are not part of the B2H Project Record or listed in the Table of Additional Admitted Evidence, and therefore are not part of the evidentiary record. However, considering the logistical challenges and inefficiency of carving up the brief, the ALJ declines to strike the challenged statements. Instead, because the evidentiary record does not support the challenged statements, the ALJ grants Idaho Power's alternate request and gives these statements no weight.

Ruling on Idaho Power's Motion to Strike Portions of Dr. Fouty's Response Brief on Issue SP-1:

In its Motion, Idaho Power moves to strike or, alternatively, asks that no weight be given to the following portions of Dr. Fouty's Response Brief: Figures A-1 and A-2 and statements made in reliance of NRCS data not in the record; statements made in reliance of Federal Resource Management Plans; statements made in reliance on the Third Oregon Climate Assessment Report; and any testimonial statements made with no reference to the existing record. Motion at 17-21.

In her opposition to Idaho Power's motion, Dr. Fouty asserts that the NRCS database, the Federal Resource Management Plans, and the Third Oregon Climate Assessment Report are part of the evidentiary record because these sources are cited in the ASC and/or referenced in the Proposed Order and attachments thereto. She argues that the references to these sources in the B2H Project Record documents makes the sources part of the record in their entirety. Fouty

³⁷¹ In Attachment A to Idaho Power's Response Brief and Motion to Strike for Issue SP-1, Idaho Power identifies approximately 20 pages of statements in Ms. Fouty's Closing Brief that are testimonial in nature and not supported by evidence in the record.

Response at 1. Dr. Fouty is incorrect on this point. A citation to, or excerpt from, a database, report, or management plan in the ASC or Proposed Order does not make the entirety of that database, report, or management plan part of the evidentiary record of the contested case. As discussed previously, the evidentiary record consists of the B2H Project Record (as marked with a Doc ID number assigned by the Department) and the documents listed in the Table of Additional Admitted Evidence. Contrary to Dr. Fouty's contention, if the referenced information from the database, report, or management plan is not included in the B2H Project Record or not listed as an exhibit in the Table of Additional Admitted Evidence, then that information is not part of the evidentiary record.

The ALJ agrees with Idaho Power that challenged statements in Ms. Fouty's Response Brief are based on information that is not part of the evidentiary record. For the reasons previously explained, the ALJ gives the challenged figures and statements no weight.

Structural Standard

OAR 345-022-0020, the Structural Standard states, in pertinent part:

[T]o issue a site certificate, the Council must find that:

- (a) The applicant, through appropriate site-specific study, has adequately characterized the seismic hazard risk of the site; and
- (b) The applicant can design, engineer, and construct the facility to avoid dangers to human safety and the environment presented by seismic hazards affecting the site, as identified in subsection (1)(a);
- (c) The applicant, through appropriate site-specific study, has adequately characterized the potential geological and soils hazards of the site and its vicinity that could, in the absence of a seismic event, adversely affect, or be aggravated by, the construction and operation of the proposed facility; and
- (d) The applicant can design, engineer and construct the facility to avoid dangers to human safety and the environment presented by the hazards identified in subsection (c).

Flooding risk – Issue SS-2

Issue SS-2: Whether Applicant adequately analyzed the risk of flooding in areas adjacent to the proposed transmission line arising out of the construction-related blasting. Whether Applicant should be required to evaluate hydrology, including more detailed and accurate mapping of existing creeks and ditches that drain into streets and private property, and core samples of sufficient variety and depth to determine the flooding risk to neighborhoods of south and west La Grande.

Limited party Cooper has standing on Issue SS-2. Mr. Cooper did not file any written direct testimony or supporting exhibits for this issue.³⁷² However, he submitted closing argument asserting that construction-related blasting and road building are likely to exacerbate problems with storm water drainage.³⁷³ Mr. Cooper also asserted that “road building, blasting, and earth moving activities threaten to cause erosion and sedimentation in the south and west hills, worsening the possibility of flooding in the Mill Creek, Miller Creek, and Deal Creek drainages.” Cooper Closing Brief on Issue SS-2 Flooding at 4.

As noted, Mr. Cooper did not present any facts or evidence to support his claim that construction related activities, including blasting, will result in significant flooding and property damage. The preponderance of the evidence in this record establishes otherwise. In the ASC, Idaho Power adequately characterized the risk of flooding and established that it can design, engineer, and construct the facility to avoid dangers posed by potential flooding hazards. As Idaho Power’s blasting consultant and expert Mr. Cummings explained, it is unlikely that construction-related blasting will reroute waterways and/or increase flooding risks. In the Proposed Order, the Department found that Recommended Structural Standard Condition 1 would require the pre-construction site specific geological and geotechnical investigation report to identify facility components within the 100-year flood zone, any related potential risk to the facility, and measures to mitigate the identified hazards. To require Idaho Power to take core samples prior to selection of the final route is not practical nor required by the Council’s rules.

Proposed Site Certificate Conditions related to Issue SS-2.

In his closing argument, Mr. Cooper proposed two new site certificate conditions. The first requires Idaho Power to conduct further analysis of storm water runoff from the proposed facility and the second requires further analysis of hydrology. Cooper Closing Brief on Issue SS-2 Flooding at 6. Mr. Cooper did not timely submit these proposed site certificate conditions to the ALJ in accordance with the schedule set in the *Case Management Order*³⁷⁴ nor did he timely present evidence in support of these proposed conditions. Because Mr. Cooper did not submit

³⁷² See *Ruling on Motion to Dismiss* at 14-15.

³⁷³ In his closing argument on Issue SS-2, Mr. Cooper also contends that the proposed project violates the Public Services Standard because that standard requires, among other things, a finding that the construction and operation “are not likely to result in a significant adverse impact to the ability of public and private providers within the analysis area * * * to provide * * * storm water drainage.” OAR 345-022-0110(1). This argument falls outside the scope of Issue SS-2, which is limited to concerns about Idaho Power’s identification and mitigation of soil-related and geologic hazards, including flooding, landslides, and erosion. Because Mr. Cooper was not granted limited party status on the issue of storm water drainage under the Public Services Standard, the ALJ declines to address this challenge. See *Amended Order on Party Status* at pages 37-38 (discussing the issues properly raised by Mr. Cooper).

³⁷⁴ Pursuant to OAR 345-015-0085(1), “parties shall submit proposed site certificate conditions to the hearing officer in writing according to a schedule set by the hearing officer.” In this matter, the deadline for submitting written direct testimony, evidence, and any proposed site certificate conditions was September 17, 2021. *Case Management Order* at 16, 18.

these proposed conditions in a timely manner, the ALJ declines to address their necessity or appropriateness.

Ruling on Idaho Power's Motion to Strike portions of Mr. Cooper's Closing Brief on Issue SS-2:

As part of its Response Brief, Idaho Power moves to strike statements from Mr. Cooper's Closing Brief on Issue SS-2 that reference or rely on documents not admitted into the evidentiary record. The ALJ acknowledges that Mr. Cooper did not timely file any direct testimony or exhibits in support of Issue SS-2, and that based on the *Ruling on Motion to Dismiss*, any references to evidence other than specified documents in the B2H Project Record "will not be excluded and considered."³⁷⁵ Instead of striking this testimony from the brief, the ALJ gives the challenged statements no weight.

Blasting concerns – Issues SS-1, SS-3 and SS-5

Issue SS-1: Whether Design Feature 32 of the Proposed Order Attachment G-5 (Draft Framework Blasting Plan) should be a site certificate condition to ensure repair of landowner springs from damage caused by blasting.

Limited party Stacia Webster has standing on Issue SS-1, and bears the burden of producing evidence to support her claim. Ms. Webster did not file any written direct testimony or exhibits in support of her position on Issue SS-1 nor did she submit written closing argument regarding this issue. Because Ms. Webster failed to submit evidence and/or argument in support of her contention that Design Feature 32 of the Framework Blasting Plan should be a site certificate condition, the ALJ considers the claim unsubstantiated.³⁷⁶ The findings in the Proposed Order pertaining to this issue constitute *prima facie* evidence of Idaho Power's compliance with the Structural standard.

Idaho Power's proposed site certificate condition related to Issue SS-1

Notwithstanding Ms. Webster's failure to substantiate this claim, Idaho Power has agreed to incorporate the requirements of Design Feature 32 into a site condition. Based on Idaho Power's agreement and the Department's concurrence, the ALJ recommends that Soil Protection Condition 4 be revised as follows:³⁷⁷

Amended Recommended Soil Protection Condition 4:

- a. Prior to construction, in accordance with the OAR 345-025-0016 agency consultation process outlined in the draft Framework Blasting Plan (Attachment

³⁷⁵ *Ruling on Motion to Dismiss* at 15.

³⁷⁶ Because Issue SS-1 is unsubstantiated, there is no need to address the merits of the claim in this order. See *Ruling on Motion to Dismiss* at 13.

³⁷⁷ Revisions in bold font.

20 G-5 of the Final Order on the ASC), the certificate holder shall finalize, and submit to the Department for approval, a final Blasting Plan. The final Blasting Plan shall meet all applicable federal, state and local requirements related to the transportation, storage, and use of explosives.

b. Prior to construction, the certificate holder will consult with landowners regarding right-of-way acquisition, and during these consultations, the certificate holder will discuss with the landowner any blasting that the certificate holder plans to conduct on the landowner's property. If the landowner identifies a natural spring or well on the property, the certificate holder will notify the landowner that at the landowner's request, the certificate holder shall conduct pre-blasting baseline flow and water quality measurements for turbidity. The certificate holder shall compensate the landowner for adequate repair or replacement if damages to the flow or quality of the natural spring or well occur solely as a result of blasting.

c. During construction, the certificate holder shall conduct all work in compliance with the final Blasting Plan approved by the Department.

Ms. Webster's proposed site certificate condition related to the Framework Blasting Plan:

In her direct witness testimony related to Issue PS-10, Ms. Webster proposed that the following condition be added to the Framework Blasting Plan (Proposed Order Attachment G-5) as well as the FSP Plan (Proposed Order, Attachment U-3): "During blasting Idaho Power will provide a water tender staffed by a crew of at least two personnel." Webster Direct Test. Issue PS-10 at 14-15. Ms. Webster asserted that during construction blasting, one person working a water tender will not be sufficient to alert the blasting crew, summon assistance, report the fire to the local fire agency, and suppress the fire. *Id.*

Ms. Webster presented no evidence in support of her claim that the Fire Safety provisions of the Framework Blasting Plan are insufficient, and that construction contractors must have a water tender staffed by a crew of at least two firewatch/fire suppression personnel during blasting activities. In the absence of such evidence, this proposed condition is denied.

Issue SS-3: Whether Applicant should be required to test the water quality of private water wells to ensure that construction-related activities are not impacting water quality and quantity.

Limited parties Horst and Cavinato have standing on Issue SS-3. As discussed previously, Mr. Horst and Ms. Cavinato reside in a home on an unpaved portion of Hawthorne Drive, just outside the city limits of La Grande. In Issue SS-3, they raise concerns about the impact that construction-related blasting (and construction-related traffic) could have on a deep water well on their property, located about 10 feet from a gravel road that contractors may use to access the power lines and a tensioning station. The limited parties request that Idaho Power test

the well water before, during and after construction and/or that the Company build a new road to detour construction-related traffic away from their property. Horst Closing Statement at 8-9.

Although Mr. Horst raised concerns that blasting and construction vehicles will damage the well on his property, he did not provide any evidence to support this concern. Idaho Power, on the other hand, presented evidence from a geological engineering expert and blasting consultant (Robert Cummings) that it is highly unlikely blasting or construction related traffic would cause damage to the well and therefore it is not necessary to test the well water before, during, and after construction of the facility.³⁷⁸ Based on the persuasive testimony provided by Mr. Cummings, there is no reason to conclude that blasting activities would impact well water quality on Mr. Horst's property given the geotechnical testing and site-specific reconnaissance to be undertaken prior to blasting and the safety measures required by the Framework Blasting Plan. Furthermore, as discussed previously, the requirements of the Framework Blasting Plan, Design Feature 32 are to be incorporated into a site condition. Accordingly, prior to construction, Idaho Power will be required to consult with landowners regarding any blasting to be conducted on the landowner's property. At the landowner's request, Idaho Power will conduct pre-blasting baseline flow and water-quality measurements, testing specifically for turbidity.

As to potential impacts from construction traffic, Mr. Cummings' testimony establishes that any seismic vibrations caused by heavy construction vehicles would be minimal and not at all likely to cause permanent damage to the well.³⁷⁹ Any turbidity in the well caused by seismic vibrations from construction vehicles would be temporary.

Consequently, on this record, limited parties Horst and Cavinato have not established that it is reasonable or necessary for Idaho Power to test the well water on their property before, during and after construction to ensure that construction-related activities do not adversely impact their well water quality and quantity. The requirements of Design Feature 32 (incorporated into Recommended Soil Protection Condition 4) will address their concerns about blasting activities. Other proposed mitigation measures, including reduced vehicle speeds, will address their concerns about impacts from construction traffic. Mr. Horst and Ms. Cavinato have also failed to establish a need for Idaho Power to build a new road to direct construction-related traffic away from the deep well on their property.

Issue SS-5: Whether Applicant has adequately evaluated construction-related blasting in Union County, City of La Grande, under the Structural Standard. Specifically, whether Applicant should be required to conduct site-specific geotechnical surveys to characterize risks from slope instability.

Limited party Jonathan White has standing on Issue SS-5. In his direct testimony, Mr. White asserted that because the Proposed Order does not provide specifics about where construction-related blasting may occur, the proposed facility does not comply with the

³⁷⁸ Cummings Rebuttal Test. at 13.

³⁷⁹ Cummings Rebuttal Test. at 45-46.

Structural Standard. Mr. White further argues that because the company has not yet conducted a site-specific study of the slope above his home or at proposed tower locations along the route in the hills above La Grande to characterize the potential geological and soils hazards at those locations, Idaho Power has not met the requirements of OAR 345-022-0020(1)(c). White Direct Test. at 1-2.

Contrary to Mr. White's contention, Idaho Power has already performed significant reconnaissance level work, including literature review and preliminary visits to site boundary areas, to characterize the potential geological and soils hazards within the site boundary. See, e.g., ASC Exhibit H, Attachment H-1, Engineering Geology and Seismic Hazards Supplement³⁸⁰ and ASC Exhibit I, Section 3.2.3 (Assessing Erosion Impacts).³⁸¹ Furthermore, as the Department noted in the Second Amended Project Order, a detailed site-specific geotechnical investigation for the entire site boundary is not practical in advance of completing the final facility design and obtaining full site access.³⁸² In the Proposed Order, the Department concluded that Idaho Power, in consultation with DOGAMI, adequately identified potential risks of slope stability and that the evaluation provided in Exhibit H was sufficient to inform the evaluation under the Structural Standard.³⁸³ The Department approved Idaho Power's two-phase plan and recommended that Council find that, subject to Idaho Power's compliance with the recommended Structural Standard conditions, the company Power can design, engineer, and construct the facility to avoid danger to human safety and the environment.³⁸⁴

Mr. White presented no new facts or exhibits to support his claim. In the ASC, and as supplemented by the testimony of Mr. Sorensen and Mr. Cummings, Idaho Power has provided sufficient evidence to evaluate compliance with the Structural Standard. In its Phase 2 Site-Specific Geotechnical Report, to be completed after issuance of the site certificate and prior to construction, Idaho Power will include the requisite site-specific information for sites that will be impacted by construction and operation of the project. Further, where appropriate and necessary, Idaho Power will employ appropriate slope instability mitigation techniques.

Based on its compliance with the pertinent site conditions (the Recommended Structural Standard Conditions and Recommended Soil Protection Condition 4), Idaho Power has demonstrated the ability to evaluate and avoid potential geologic and soils hazards, and blasting-related impacts, in accordance with the Structural Standard requirements.

Miscellaneous Issue - Hazardous materials management and monitoring

Issue M-6: Whether the Proposed Order fails to provide for a public review of

³⁸⁰ ODOE - B2HAPPDoc3-14 ASC 08a_Exhibit H_Geology_ASC_Part 1 2018-09-28, pages 42 to 243.

³⁸¹ ODOE - B2HAPPDoc3-16 ASC 09a_Exhibit I_Soil_ASC_Part 1 2018-09-28, pages 9-13 of 115.

³⁸² ODOE - B2HAPPDoc15 ApASC Second Amended Project Order 2018-07-26, page 14 of 29.

³⁸³ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 80 to 96.

³⁸⁴ *Id.* at pages 96-98.

final monitoring plans, fails to provide long-term hazardous materials monitoring, and improperly allows exceptions that substantially increase the likelihood of a hazardous material spill in violation of OAR 345-021-0010(w).

Limited party Marlette has standing on Issue M-6. In her direct testimony and closing argument, Ms. Marlette asserted that the Council should provide the public the opportunity to review and comment on final monitoring plans, including the SPCC Plan.³⁸⁵ Ms. Marlette also claimed that the SPCC Plan is inadequate because it does not require long-term monitoring for hazardous material contamination during operation of the proposed facility and is not consistent with the setbacks included in the federal B2H Final Environmental Impact Statement (FEIS).³⁸⁶ In addition, Ms. Marlette asserted that Idaho Power will use and store hazardous materials (including herbicides) during operation of the proposed facility, and for that reason, additional monitoring and safety precautions are necessary to protect the public and resources from hazardous materials spills. Marlette Closing Brief on Issue M-6 at 2-4. For the reasons that follow, Ms. Marlette's contentions lack merit.

Review of final plans. First, and contrary to Ms. Marlette's contention, the Council is not required to provide further public review and comment on draft plans, including the SPCC Plan, before approving a site certificate. As set out in the findings above, Idaho Power included a draft SPCC Plan in ASC Exhibit G.³⁸⁷ The public had the opportunity to review and comment on the SPCC Plan (and all other draft monitoring and mitigation plans in the ASC) during the public meetings and during the comment period following the issuance of the DPO. Idaho Power had the opportunity to respond to those comments, and the Department considered the public comments and responses thereto in making its findings in the Proposed Order.

In the Proposed Order, the Department discussed the substance of the draft SPCC Plan and recommended Soil Protection Condition 2, which requires Idaho Power to submit a final SPCC Plan to the Department prior to construction of the facility.³⁸⁸ This final review process for draft plans in the ASC is authorized by ORS 469.402.³⁸⁹ The statute allows the Council, in

³⁸⁵ As set out in the findings, the SPCC Plan (Attachment G-4 to ASC Exhibit G), outlines the preventive measures and practices that contractors will employ during construction of the proposed facility to reduce the likelihood of an accidental release hazardous or regulated liquid and the measures to be taken to expedite the response should such a spill occur.

³⁸⁶ Ms. Marlette did not submit the FEIS as an exhibit in this matter. Idaho Power attached a courtesy copy of Chapter 3 of this document as Attachment A to its Closing Arguments for Issue M-6.

³⁸⁷ ODOE - B2HAPPDoc3-13 ASC 07_Exhibit G_Materials_ASC 2018-09-28, page 14 of 102.

³⁸⁸ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 106 of 10016.

³⁸⁹ ORS 469.402 provides:

If the Energy Facility Siting Council elects to impose conditions on a site certificate or an amended site certificate, that require subsequent review and approval of a future action, *the council may delegate the future review and approval to the State Department of*

its discretion, to approve a site certificate based on draft plans and impose a condition delegating future review and approval of such plans to the Department without further public participation.

The Court of Appeals' decision in *Gould v. Deschutes County*, 216 Or App 150 (2007), referenced by Ms. Marlette, does not dictate a different result. The circumstances at issue in *Gould* are not analogous to Department and Council review of a site certificate application. *Gould* involved appellate review of a LUBA decision that upheld the county's conditional approval of a conceptual master plan (CMP) for a destination resort development near Redmond, Oregon. The *Gould* court noted that state and local law contain special standards for approving destination resort developments and that the proposed development at issue was subject to compliance with the Deschutes County Code (DCC) Chapter 18.113. The DCC requires a three-step process for approving a destination resort. The first step includes consideration and approval of the CMP at a public hearing where the developer must submit evidence of the CMP's compliance with the DCC. Under the DCC, any approval must be based on the record created at that public hearing. DCC 18.113.040(A). Then, once the CMP is approved, it becomes the standard for staff evaluation of a "final master plan," and any "substantial change" in the CMP must be reviewed and approved using the same process as the original plan approval pursuant to DCC 18.113.040(C). *Gould* at 153-54.

Petitioner Gould challenged LUBA's decision to uphold the county's approval of the CMP asserting, among other things, that the county acted contrary to DCC requirements when it approved a wildlife mitigation plan for the CMP outside of the public hearing process. The court agreed and found that, to adhere to the DCC approval process, the county should have postponed approval of the CMP to allow for a public hearing on a draft wildlife mitigation plan. In reversing and remanding the matter to LUBA, the court explained:

The county's decision is inconsistent with ORS 215.416(9)³⁹⁰ because the decision lacks a sufficient description of the wildlife impact mitigation plan, and justification of that plan based on the standards in DCC 18.113.070(D). Second, that code provision requires that the content of the mitigation plan be based on "substantial evidence in the record," not evidence outside the CMP record. In this case, the particulars of the mitigation plan were to be based on a future negotiation, and not a county hearing process. Because LUBA's opinion and order concluded that the county's justification was adequate despite those deficiencies, the board's decision was "unlawful in substance."

Energy if, in the council's discretion, the delegation is warranted under the circumstances of the case.

Emphasis added.

³⁹⁰ ORS 215.416(9), addressing county approval of land use permit applications, states:

Approval or denial of a permit or expedited land division shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

216 Or App at 159-60.

Gould does not govern this contested case because, as noted above, the resort development CMP review process established under the DCC is not analogous to the Department and Council review process for site certificate applications. In this matter, in accordance with the policy and procedures set out in ORS Chapter 469, the draft SPCC Plan and other monitoring and mitigation plans were submitted in the ASC and were subject to public review and comment in hearings following issuance of the DPO. There is nothing in the EFSC governing statutes or rules that require public review and comment prior to finalization of these plans. As noted above, ORS 469.402 authorizes the Council to delegate the approval of a future action to the Department. Furthermore, pursuant to OAR 345-025-0016, a certificate holder “must develop proposed monitoring and mitigation plans in consultation with the Department and, as appropriate, other state agencies, local governments and tribes,” but again, there is no requirement for additional public input prior to the finalization of such plans.

In short, there is no need for Idaho Power to finalize all draft mitigation and/or monitoring plans (including the SPCC Plan) prior to Council’s approval of a site certificate and there is no requirement for further public review and comment on the draft plans before issuance of a site certificate. Under ORS 469.402, Council may find that an applicant’s draft plans constitute sufficient evidence on which to base a finding of compliance with applicable standards, and may condition its approval on draft plans that are subject to future final review by the Department.

Sufficiency of the SPCC Plan. Second, a preponderance of the evidence establishes the SPCC Plan includes protective measures sufficient to demonstrate compliance with relevant Council standards. In the Proposed Order, the Department reviewed the SPCC Plan in connection with the Soil Protection standard³⁹¹ and the Retirement and Financial Assurances standard.³⁹² In its findings regarding the Soil Protection standard, the Department discussed the SPCC Plan’s spill prevention and emergency preparedness provisions and recommended site certificate conditions related to the plan. The Department agreed that a SPCC Plan would not be necessary during operation of the facility unless Idaho Power took over operation of the Longhorn Station. The Department included Recommended Soil Protection Condition 3 to address that contingency.³⁹³ The Department recommended that the Council find, subject to

³⁹¹ As discussed previously, under the Soil Protection standard, the Council must find that the construction and operation of the facility is not likely result in adverse impact to soils including “chemical factors such as * * * chemical spills.” OAR 345-022-0022.

³⁹² As discussed previously, the Retirement and Financial Assurance standard requires, among other things, that the Council find that the site “can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility.” OAR 345-022-0050(1).

³⁹³ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 106 of 10016 (“The applicant does not anticipate that it would be required to adhere to an SPCC Plan during operations unless it were to operate the Longhorn Station instead of BPA.”) The recommended condition provides that if, prior to construction, Idaho Power is required by DEQ statutes or rules to implement a SPCC Plan for operation of the facility, then the Company must submit to the Department a copy of a DEQ-approved

Idaho Power's compliance with the recommended site certificate conditions, the construction and operation of the proposed facility comply with the Soil Protection standard. Ms. Marlette did not present any persuasive evidence to the contrary.

With regard to the Retirement and Financial Assurances standard, the Department reviewed the information submitted in ASC Exhibit W,³⁹⁴ and determined that Idaho Power was not required to develop a hazardous materials monitoring plan because, after completing construction, there will be no hazardous materials used or stored on site.³⁹⁵ Ms. Marlette did not present any persuasive evidence to the contrary.

Third, the FEIS setbacks identified by Ms. Marlette are not relevant to the SPCC Plan, and are not necessary to ensure that SPCC Plan complies with Council standards. The SPCC Plan requires that transfer of liquids or refueling must occur at least 100 feet from any wetlands or surface waters. Ms. Marlette argues that Idaho Power should apply a 300-foot setback for such activities, based on FEIS Design Feature 15.³⁹⁶ However, the 300-foot setback discussed in FEIS Design Feature 15 applies only to surface-disturbing activities. The transfer of liquids and refueling is not a surface-disturbing activity. Design Feature 21 (Disposal of Hazardous Materials and Construction Waste) is the only provision FEIS pertinent to the SPCC Plan, and the SPCC Plan's 100-foot setbacks for on-site activities are more specific and conservative than those stated in FEIS Design Feature 21.³⁹⁷

operation-related SPCC Plan and maintain compliance with the plan during operations at Longhorn Station. *Id.*

³⁹⁴ Pursuant to OAR 345-021-0010(1)(w)(E), for proposed facilities that might produce site contamination by hazardous materials, the ASC must include a proposed monitoring plan or an explanation why a monitoring plan is unnecessary.

³⁹⁵ During the operations phase, all use and storage of gasoline and diesel will remain inside vehicles that will come and go from the site. Herbicides are not hazardous materials and will be managed by licensed contractors. *See Stippel Rebuttal Test., Issue M-6, at 9.*

³⁹⁶ Design Feature 15 of the FEIS (Reduce Impacts on Riparian Areas) states, in pertinent part:

Consistent with the BLM and USFS PACFISH/INFISH riparian management policies, surface-disturbing activities would be avoided in defined segments of RCAs, using the following delineation criteria, unless exception criteria defined by the BLM are met or with agency approval of acceptable measures to protect riparian resources and habitats by avoiding or minimizing stormwater runoff, sedimentation, and disturbance of riparian vegetation, habitats, and wildlife species:

- Fish-bearing streams: 300 feet slope distance on either side of the stream, or to the extent of additional delineation criteria—whichever is greatest.
- Perennial non-fish-bearing streams: 150 feet slope distance on either side of the stream, or to the extent of additional delineation criteria—whichever is greatest.

Idaho Power Closing Arguments for Issue M-6, Attachment A at 3-4.

³⁹⁷ Design Feature 21 of the FEIS states:

In summary, Ms. Marlette has failed to present evidence to substantiate her claims with regard to Issue M-6. There is no Council standard requiring public review and comment of final monitoring plans. The evidence in the record persuasively establishes that there is no need for Idaho Power to have a long-term monitoring plan in place for purposes of the Soil Protection Standard or the RFA Standard. The SPCC Plan and recommended Soil Protection Condition 2 adequately address the management of hazardous substances to be used and stored during construction of the proposed facility. Because Idaho Power does not anticipate using and storing hazardous materials during facility operation and the facility is not one that will produce contamination by hazardous materials, there is no need for a long-term monitoring plan.

Ms. Marlette proposed two conditions in her Closing Arguments (Closing Brief of JoAnn Marlette, Pro Se Petitioner Issue M-6: Monitoring Plans for Hazardous Materials at 3), as presented below:

1. **Marlette Proposed Condition 1 for Issue M-6:** Idaho Power will complete a site-specific, written exception any time they are unable to follow the standard procedures for managing hazardous chemicals. The exception will include identification of additional safety precautions they will use to minimize the risk of spills.”
2. **Marlette Proposed Condition 2 for Issue M-6:** In order to approve an exception, the EI must complete a site-specific SPCC plan that identifies additional measures that will be implemented to assure no spills occur, which would include the need for more safeguards when using chemicals in hazardous areas. The plan must be maintained and remain at the site to comply with OAR 345-022-0050.”

The Council rejects Marlette’s proposed conditions for the following reasons. The Department’s recommended Soil Protection Condition 2, as included in the Proposed Order on the ASC, would require that Idaho Power and their Contractor(s) adhere to the requirement of an SPCC. Ms. Marlette’s proposed conditions presume that Idaho Power would not be able to comply with standard procedures and would require exceptions under the SPCC. If Idaho Power cannot comply with the requirements of the SPCC, including standard procedures for managing hazards chemicals, they would be obligated to submit a report to the Department under OAR Division 29 (OAR 345-029-0010) documenting their site certificate non-compliance and explaining the impact and resolution, for Department determination on whether to exercise enforcement. If Idaho Power requires an exception to the SPCC, there are only specific components of the plan that allow exceptions, such as an exception to the minimum setback from disturbance to water bodies if the topography is not suitable (i.e. substantial slope) for achieving such setback. Otherwise, general exceptions to the SPCC requirements are not allowable and Idaho Power must comply with all requirements of the SPCC under Soil Protection Condition 4. For these reasons, Ms. Marlette’s proposed conditions are unnecessary and inappropriate.

Proposed Site Certificate Conditions Unrelated to Identified Issues on Which the Limited Parties Have Standing in the Contested Case

In addition to the proposed conditions discussed previously in this order, two limited

parties, Ms. Gilbert and Ms. Geer, timely proposed site certificate conditions pertaining to matters unrelated to the identified issues on which they have standing in the contested case. Idaho Power objected to these proposed conditions and requested that the ALJ exclude them from further consideration in the contested case because they are not within the scope of the issues properly raised by the limited parties in this matter.³⁹⁸ Idaho Power asserted that the ALJ and Council should read OAR 345-015-0085(1)³⁹⁹ narrowly and in conjunction with OAR 345-015-0016,⁴⁰⁰ to preclude a limited party from proposing site conditions that are outside the scope

Hazardous material would not be discharged onto the ground or into streams or drainage areas. Enclosed containment would be provided for all waste. All construction waste (i.e., trash and litter, garbage, other solid waste, petroleum products, and other potentially hazardous materials) would be removed to a disposal facility authorized to accept such materials within one month of B2H Project completion, except for hazardous waste which would be removed within one week of B2H Project completion.

Refueling and storing potentially hazardous materials would not occur within a 200-foot radius of all identified private water wells, and a 400-foot radius of all identified municipal or community water wells. Spill prevention and containment measures would be incorporated as needed.

Idaho Power Closing Arguments for Issue M-6, Attachment A at 5.

³⁹⁸ See Idaho Power Company's Response to Limited Parties' Proposed Site Certificate Conditions, filed November 18, 2021, at 36-39.

³⁹⁹ OAR 345-015-0085(1) states, in pertinent part: "The hearing officer shall allow *any party, including any limited party, to propose site certificate conditions* that the party believes are necessary or appropriate to implement the policy of ORS 469.310 or to meet the requirements of any other applicable statute, administrative rule or local government ordinance."

⁴⁰⁰ OAR 345-015-0016(3) states, in pertinent part: "If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the hearing officer may not consider the issue in the contested case proceeding."

of the contested case issues and/or outside the scope of the matters on which the limited party has standing.

Idaho Power argued, in pertinent part, as follows:

[I]nterpreting OAR 345-015-0085(1) to allow all parties to propose conditions on all issues—without any limitation as to whether the limited party properly raised the issue in this case—would frustrate the intent to limit issues raised in the contested case to those raised with sufficient specificity in DPO comments. Additionally, it would achieve an absurd result, in which a limited party could sandbag the contested case by proposing *entirely new conditions on entirely new issues* without having raised them below, thus entirely undermining the Council’s framework for conducting contested cases.

Idaho Power Company’s Response to Limited Parties’ Proposed Site Certificate Conditions at 38, emphasis in original,

In light of Idaho Power’s request to exclude these proposed conditions from consideration, the ALJ certified the following two questions to Council for its consideration and disposition:⁴⁰¹

1. Should OAR 345-015-0085(1) be read to restrict a limited party’s authorization to propose site certificate conditions to those that relate to and are within the scope of the issue(s) on which the limited party was granted standing in the contested case?
2. Should OAR 345-015-0085(2) be read to restrict a limited party to presenting evidence and argument relating to the appropriateness, scope or wording of another party’s proposed site certificate condition to those proposed conditions that relate to and are within the scope of the issue(s) on which the limited party was granted standing in the contested case?

Certified Questions to Council Regarding Interpretation of OAR 345-015-0085(1) and (2), issued December 14, 2021. The Council declined to provide answers to these two questions,⁴⁰² thereby leaving it up to the ALJ to determine the Council’s intention.

The ALJ appreciates Idaho Power’s arguments on this issue. The ALJ also agrees that

⁴⁰¹ OAR 345-015-0023(5)(k) authorizes the ALJ, in her discretion, to “certify any question to the Council for its consideration and disposition.”

⁴⁰² See Ratcliffe email to ALJ Webster, December 23, 2021 (“The Council received legal advice on the questions and deliberated extensively on the legal and policy issues involved. The Council took several motions on both sides of the questions, but none of the motions received a majority. As a result, the Council cannot provide answers to your questions at this time.”)

allowing a limited party to propose *any* site certificate conditions that the limited party believes are necessary or appropriate notwithstanding the limitations on that limited party's standing and participation in the contested case tends to frustrate the intent of ORS 469.370 and OAR 345-015-0016. Both the statute and rule specify that the contested case shall be limited to those issues properly raised on the record of the DPO.⁴⁰³

On the other hand, the broad language of OAR 345-015-0085(1) ("the hearing officer shall allow any party, including any limited party, to propose site certificate conditions"), cannot be ignored. *See, e.g., Papas v. OLCC*, 213 Or App 369 (2007) (an agency interpretation of a rule that is inconsistent with the wording of the rule and its context is not plausible and is not entitled to deference). If the Council intended to limit a party/limited party's ability to propose site certificate conditions to those within the scope of the issues on which the party/limited party has standing in the contested case, then it could and would have so stated in the rule.

Based on the plain language of OAR 345-015-0085(1) and the Council's unwillingness to answer the certified questions in the affirmative, the ALJ declines Idaho Power's request to exclude these proposed site certificate conditions from further consideration based on the limited party's lack of standing. In other words, the ALJ relies on the broad language of the rule and declines to insert limitations on standing that the Council and Department did not specifically include in the rule. Accordingly, what follows is a determination whether the additional proposed conditions submitted by Ms. Gilbert⁴⁰⁴ and Ms. Geer⁴⁰⁵ are necessary or appropriate to implement the policy of ORS 469.310 or meet the requirements of any other applicable law.

Gilbert Additional Proposed Site Certificate Conditions

1. Gilbert Proposed Financial Assurance Condition: Prior to the start of construction, the developer will document that they have the financial ability to pay for construction costs they will be assuming that exceed the 21% amount reflected in the application and provide documentation regarding any other party

⁴⁰³ Both ORS 469.370 and OAR 345-015-0016 state that issues that may be the basis for the contested case shall be limited to those raised with sufficient specificity on the record of the public hearing. *See also* OAR 345-015-0083(2), which requires the ALJ to issue a prehearing order stating the issues to be addressed in the contested case and "limiting parties to those issues they raised on the public hearing." The rule also prohibits the ALJ from "receiv[ing] evidence or hear[ing] legal argument on issues not identified in the prehearing order."

⁴⁰⁴ Ms. Gilbert submitted 20 total proposed site certificate conditions. She proposed 17 new conditions in a document named "Site Certificate Conditions and statutes to use" (Gilbert Proposed Conditions). She also submitted the following proposed conditions: a "Request Regarding B2H Site Certificate Condition Related to the Need for the Traffic Plan to Be Completed and Approved by Counsel Prior to Start of Construction;" a "Request Regarding B2H Site Certificate Impacts to Quiet Areas;" and a "Request Regarding B2H Site Certificate Condition Related to Statutory Requirement that Citizens Impacted by a State Action Receive Notice as Specified in ORS 183.415."

⁴⁰⁵ Ms. Geer submitted two conditions outside the scope of her Fish and Wildlife Habitat/Noxious Weed Plan issues: one related to Sandhill Cranes and one related to Trifolium Douglasii.

which will be assuming the costs not being covered by Idaho Power.

Ms. Gilbert submitted this proposed condition asserting that it is required by ORS 469.501(1)(d).⁴⁰⁶ Ms. Gilbert did not submit any evidence in support of this proposed condition or any further explanation as to why she believes it is necessary or appropriate to meet the requirements of OAR 345-022-0050 (the RFA Standard).

Both the Department and Idaho Power oppose this proposed condition and recommend that it be rejected. Idaho Power also notes that the Proposed Order recommends that Idaho Power be required to carry a bond or letter of credit during construction equal to the amount required to decommission the line and restore the site to a useful condition.

Because there has been no showing that this proposed RFA condition is necessary or appropriate, the proposed condition is denied.

2. Gilbert Proposed Water Quality Condition: Prior to starting construction the developer will provide results of testing of all wells or springs within 2,000 feet of the transmission line corridor to document pre-construction condition. The testing will be repeated within the first and second years of operation to determine if there has been a reduction in quantity or quality of water available.

Ms. Gilbert submitted this proposed condition without specifying the applicable statute or Council standard, without supporting evidence, and without explaining why she believes this condition is necessary or appropriate to implement the policy of ORS 469.310 or satisfy an applicable statute, standard, or rule.

Both the Department and Idaho Power assert this proposed condition is unsupported and unnecessary, and recommend that it be rejected. Idaho Power also notes that to the extent this proposed condition relates to the Structural Standard and to limited parties' concerns that construction-related blasting could impact well water quality, the Company has agreed to incorporate a modified version of Design Feature 32 from the Framework Blasting Plan into Recommended Soil Protection Standard Condition 4. Consequently, if Idaho Power plans to conduct blasting on a landowner's property, the condition requires that Idaho Power, at the landowner's request, conduct pre-blasting baseline flow and water quality measurements for turbidity.

Ms. Gilbert has not established that this proposed condition for pre-construction water quality testing is necessary or appropriate. Idaho Power has explained why the proposed condition is not necessary. Accordingly, this proposed condition is denied.

3. Gilbert Proposed Condition Regarding Fish Passage: Starting with year 6 and for the remainder of the life of the development all fish passage sites will be

⁴⁰⁶ ORS 469.501(1)(d) states: "(1) The Energy Facility Siting Council shall adopt standards for the siting, construction, operation and retirement of facilities. The standards may address but need not be limited to the following subjects: * * * (d) The financial ability and qualifications of the applicant."

monitored and maintained every other year to assure fish continue to be able to pass through the locations requiring fish passage. Results of the monitoring will be provided to the department.

Ms. Gilbert argues that this Fish and Wildlife Habitat/Fish Passage site certificate condition is necessary because Idaho Power must maintain mitigation for the life of the development and continue monitoring to assure compliance with the site certificate conditions.

Both the Department and Idaho Power oppose this proposed condition and assert it is unnecessary. In its opposition to this proposed condition, Idaho Power explains that, it submitted fish passage plans and designs for seven temporary road crossing structures that require review by ODFW.⁴⁰⁷ Idaho Power will permanently remove these structures once construction activities are completed.⁴⁰⁸ ODFW approved the proposed fish passage designs, contingent on Idaho Power maintaining, monitoring, evaluating, and reporting on these fish passages as required by ORS 509.610.⁴⁰⁹ ODFW's approval requires Idaho Power to provide written reports annually for the first three years after project completion, and then a final report at year five, or as determined by ODFW.⁴¹⁰ ODFW is the agency with the expertise to determine the appropriate monitoring and reporting period and, at this point, ODFW has approved the proposed fish passage plans with a final report in year five (or as otherwise determined by ODFW). For this reason, Ms. Gilbert's proposed condition is neither necessary nor appropriate. As Idaho Power notes, if ODFW determines based on the year five final report that impacts from the temporary structures have not been rectified, then ODFW may require additional actions from Idaho Power.

Ms. Gilbert has not established that this proposed condition to maintain and monitor fish passage sites for the life of the project is necessary or appropriate. Idaho Power has explained why the proposed condition is unnecessary and excessive. Therefore, this proposed condition is denied.

4. Gilbert Proposed Forest Practices Act Condition: Prior to the start of construction, the developer must survey all streams where timber will be removed within 300 feet of the stream during construction of the transmission line. If fish are present and impacts will occur within 100 feet of the transmission line or Threatened and Endangered species are present, [a] written plan of action must be developed for the approval of the Oregon Department of Forestry and the Council.

⁴⁰⁷ As found above, in the Proposed Order, the Department recommended that Council find Idaho Power's proposed fish passage compliance plan "is sufficient to demonstrate compliance with the ODFW Fish Passage rule, that the plan should be finalized prior to construction based on final facility design, and that the plan should be implemented during construction." ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 351 of 10016

⁴⁰⁸ ODOE - B2HAPPDoc3-45 ASC 28_Exhibit BB_Other_Info_ASC 2018-09-28, pages 75-98 of 209.

⁴⁰⁹ ODOE - B2HAPPDoc3-45 ASC 28_Exhibit BB_Other_Info_ASC 2018-09-28, page 98 of 209.

⁴¹⁰ *Id.*

Ms. Gilbert argues that this condition is necessary because ORS 527.670⁴¹¹ requires a written plan of operation prior to any forestry operation, including clearing of an area to build a transmission line within 100 feet of a stream used by fish or within 300 feet of a stream containing state or federally threatened or endangered species. Gilbert Proposed Conditions at 3-4.

Both the Department and Idaho Power oppose this proposed condition as inappropriate and unnecessary. In the Proposed Order, the Department addressed the proposed facility's compliance with the Oregon Forest Practices Act (FPA) as follows:

In ASC Exhibit BB, the applicant requests Council review of compliance with the requirements of the Oregon Forest Practices Act (FPA) as implemented under ORS 527.610 to 527.770, 527.990(1) and 527.992, and the implementing rules at OAR Chapter 629. More specifically, the applicant requests Council grant an exemption from FPA's reforestation requirements and approve a Plan for an Alternative Practice, as in forest lands for uses not meeting reforestation requirements.

The requirements of the FPA include providing notification to the State Forester prior to commencement of operation; submitting a request for a permit to operate power driven machinery; submittal of a written plan; and obtaining approval of a Plan for Alternative Practice, if a use would not meet reforestation requirements. While compliance with these requirements supports minimization of impacts to forest lands, as evaluated in IV.E. Land Use and IV.M. *Public Services* of this order, the Department recommends Council not assert jurisdiction of the FPA and refer the applicant to submit its request for exemption directly to the Oregon Department of Forestry, consistent with the approach described in ASC Exhibits K and BB where the applicant represents it would work directly with the state agency on FPA requirements.

ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 622-23 of 10016. The Department also noted that Idaho Power's compliance with FPA requirements would reduce potential impacts evaluated under the Council's Land Use and Protected Area standards. *Id.* at n. 645.

Based on the above recommendations in the Proposed Order (*i.e.*, that Idaho Power work directly with the Oregon Department of Forestry), Idaho Power contends that Ms. Gilbert's proposed condition is redundant and unnecessary. The ALJ agrees, and rejects this proposed condition.

5. Gilbert Proposed Condition Regarding Wetlands: Prior to the start of construction, the developer must complete a compatibility analysis regarding the impacts of the proposed development on surrounding wetlands.

⁴¹¹ ORS 527.670, part of the Oregon Forest Practices Act, requires the State Board of Forestry to, among other things, designate the types of operations for which notice shall be required and identify the types of operations that require a written plan.

Referencing *Foland v. Jackson County*, LUBA 2009109, 2009112, 2009113, *affirmed* 239 Or App 60 (2010), Ms. Gilbert asserts that a “compatibility analysis [is] needed for proposed development with the surrounding wetlands.” Gilbert Proposed Conditions at 4. Ms. Gilbert offered no further explanation or argument as to the *Foland* decision is relevant,⁴¹² why she believes this a compatibility analysis of surrounding wetlands is necessary, or even what constitutes surrounding wetlands.

Both the Department and Idaho Power oppose this proposed condition as unsupported and unnecessary. Idaho Power notes that, in the ASC, it addressed project related impacts to waters of the state, including wetlands. It included its Joint Permit Application to the Department of State Lands (DSL) and the U.S. Army Corps of Engineers, which addressed construction activities occurring in waters of the state. Idaho Power also recommended, and the Proposed Order includes, Recommended Removal-Fill conditions.⁴¹³ The Recommended Removal-Fill Conditions require, among other things, that prior to construction of a phase or segment of the facility, Idaho Power: submit updated wetland delineation reports to the Department and DSL; receive a Letter of Concurrence from DSL; and submit a final Site Rehabilitation Plan addressing mitigation and restoration of impacted waters of the state, including wetlands.⁴¹⁴ Recommended Removal-Fill Condition 2 also requires that following construction and during operation, Idaho Power ensure that temporary impacts to wetlands and non-wetland waters of the state are restored in accordance with the final Site Rehabilitation Plan.⁴¹⁵

Because Ms. Gilbert’s proposed condition regarding surrounding wetlands is vague, unsupported, and unnecessary in light of the Recommended Removal-Fill Conditions, it is denied.

6. Gilbert Proposed Conditions Relating to Historic Properties: (a) Prior to construction, the developer must complete a cumulative effects assessment of the impacts the development will have on historic properties referenced in 36 CFR 800.5 and provide appropriate mitigation for the impacts.

(b) Idaho Power must identify and provide mitigation for both direct and indirect impacts of the proposed transmission line to Historical Properties located within 5 miles or to the visual horizon of the transmission line as required by the

⁴¹² *Foland* involved review of a LUBA decision remanding Jackson County’s decision to approve a Department of Transportation application to site an interstate highway rest area and welcome center on land south of Ashland zone for exclusive farm use. The Court of Appeals upheld the LUBA’s determination that, “Goal 11 prohibits the extension of city water services to serve that urban use on rural land without an exception to Goal 11.” 239 Or App at 72.

⁴¹³ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 668 to 677 of 10016.

⁴¹⁴ *Id.* at 671-673.

⁴¹⁵ *Id.* at 673.

Boardman to Hemingway Programmatic Agreement required to meet the requirements of Section 106 of NEPA.

Ms. Gilbert argues that these proposed conditions are appropriate because they are required under the B2H Programmatic Agreement. As for proposed condition (a) above, Ms. Gilbert asserts that the Programmatic Agreement “requires on Page 6 that the assessment of impacts include direct and/or indirect, or reasonably foreseeable effects caused by the undertaking that may occur overtime, be farther removed in distance or be cumulative.” Gilbert Proposed Conditions at 4. As for proposed condition (b) above, Ms. Gilbert asserts that Idaho Power “only evaluated direct impacts to National Register of Historical Properties eligible sites” contrary to the provisions of the Programmatic Agreement. *Id.* at 5.

Both the Department and Idaho Power opposed these proposed conditions as unsupported and unnecessary. As for proposed condition (a) above, Idaho Power notes that it has already conducted a cumulative effects analysis and has proposed site-specific avoidance and mitigation plans in the HPMP.⁴¹⁶ Idaho Power also asserts that it is inappropriate to require that the analysis be conducted pursuant to 36 CFR 800.5, because Council’s role is limited to ensuring compliance with all applicable state and local laws, not federal law.

As for proposed condition (b), both the Department and Idaho Power note that the Proposed Order already requires Idaho Power to identify and provide proposed mitigation measures for both direct (permanent/ground disturbing) and indirect (visual) impacts.⁴¹⁷ Idaho Power adds that, by definition, direct impacts occur only within the site boundary, so a condition requiring the Company to identify and propose mitigation for direct impacts within five miles would be illogical. Idaho Power also notes that Council does not enforce compliance with federal laws (such as Section 106 of NEPA), and that Recommended Historic, Cultural and Archeological Resources Condition 2 requires Idaho Power to submit a final EFSC HPMP to the Department, the State Historic Preservation Office, and applicable Tribal Governments for review and Department approval.⁴¹⁸

Ms. Gilbert has not established that these proposed conditions relating to compliance with the Programmatic Agreement are necessary or appropriate. The Department and Idaho Power have shown that these proposals are unnecessary and either redundant or outside the Council’s jurisdiction. Therefore, these proposed conditions are denied.

7. Gilbert Proposed Condition Regarding Construction Helicopters:

Construction helicopters shall not impede emergency transports by flying above the helipad located on the roof of the Grande Ronde Hospital or flying across routes used by Life Flight Emergency transport leaving or returning to the helipad.

⁴¹⁶ See Ranzetta Rebuttal Testimony, Issues HCA-3, HCA-4, and HCA-7, pages 51-52.

⁴¹⁷ See *e.g.*, ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 460 of 10016.

⁴¹⁸ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 513 of 10016.

Ms. Gilbert asserts that this condition is required under the Public Services Standard, OAR 345-022-0110, because construction and operation of the proposed facility could potentially interfere with the provision of emergency medical transport and treatment to citizens. Gilbert Proposed Conditions at 6.

Both the Department and Idaho Power oppose this proposed condition as unsupported and unnecessary. Idaho Power notes that, in the Proposed Order, Recommended Public Services Condition 3 requires the Company to submit a Helicopter Use Plan to the Department and each affected county planning department prior to the use of a helicopter during construction.⁴¹⁹ Recommended Public Services Condition 4 requires the Company to submit appropriate notices to the Federal Aviation Administration (FAA) and the Oregon Department of Aviation to determine if any facility structures or power lines within five miles of an airport will pose a hazard to aviation safety.⁴²⁰ Idaho Power asserts that helicopter operators must adhere to FAA regulations for low-flying aircraft, the FAA works with local air traffic control to communicate and track all planes and helicopters in their vicinity, and local air traffic control communicates with helicopter companies regarding routes to fly to avoid existing commercial airline patterns.

In the Proposed Order, the Department recommended that the Council find that construction and operation of the proposed facility is not likely to result in significant adverse impacts to the ability of the public and private air safety providers within the analysis area.⁴²¹ Ms. Gilbert has not established otherwise. Accordingly, Ms. Gilbert's proposed condition regarding construction helicopters is denied.

8. Gilbert Proposed Condition Regarding Visual Analysis for Historic Places: The developer must complete a visual analysis and provide mitigation for visual impacts to the following locations within the City of La Grande and surrounding areas which are listed on the National Register of Historic Places in Union County, Oregon: Eastern Oregon University campus Administration Building; John Anthony House; Anthony-Buckley House; Folley Building; Hot Lake Resort; La Grande Commercial Historic District; La Grande Neighborhood Club; Liberty Theatre; Roesch Building; Slater Building; August J. Stange House; US Post Office and Federal Building; and A. B. Hudelson and Son Building in North Powder.

Ms. Gilbert contends, without further explanation or evidence, that under the HCA standard the above-listed places "require evaluation and mitigation for adverse impacts to their visual qualities." Gilbert Proposed Conditions at 7.

⁴¹⁹ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 573-74 of 10016.

⁴²⁰ *Id.* at 574.

⁴²¹ *Id.*

Both the Department and Idaho Power oppose this proposed condition as unsupported and unnecessary. In opposing this proposed condition, Idaho Power explained it addressed all of the buildings listed in the proposed condition in its Reconnaissance Level Survey (RLS) Visual Assessment of Historic Property Report, submitted as ASC Exhibit S, attachment S-7.⁴²² The RLS field study determined that these resources did not require additional evaluation for adverse impacts because of intervening vegetation and dense urban development, because the resources' historical significance was not based upon the respective views of the Blue Mountains, and/or because of the presence of an interstate highway between the resource and the proposed facility.

In the Proposed Order, subject to compliance with the recommended HCA conditions of approval, the Department recommended the Council find that, taking into account mitigation, the construction and operation of the proposed facility is not likely to result in significant adverse impacts to any historic, cultural, or archeological resources.⁴²³ Ms. Gilbert has not established otherwise. Accordingly, Ms. Gilbert's historic places proposed condition is denied.

9. Gilbert Proposed Condition Regarding Impacts to Wildlife: The developer must complete an assessment and provide mitigation for direct and indirect impacts to wildlife using habitat contained in three federal mitigation sites compensating for wildlife damages due to the Columbia River Dams and the Oregon Department of Transportation mitigation site located in the vicinity of the Ladd Marsh Wildlife Area.

Ms. Gilbert argues, without further explanation or evidence, that the mitigation sites referenced above are "afforded enhanced protection due to the role of compensating for damages" and that the proposed facility "is not to cause direct or indirect damages to these mitigation sites." Gilbert Proposed Conditions at 7.

Both the Department and Idaho Power oppose this proposed condition as unsupported and unnecessary. Idaho Power notes that, as part of the ASC, it completed an assessment of the direct and indirect impacts to wildlife habitat for the project generally and in the vicinity of the Ladd Marsh Wildlife Area. In the Proposed Order, the Department addressed the Ladd Marsh Wildlife Area/State Natural Heritage Area, and recommended a Protected Areas Condition requiring Idaho Power to follow mitigation plans and best practices for Category 2 habitat and to coordinate construction activities in the Ladd Marsh Wildlife Area with the Wildlife Area Manager.⁴²⁴

Ms. Gilbert has not established that this proposed condition requiring additional wildlife habitat assessments is necessary or appropriate. Idaho Power has explained why the proposed

⁴²² ODOE - B2HAPPDoc3-36 ASC 19_Exhibit S_Cultural_ASC_Public 2018-09-28, page 419 of 783. This attachment was submitted as confidential to protect the location of archeological sites and objects. See also Proposed Order at page 431, n. 469; ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 438 of 10016.

⁴²³ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 515 of 10016.

⁴²⁴ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 271 of 10016.

condition is unnecessary. Therefore, this proposed condition is denied.

10. Gilbert Proposed Condition Regarding Slickspot Peppergrass: The developer is to identify habitat that can or does support slickspot peppergrass and avoid all construction related impacts to this habitat.

Ms. Gilbert proposed this condition asserting that, in 2016, the US Fish and Wildlife Service reinstated slickspot peppergrass as a threatened species and indicated an intent to designate critical habitat. Ms. Gilbert argued that the proposed condition is necessary to avoid conflicts between Department actions and federal rules. Ms. Gilbert did not submit any evidence related to this proposed condition.

Both the Department and Idaho Power oppose this proposed condition. First, as Idaho Power notes, slickspot peppergrass is not an Oregon-listed threatened or endangered species and is not known to occur in Oregon. Second, as set out in the *Ruling and Order on Motion for Summary Determination on Contested Case Issue FW-4*, Idaho Power has no obligation under the Fish and Wildlife Habitat Standard (or the Threatened and Endangered Species Standard) to evaluate impacts to federally-listed threatened or endangered species and/or their habitats.

Because slickspot peppergrass habitat is outside the Council's jurisdiction and authority, and because the proposed condition is neither appropriate nor necessary, it is denied.

11. Gilbert Proposed Condition Regarding Road Design: Prior to the start of construction, the developer will provide to Council the final road design standards including providing for adequate access for fire fighting equipment and will include maximum grade, road width, turning radius, road surface, bridge design, culverts and road access for their approval, and amend the site certificate to incorporate the planning document.

Ms. Gilbert contends, without further explanation or evidence, that this proposed condition is required by OAR 660-006-0040.⁴²⁵ Gilbert Proposed Conditions at 8.

Both the Department and Idaho Power oppose this proposed condition as unsupported and unnecessary. Idaho Power notes that at least 90 days prior to construction of a facility phase or segment it is required by Recommended Public Services Condition 2 to, among other things, prepare final Transportation and Traffic Plans that address the specific road improvements

⁴²⁵ OAR 660-006-0040, a Land Conservation and Development Department rule, addresses fire safety design standards for road. It provides as follows:

The governing body shall establish road design standards, except for private roads and bridges accessing only commercial forest uses, which ensure that public roads, bridges, private roads and driveways are constructed so as to provide adequate access for firefighting equipment. Such standards shall address maximum grade, road width, turning radius, road surface, bridge design, culverts, and road access taking into consideration seasonal weather conditions. The governing body shall consult with the appropriate Rural Fire Protection District and Forest Protection District in establishing these standards.

needed for transportation routes. These plans must be submitted to, and approved by, the appropriate federal, state, and local agencies before construction begins. The Proposed Order further requires that if Idaho Power must substantially modify a road that is not currently within the site boundary, then “it must submit an Amendment Determination Request or a Request for Amendment of the Site Certificate [and] receive Council approval via an amendment, if necessary, as provided Recommended Public Services Condition 2.”⁴²⁶

Ms. Gilbert has not established that this proposed condition regarding road design standards is required by OAR 660-006-0040, or that it is necessary or appropriate. Idaho Power has explained why the proposed condition unnecessary. Therefore, this proposed condition is denied.

12. Gilbert Proposed Condition Regarding Completion of Traffic Safety

Plans: The developer must complete the Traffic Safety Plans and the Energy Facility Siting Council must approve the plans for all areas outside the site boundary where facility related traffic will be using public roads. In addition, the approved plans are required to be included in the Site Certificate when it is issued.

In a separate filing, Ms. Gilbert states her concern that the Proposed Order does not require Idaho Power to complete, and the Council to approve, the Traffic Safety Plans prior to issuance of the site certificate, and does not include a provision for Council review of the final Traffic Safety Plans after the site certificate is issued. Gilbert Request Regarding B2H Site Certificate Condition Related to the Need for the Traffic Plan to Be Completed and Approved by Counsel Prior to Start of Construction at 1.

Both the Department and Idaho Power oppose this proposed condition as unsupported and unnecessary. Idaho Power also notes that the Council does not have jurisdiction or authority to evaluate roads that are not included in, and governed by, the ASC. *See* Proposed Order at page 51, n. 58.⁴²⁷ Furthermore, as discussed previously, Recommended Public Services Condition 2 already provides a thorough and appropriate review process for the final Transportation and Traffic Plans prior to construction.

Because the Council does not have jurisdiction over roads outside the site boundary and because the proposed condition is not appropriate or necessary, it is denied.

⁴²⁶ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 569 of 10016.

⁴²⁷ The Proposed Order states:

The Council does not have jurisdiction over matters that are not included in and governed by the site certificate or amended site certificate. However, the Council may rely on the determinations of compliance and the conditions in the permits issued by these state agencies and local governments in deciding whether the facility meets other standards and requirements under its jurisdiction.

ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 58 (emphasis added).

13. Gilbert Proposed Condition Regarding Noise Sensitive Locations: Once [the] transmission line is energized, ORS 469.507 requires testing or sampling to show ongoing compliance with the Noise standard for noise sensitive locations along the transmission line.

Ms. Gilbert asserts, without additional explanation or supporting evidence that the procedure outlined in the Proposed Order when a noise exceedance is reported fails to comply with state statute. Gilbert Proposed Conditions at 8. She further argues that the Department must require Idaho Power to purchase a noise easement or reduce the noise level through mitigation or other means. *Id.*

Both the Department and Idaho Power oppose this proposed condition as unsupported and unnecessary. Idaho Power argues that ORS 469.507⁴²⁸ does not specify the type of monitoring required to comply with Council standards, and does not require the testing and sampling described in Ms. Gilbert's proposed condition. Idaho Power further asserts that because the proposed facility will comply with the Noise Rules, either directly or through an exception or variance, it did not propose any monitoring.⁴²⁹ Rather, during operations, as required by Amended Recommended Noise Control Condition 2, Idaho Power will implement a complaint response plan to address noise complaints.⁴³⁰

⁴²⁸ ORS 469.507 states as follows:

(1) The site certificate holder shall establish programs for monitoring the environmental and ecological effects of the construction and operation of facilities subject to site certificates to assure continued compliance with the terms and conditions of the certificate. The programs shall be subject to review and approval by the Energy Facility Siting Council.

(2) The site certificate holder shall perform the testing and sampling necessary for the monitoring program or require the operator of the plant to perform the necessary testing or sampling pursuant to guidelines established by the Energy Facility Siting Council or its designee. The council and the Director of the State Department of Energy shall have access to operating logs, records and reprints of the certificate holder, including those required by federal agencies.

(3) The monitoring program may be conducted in cooperation with any federally operated program if the information available from the federal program is acceptable to the council, but no federal program shall be substituted totally for monitoring supervised by the council or its designee.

(4) The monitoring program shall include monitoring of the transportation process for all radioactive material removed from any nuclear fueled thermal power plant or nuclear installation.

⁴²⁹ See ODOE - B2HAPPDoc3-41 ASC 24_Exhibit X_Noise_ASC 2018-09-28, page 60 of 371.

⁴³⁰ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 655-55 of 10016.

Ms. Gilbert has not established that this proposed condition requiring ongoing monitoring at noise sensitive locations is necessary or appropriate. Idaho Power has explained why the proposed condition is unnecessary. Accordingly, this proposed condition is denied.

14. Gilbert Proposed Condition Regarding Construction: Prior to starting construction on any segment of the B2H transmission line, Idaho Power must provide convincing documentation that the portion would be constructed even if the remainder of the development were not built per OAR.345-025-0006(5). If the certificate holder does not have construction rights on all parts of the site, the certificate holder may [n]evertheless begin construction as defined in OAR 345-001-0010, or create a clearing on a part of the site if the certificate holder has construction rights on that part of the site and:

(a) The certificate holder would construct and operate part of the facility on that part of the site even if a change in the planned route of a transmission line or pipeline occurs during the certificate holder's negotiations to acquire construction rights on another part of the site.

Ms. Gilbert proposed this condition without further explanation or supporting evidence. Gilbert Proposed Conditions at 9.

Both the Department and Idaho Power oppose this proposed condition as unsupported and unnecessary. The Proposed Order already incorporates the mandatory site certificate conditions of OAR 345-025-0006(5) in Recommended General Standard of Review Condition 7. The Department modified this recommended condition to maintain the portions applicable to proposed transmission line facilities:

The certificate holder may begin construction, as defined in OAR 345-001-0010, or create a clearing on a part of the site if the certificate holder has construction rights on that part of the site and the certificate holder would construct and operate part of the facility on that part of the site even if a change in the planned route of transmission line occurs during the certificate holder's negotiations to acquire construction rights on another part of the site. [Mandatory Condition OAR 345-025-0006(5)]⁴³¹

As Idaho Power notes, the only meaningful difference between the Department-recommended condition and Ms. Gilbert's proposed condition is that Ms. Gilbert inserts a requirement for Idaho Power to provide "convincing documentation that the portion would be constructed." Ms. Gilbert offers no justification for this provision. Idaho Power maintains it is unnecessary because Idaho Power retains the burden of demonstrating compliance with the conditions in the site certificate. Ms. Gilbert's proposal, as written, also needlessly requires Idaho Power to continue constructing a segment of the facility even if the remainder of the project is not built.

⁴³¹ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 65 of 10016.

Ms. Gilbert has not established that this proposed condition is necessary or appropriate. Idaho Power has explained why the proposed condition is unnecessary. Accordingly, this proposed condition is denied.

15. Gilbert Proposed Condition Regarding Finalization of Monitoring and Mitigation Plans: Prior to the start of construction, the developer will complete all final monitoring and mitigation plans including, but not limited to the “Fire Protection Plan, Travel Management Plan, Blasting Plan, Noise Mitigation Plan, Historic Resources Mitigation Plan, and all other required plans. The plans must be approved by the Energy Facility Siting Council and an Amended Site Certificate must be requested to incorporate these final plans as a part of the Site Certificate.

Ms. Gilbert contends, without further explanation or supporting evidence, that this condition is appropriate under OAR 345-025-0016.⁴³² Gilbert Proposed Conditions at 9-10.

Both the Department and Idaho Power oppose this proposed condition. Idaho Power asserts the proposed condition is unnecessary and redundant for several reasons. The Proposed Order includes many recommended site certificate conditions that require the Company to finalize the draft version of plans prior to facility construction, these final plans will already be subject to the Council’s approval pursuant to OAR 345-025-0016, and the Council must incorporate the individual approved plans into the applicable site certificate conditions. Idaho Power also notes that nothing in OAR 345-025-0016 requires Idaho Power to apply for an amended site certificate. Rather, the activities and/or changes that require a site certificate amendment are specified in OAR 345-027-0350 (Changes Requiring an Amendment).

Ms. Gilbert has not established that this proposed plan finalization condition is necessary or appropriate. Idaho Power has explained why it is unnecessary. Consequently, this proposed condition is denied.

16. Gilbert Proposed Condition Regarding Site Restoration: Developer must remove all concrete footings and support structures to [a] depth of 3 feet below ground level.

Ms. Gilbert argues that the site certificate condition requiring removal of transmission

⁴³² OAR 345-025-0016 states:

In the site certificate, the Council must include conditions that address monitoring and mitigation to ensure compliance with the standards contained in OAR Chapter 345, Division 22 and Division 24. The site certificate applicant, or for an amendment, the certificate holder, must develop proposed monitoring and mitigation plans in consultation with the Department and, as appropriate, other state agencies, local governments and tribes. Monitoring and mitigation plans are subject to Council approval. The Council must incorporate approved monitoring and mitigation plans in applicable site certificate conditions.

line concrete footings to a depth of one foot is too shallow, and will not suffice to return the site to a useful, non-hazardous condition as required by the RFA Standard, OAR 345-022-0050(1). Gilbert Proposed Conditions at 10.

Both the Department and Idaho Power oppose this proposed condition. This is essentially the same condition proposed by limited party Carbiener. For the reasons discussed previously in connection with Issue RFA-2, this proposed condition is not necessary or appropriate.

17. Gilbert Proposed Conditions Regarding Compliance with Site

Conditions: Prior to the start of construction the certificate holder shall develop and implement a plan that verifies compliance with all site certificate terms and conditions and applicable statutes and rules. Certificate holder must document compliance with the site certificate terms and conditions and applicable statutes and rules. Prior to the start of construction, all plans must be finalized, approved by Council, and an amended site certificate must be issued including the final plans.

Ms. Gilbert asserts, without further explanation or supporting evidence, that this proposed condition is required by OAR 345-026-0048.⁴³³ Gilbert Proposed Conditions at 11-12.

Both the Department and Idaho Power oppose this proposed condition. Idaho Power asserts that the proposed condition conflicts with the timing established in Council's rule, which requires the certificate holder to implement a plan that verifies compliance "following receipt of a site certificate or an amended site certificate." OAR 345-026-0048.

Ms. Gilbert has not established that this proposed condition is necessary or appropriate. Idaho Power has explained why the proposed condition conflicts with the provisions of OAR 345-026-0048. Consequently, this proposed condition is rejected.

18. Gilbert Proposed Condition Regarding Special Status Species: Prior to

⁴³³ OAR 345-026-0048 states:

Following receipt of a site certificate or an amended site certificate, the certificate holder shall implement a plan that verifies compliance with all site certificate terms and conditions and applicable statutes and rules. As a part of the compliance plan, to verify compliance with the requirement to begin construction by the date specified in the site certificate, the certificate holder shall report promptly to the Department of Energy when construction begins. Construction is defined in OAR 345-001-0010. In reporting the beginning of construction, the certificate holder shall describe all work on the site performed before beginning construction, including work performed before the Council issued the site certificate, and shall state the cost of that work. For the purpose of this exhibit, "work on the site" means any work within a site or corridor, other than surveying, exploration or other activities to define or characterize the site or corridor. The certificate holder shall document the compliance plan and maintain it for inspection by the Department or the Council.

the start of construction on any phase/segment of the development surveys must be performed to identify all Special Status Species having potential habitat within the route as listed in the Revised Final Biological Survey Work Plan to identify habitat impacts and determine required mitigation amounts.

Ms. Gilbert asserts that allowing the proposed facility to “use and cross water resources on Bureau of Reclamation land will place water resources as well as agricultural lands of the state at risk.” Gilbert Proposed Conditions at 12. She further asserts, “Swanson’s hawks have shown difficulty in replacing lost nesting habitat.” *Id.*

Both the Department and Idaho Power oppose this proposed condition as unnecessary and unsupported. Idaho Power further contends that pre-construction field surveys will be conducted in accordance with the Revised Final Biological Survey Work Plan (ASC Exhibit P1, Attachment P1-2), which includes protocols that were reviewed by the Department, ODFW, USFS, FWS, NOAA Fisheries and the BLM.⁴³⁴ Idaho Power consulted with these agencies to determine the appropriate list of special status species to be field surveyed prior to construction, and these expert agencies approved Idaho Power’s approach of field surveying a select prioritized list of special status species, instead of all of the special status species, in the preconstruction surveys.⁴³⁵ Idaho Power contends that a condition proposing field surveys of all special status species within the analysis area goes beyond the scope established by the expert agencies.

Ms. Gilbert has not established that this proposed condition is necessary or appropriate. Idaho Power has explained why the proposed condition is unnecessary and contrary to the field survey plan approved by the Department and consulting expert agencies. Consequently, this proposed condition is denied.

19. Gilbert Proposed Condition Regarding Quiet Areas: Idaho Power will determine if the protected areas, national parks, game preserves and wildlife breeding areas within ½ mile of the proposed transmission line comply with the “quiet areas” standard for noise impacts prior to starting construction on any section of the transmission line and provide the results to the Counsel for review and approval.

In a separate pleading, Ms. Gilbert argues that this condition is necessary because even though the DEQ suspended administration of the Noise Control Rules and can no longer authorize “quiet areas,” this does not negate the fact that such areas exist. Ms. Gilbert further asserts that the areas listed in the proposed condition meet the definition of “quiet areas,” and the Department and Council are required to apply the Noise Control Rules as written. Gilbert Request Regarding B2H Site Certificate Impacts to Quiet Areas at 1-2.

⁴³⁴ ODOE - B2HAPPDoc3-25 ASC 16A_Exhibit P1_Wildlife_ASC_Part 1_Main thru Attach P1-6 rev 2018-09-28, pages 125-550 of 940.

⁴³⁵ See ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 313-16 of 10016.

Both the Department and Idaho Power oppose this condition as unnecessary and unsupported. Idaho Power asserts that DEQ does not maintain a list of quiet areas in the state, and there is no evidence that the agency ever did so.⁴³⁶ Idaho Power also notes that Ms. Gilbert provided no support to her claim that there are designated quiet areas within ½ mile of the proposed transmission line.

In short, Ms. Gilbert has not established that this proposed quiet areas condition is necessary or appropriate. Idaho Power has explained why the proposed condition is not needed. Consequently, this proposed condition is denied.

20. Gilbert Proposed Condition Regarding Notice: All landowners impacted by the decision for the Oregon Department of Energy and Energy Facility Siting Council to issue a Site Certificate to allow the Boardman to Hemingway Transmission Line to impact the project will have on their health, noise levels, views, property values, recreational value, and other qualities of their property must be provided notice as required by ORS 183.415 due to the impact the development will have on their ability to live and work on their property.

Ms. Gilbert submitted this proposed site certificate condition asserting that ORS 183.415 requires the Department and Council to notify owners of identified noise sensitive properties that “the agency intends to allow an exception and variance to allow noise impacts to occur in violation of Oregon Noise standards.”⁴³⁷ Ms. Gilbert did not present any evidence related to this proposed condition, nor did she explain why she believes that the Department’s notice in this contested case proceeding was inadequate or otherwise failed to comply with applicable law. Ms. Gilbert also failed to explain why she believes ORS 183.415 applies to “all landowners impacted by the decision.” Both the Department and Idaho Power oppose this condition.

ORS 183.415 applies to contested cases and sets out the requirement for state agencies to provide “all parties” notice of their right to a hearing in a contested case. “Contested case” is defined in ORS 183.310(2).⁴³⁸ “Party” is defined in ORS 183.310(7).⁴³⁹ Council procedural rule

⁴³⁶ Declaration of Lisa Rackner Regarding Noise Control Issues, Nov. 12, 2021, at 3 and Ex. B.

⁴³⁷ Gilbert Site Certificate Request Regarding B2H Site Certificate Condition Related to Statutory Requirement that Citizens Impacted by a State Action Receive Notice as Specified in ORS 183.415, at 1.

⁴³⁸ As pertinent here, ORS 183.310(2)(a) states:

“Contested case” means a proceeding before an agency:

(A) In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after an agency hearing at which such specific parties are entitled to appear and be heard;

(B) Where the agency has discretion to suspend or revoke a right or privilege of a person;

OAR 345-015-0014 requires the Department to issue contested case notices for Council contested case proceedings in accordance with ORS 183.415 and OAR 137-003-0001. OAR 345-015-0014(2) requires the Department to send “a contested case notice * * * to the applicant or certificate holder, and to each party or limited party to the contested case.” The notice requirements of ORS 183.415, OAR 137-003-0001, and OAR 345-015-0014(2) do not attach until the matter becomes a contested case.⁴⁴⁰ Consequently, the Department has no obligation *under ORS 183.415* to send notice to all landowners potentially impacted by the proposed facility. The Department’s notice obligation under ORS 183.415 is limited to the parties in the contested case. Accordingly, this proposed condition is denied.

21. Gilbert Proposed Revisions to Recommended Amended Fish and Wildlife Condition 16: Requiring species-specific surveys for bats and post-construction surveys for all species listed in Recommended Fish and Wildlife Condition 16.

On February 28, 2022, the due date for written closing arguments, Ms. Gilbert submitted a “Closing Brief Regarding Idaho Power Site Certificate Recommendation Submitted with FW-9 Summary Determination Request,” proposing changes to Recommended Amended Fish and Wildlife Condition 16.⁴⁴¹ Ms. Gilbert proposed returning state sensitive bat species to the list of

(C) For the suspension, revocation or refusal to renew or issue a license where the licensee or applicant for a license demands such hearing; or

(D) Where the agency by rule or order provides for hearings substantially of the character required by ORS 183.415, 183.417, 183.425, 183.450, 183.460 and 183.470.

⁴³⁹ ORS 183.310(7) states:

“Party” means:

(a) Each person or agency entitled as of right to a hearing before the agency;

(b) Each person or agency named by the agency to be a party; or

(c) Any person requesting to participate before the agency as a party or in a limited party status which the agency determines either has an interest in the outcome of the agency’s proceeding or represents a public interest in such result. * * *.

⁴⁴⁰ The Council’s obligation to provide public notice upon receipt of a notice of intent to file an application for site certificate or an application for site certificate are set out in ORS 469.330 through 469.370, and OAR chapter 345, division 015. Pursuant to OAR 345-015-0230(3), following issuance of a proposed order, the Department must issue a public notice of the proposed order. That public notice must include certain information, including a summary of the recommendations in the proposed order and a description of the process and deadline for requests to participate as a party or limited party in the contested case under OAR 345-015-0016.

⁴⁴¹ As discussed previously herein, in the August 17, 2021 *Ruling on Issues FW-9, FW-10, FW-11 and LU-10*, the ALJ recommended that, in Recommended Fish and Wildlife Condition 16, “State Sensitive

required preconstruction surveys and proposed requiring post-construction surveys for all species listed in the condition. Ms. Gilbert argued that she could not object to Idaho Power's Motion for Summary Determination on Issue FW-9 because of a lack of standing on that issue, but she is nevertheless entitled under the Council's rules to propose conditions and to present evidence and argument regarding Recommended Amended Fish and Wildlife Condition 16.

Ms. Gilbert is correct that, under OAR 345-015-0085, a party or limited party may propose site certificate conditions and may present evidence and argument concerning proposed conditions. However, the proposed condition amendment is unnecessary and inappropriate for the reasons set forth in the August 17, 2021 Ruling and Order on IPC's Motion for MSD of Contested Case Issues FW-9, FW-10, FW-11 and LU-10 (p.7).

As stated in that ruling, in the Department's Proposed Order on the ASC, recommended Fish and Wildlife Condition 16 was amended to include a requirement that protocol-level surveys for "State Sensitive bat species" be conducted as a preconstruction survey. This change was intended to align recommended Fish and Wildlife Condition 12 and 16 – Fish and Wildlife Condition 12 is a condition that applies during construction – and requires reporting to the Department of incidental finds of sensitive species, including State Sensitive bat-species. Fish and Wildlife Condition 16 is a condition that applies at preconstruction – and requires preconstruction, protocol level surveys of certain species. However, the change made by the Department in the Proposed Order was in error because under recommended Fish and Wildlife Condition 12, the applicant would be required to document any State Sensitive bat species and unique habitat for bats (i.e. bat roosts) observed during other biological surveys, it did not require that separate, protocol level surveys be conducted for State Sensitive bat species. The Department's proposed revision to Fish and Wildlife Condition 16, as presented in the Proposed Order on the ASC, therefore exceeded the intent of ensuring the conditions were consistent and added a new requirement, without sufficient basis, for protocol level of surveys of State Sensitive bat species. Ms. Gilbert did not provide evidence to support the requested requirement for inclusion of protocol-level State Sensitive bat species or post-construction surveys for all species. – However, pursuant to OAR 345-015-0085(1), the proposed conditions, evidence and argument must be submitted in accordance with the schedule set by the ALJ. As previously discussed, the deadline for submitting proposed site certificate conditions was September 17, 2021 and the deadline for submitting responses to proposed conditions was November 11, 2021. Regardless of her lack of standing on Issue FW-9 (which was resolved in Idaho Power's favor on summary determination), Ms. Gilbert did not submit her proposed changes/revisions to Recommended Amended Fish and Wildlife Condition 16 until February 28, 2022. This means that the Department and Idaho Power had no opportunity during the contested case hearing to present evidence in response to the appropriateness of Ms. Gilbert's proposed changes to this condition. – Because Ms. Gilbert did not submit her proposed revisions to Recommended Amended Fish and Wildlife Condition 16 in accordance with OAR 345-015-0085(1), the Case Management Order, and the Second Case Management Order, the ALJ declines to further address the necessity and appropriateness of Ms. Gilbert's proposals on this matter.

Geer Additional Proposed Site Conditions

1. ~~1.~~ **Geer Proposed Revised Condition Regarding *Trifolium Douglasii***
Request that Idaho Power revise its plans to completely bypass Morgan Lake Park property and to avoid *Trifolium douglasii* (rare plant) occurrences

wherever they are found. To avoid negative impacts to nesting success of bald eagles and sandhill cranes the Project ROW should be removed from this area by at least ¼ mile.

Ms. Geer timely submitted this proposed condition in connection with her direct testimony on Issues FW-3 and FW-6 and her Closing Arguments, but did not offer any further explanation or evidence in support of this proposal.

Both the Department and Idaho Power oppose the proposed condition. The Department asserts that the proposed condition is not necessary to meet the requirements of ORS Chapter 569. Idaho Power asserts (1) the project site boundary does not cross any portion of Morgan Lake Park and (2) there is no applicable Council standard requiring Idaho Power to avoid *Trifolium douglasii* because the plant is not on the State List of Threatened and Endangered Species (OAR 603-073-0070).

Because Ms. Geer has not provided evidence to support the proposed condition and Idaho Power has explained why it is not necessary, the proposed condition is denied.

2. Geer Proposed Condition Regarding Sandhill Cranes: The developer will provide UV lights on the B2H transmission lines from central Baker County to

bat species” be removed from the list of required surveys and that footnote 373 of the Proposed Order be deleted.

the Umatilla County Line.

Ms. Geer contends that sandhill cranes are protected by the Migratory Bird Treaty Act of 1918, they are an Oregon Conservation Strategy Species, and are listed as Sensitive by the ODFW. She argues that because the sandhill crane is a federally protected species, because ODFW is to make recommendations regarding the protection of federally protected species when necessary, and because the proposed transmission line is in the migratory pathway of the sandhill crane, it is appropriate to require this mitigation to minimize the likelihood of fatalities to the cranes. Geer Requested Site Certificate Condition be Included in the Final Order at 1.

Both the Department and Idaho Power oppose this proposed condition. Idaho Power adds that its Avian Protection Plan guides the Company's efforts to protect raptors and other large birds from harm from transmission lines and poles. Idaho Power asserts that its Avian Protection Plan is sufficient to satisfy the Council's Fish and Wildlife Habitat Standard as it relates to the sandhill crane and that no additional measures (such as flight diverters or UV lights) are required.⁴⁴² Idaho Power adds that in the event ODFW identifies specific sites along the completed project that result in elevated risks of crane collisions, it will consider potential actions to address those risks.⁴⁴³

In the Proposed Order, the Department discussed Idaho Power's Avian Protection Plan (Attachment P1-9 to the Proposed Order) in connection with the risk of bird electrocutions along the proposed transmission lines. Noting that the risk of avian mortalities resulting from electrocutions is very low for high-voltage transmission lines, the Department nevertheless included Recommended Fish and Wildlife Condition 10 requiring Idaho Power to construct the transmission line to avian-safe design standards, consistent with the Avian Protection Plan.⁴⁴⁴ The Department also noted as follows:

ODFW has historically provided guidance to ODOE that its Fish and Wildlife Habitat Mitigation Policy, implemented under Council's standard, applies to terrestrial (land-based) environments, and has not developed guidance to date supporting or recommending assessment of airspace (or bird flight corridors) as habitat, for which to then assign a habitat category and evaluate impacts and mitigation goal obligations. Therefore, the Department does not consider imposing a requirement for specific technology (UV light technology) appropriate under the Council's standard, but considers it consistent with OAR 345-025-0016 to require agency consultation during implementation of the Avian Protection

⁴⁴² See Idaho Power's Responses to DPO Comments, ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, page 7602 of 10016 (responding to ODFW's comments regarding sandhill crane migration and flight diversion technology).

⁴⁴³ *Id.*

⁴⁴⁴ ODOE - B2HAPPDoc2 Proposed Order on ASC and Attachments 2019-07-02, pages 338-41 of 10016.

Plan.⁴⁴⁵

Ms. Geer has not provided evidence to support the proposed condition. Furthermore, there is evidence in the B2H Project Record to the contrary. The Department opted not to require UV lighting technology on the transmission lines. Accordingly, Ms. Geer's proposed condition regarding sandhill crane protection is denied.

ORDER

I propose the Oregon Department of Energy, Energy Facility Siting Council, issue a Final Order granting the requested site certificate consistent with the Department's Proposed Order dated July 2, 2020, including the recommended site certificate conditions, and incorporating the following amendments to recommended conditions:

Noise Control

Amended Recommended Noise Control Condition 1:

Prior to construction, the certificate holder will initiate discussions with the following 41 NSR property owners at which it has estimated exceedances of the ambient antidegradation standard may occur identified in Attachment X-5 and/or Attachment X-4 of the Final Order on the ASC (NSR: 8, 9, 10, 11, 5002, 69, 70, 5004, 46, 118, 125, 5010, 5011, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 518, 111, 112, 132, 133, 5008, 5009, 113, and 115) to develop mutually agreed upon Noise Exceedance Mitigation Plans, specific to each NSR location. The site-specific Noise Exceedance Mitigation Plans will include agreed upon measures that would be implemented at the NSR location to minimize or mitigate the ambient antidegradation standard noise exceedance.

- a. If the certificate holder and the NSR property owner agree upon a specific Noise Mitigation Plan, the certificate holder will submit a signed acknowledgement from the property owner to the Department for its records.
- b. If an agreement between certificate holder and NSR property owner is not obtained, the certificate holder shall concurrently notify the Department and NSR property owner of the dispute and of Council review of the dispute to occur at the next regularly scheduled Council meeting, to the extent possible, from the date of the certificate holder's notice. The notice shall explain that the NSR property owner will be given an opportunity to provide comments to the Council on the dispute, unless the Council Chair defers the dispute review to the Department. Review of the dispute will be based on the information per sub(i) below, and any other relevant facts provided by the NSR property owner and will result in a determination of the appropriate mitigation measure(s), proportional to the facility operational noise levels in excess of the ambient degradation standard, as

⁴⁴⁵ *Id.* at 341 of 10016.

determined to occur at the NSR property. The Council or Department's determination of appropriate mitigation is not binding on the NSR property owner or certificate holder if the NSR property owner opts not to accept the mitigation.

i. At the time of issuance of the notice per (b) above, certificate holder will submit to the Department: (1) the mitigation measures it offered the NSR property owner, the mitigation measures that the NSR property owner requested and an explanation of the dispute; (2) a list of the dates that the certificate holder communicated with, or attempted to communicate with, the NSR property owners; and (3) the names, addresses, and phone numbers of the NSR owners.

c. In working with NSR property owners under this condition, certificate holder will propose corona-noise mitigation of installation of sound-attenuating windows for residential structures as follows:

i. For NSRs where an 11 to 14 dBA sound level increase above ambient noise levels are expected, certificate holder will purchase and install sound attenuating windows with an STC rating of 25-40.

ii. For NSRs where a 15 dBA or greater sound level increase is expected, certificate holder will purchase and install sound attenuating windows with an STC rating of above 40.

iii. If an owner of an NSR where an 11 dBA or greater sound level increase is expected provides a letter from a health care provider indicating that health care provider's belief that the owner has a health condition that is exacerbated by increased sound levels, upon request, certificate holder will purchase and install sound attenuating windows with an STC rating of over 40 and would work with the NSR property owner to consider other mitigation options, as appropriate. During landowner consultations required under this condition, the certificate holder will specifically ask each landowner whether that landowner has a health condition that the landowner believes is exacerbated by elevated sound levels.

iv. At the request of an NSR property owner, certificate holder will offer alternative mitigation proposals, such as performing air-sealing of the NSR residence, planting trees, or installing insulation.

d. Prior to operation, the certificate holder will implement the mitigation measures agreed upon with the NSR property owners and/or as determined by EFSC or the Department to be the appropriate mitigation measures.

Amended Recommended Noise Control Condition 2:

a. After the Site Certificate has been issued and before landowner consultations contemplated in Condition 1, the certificate holder will prepare a new version of Attachment X-7, which will update landowner information and correct any errors-~~18~~ (Updated Attachment X-7). The certificate holder will send notices to all landowners listed in Updated Attachment X-7, which notice shall inform the recipient: (a) that the recipient is the owner of an NSR; ~~and~~ (b) the requirements and condition language of the Noise Control ~~21 Conditions 1 and 2~~ as adopted by the Council; and (c) a plain summary of the steps designated Noise Control Conditions 1 and 2. In addition, prior to construction, the certificate holder shall develop and submit to the Department an operational noise complaint response plan as well as distribute a simplified operational noise complaint response plan for landowners to the landowners listed in Updated Attachment X-7.

b. The plan shall specify that it is intended to address complaints filed by persons falling into one of the following categories: (1) the owner of an NSR property identified in Noise Control Condition 1, and for whom has received mitigation under Noise Control Condition 1, but who believes that exceedances (as measured at their NSR property) are occurring in a manner not otherwise allowed under Noise Control Condition 4 or Noise Control Condition 5; or (2) An owner of an NSR property within one mile of the site boundary who was not identified under Noise Control Condition 1 and who has not received mitigation from the certificate holder, but who nevertheless believes that exceedances above the ambient degradation standard have occurred at their NSR property.

c. The plan shall include the following: Scope of the complaint response plan, including process for complaint filing, receipt, review and response. The scope shall clearly describe how affected persons will be provided necessary information for filing a complaint and receiving a response, and will specify the information that the complainant must include in its complaint, including the date the certificate holder received the complaint, the nature of the complaint, weather conditions of the date for which the complaint is based (including wind speed, temperature, relative humidity, and precipitation), duration of perceived noise issue, the complainant's contact information, and the location of the affected property.

d. The plan shall require that the certificate holder notify the Department within three working days of receiving a noise complaint related to the facility. The notification shall include the date the certificate holder received the complaint, the nature of the complaint, weather conditions of the date for which the complaint is based (~~including such as~~ wind speed, temperature, relative humidity, and precipitation) as described by the complainant, duration of perceived noise issue, the complainant's contact information, the location of the affected property, and a schedule of any actions taken or planned to be taken by the certificate holder (including inspection and maintenance actions, or actions taken or planned to be taken pursuant to the processes described in subsection (e) of this condition).

e. The plan shall identify the following process if a noise complaint is received:

i. The certificate holder shall assess possible causes of the corona noise. If the complaint is received within the first 12 months of operation, the certificate holder will assess whether the corona noise is typical of noise that occurs during the transmission line “burn in period” (the first 12 months of operation) and ensure that it already has taken appropriate measures near that NSR to minimize corona noise that may occur during the burn in period (e.g., use conductors with a nonspecular finish/sandblasting of conductors to make them less reflective and clean them of manufacturing oils, protect the conductors to minimize scratching and nicking during construction). If the exceedance occurs during the burn-in period, and if the certificate holder complies with the requirements of this condition, the certificate holder will not be found to be in violation of its site certificate because of the exceedance.

ii. If it is determined the corona noise is not typical burn in period noise, the certificate holder will assess whether the noise exceeds the ambient antidegradation standard in a manner not otherwise allowed under Noise Control Condition 4 or Noise Control Condition 5. If the complainant’s noise sensitive property or properties are included in Attachment X-5 of the Final Order on the ASC, the modeled sound level increases as presented in Attachment X-4 of the Final Order on the ASC may be relied upon to determine whether the corona noise exceeds the ambient antidegradation standard, unless the complainant voluntarily provides alternative noise data.

iii. If the complainant’s NSR property or properties are not included in Attachment X-5 of the Final Order on the ASC, the certificate holder shall model the sound level increases using the methods set forth in ASC Exhibit X, unless the complainant voluntarily provides alternative noise data.

iv. If the complainant voluntarily provides alternative noise data and the data suggests an exceedance that had not previously been identified and mitigated, and/or an exceedance not otherwise allowed under Noise Control Condition 4 or Noise Control Condition 5, the complaint shall be verified through site specific sound monitoring conducted by an Oregon registered Professional Engineer, Board Certified by the Institute of Noise Control Engineering noise specialist, employed or contracted by the certificate holder, in accordance with NPCS-1 unless otherwise approved by the Department. If site specific sound monitoring is not authorized by the complainant, the certificate holder’s modeling results may be relied upon to determine compliance.

v. In the event of a dispute regarding complainant’s noise data and the certificate holder’s data from site specific sound monitoring, certificate holder shall request that EFSC, in consultation with the Department’s

noise consultant, if necessary, make the final determination regarding which data will be used to determine whether corona noise exceeds the ambient antidegradation standard and/or in a manner not allowed under Noise Control Condition 4 or Noise Control Condition 5. The EFSC Chair may direct the Department to make this determination.

f. The plan shall specify that if it is determined pursuant to the process described in subsection (e) of this condition that corona noise at the complainant's NSR property exceeds the ambient antidegradation standard in a manner not allowed under Noise Control Condition 4 or Noise Control Condition 5, and/or exceeds the ambient antidegradation standard at an NSR property that had not previously been predicted to experience exceedances under Noise Control Condition 1, the certificate holder shall work with the NSR property owner to develop a mutually agreed upon mitigation plan to include agreed upon measures that would be implemented at the NSR location to minimize or mitigate the ambient antidegradation standard noise exceedance. To be clear, the fact that the certificate holder has received an exception or variance under Noise Control Conditions 4 and 5 does not excuse the certificate holder from providing mitigation under this condition.

i. If the NSR property was identified in Noise Control Condition 1 and has previously received mitigation by the certificate holder, and if it has been determined that the NSR property experiences exceedances not allowed under Noise Control Condition 4 or Noise Control Condition 5, the certificate holder will work with the complainant to identify supplemental mitigation measures, which may include any of the measures discussed in Noise Control Condition 1 or the ASC, or other measures requested by the complainant.

ii. If the NSR property was not identified in Noise Control Condition 1 and has not been provided with mitigation by the certificate holder, certificate holder will work with the NSR property owner to identify appropriate mitigation measures, which may include any of the measures discussed in Noise Control Condition 1 or the ASC, or other measures requested by the landowner.

iii. If, through the efforts described above, the certificate holder executes an agreement with the NSR property owner, the certificate holder will submit a signed acknowledgement from the property owner to the Department for its records. If an agreement between certificate holder and NSR property owner is not obtained, the certificate holder shall concurrently notify the Department and NSR property owner of the dispute and of Council review of the dispute to occur at the next regularly scheduled Council meeting, to the extent possible, from the date of the certificate holder's notice. The notice shall explain that the NSR property owner will be given an opportunity to provide comments to the Council on

the dispute, unless the Council defers the dispute review to the Department. Review of the dispute will be based on the information per (iv) below, and any other relevant facts provided by the NSR property owner and will result in a determination of the appropriate mitigation measure(s), proportional to the facility operational noise levels in excess of the ambient degradation standard, as determined to occur at the NSR property. The Council or Department's determination of appropriate mitigation is not binding on the NSR property owner or certificate holder if NSR property owner opts not to accept the mitigation.

iv. At the time of issuance of the notice per (iii) above, certificate holder will submit to the Department: (1) the mitigation measures it offered the NSR property owner, the mitigation measures that the NSR property owner requested and an explanation of the dispute; (2) a list of the dates that the certificate holder communicated with, or attempted to communicate with, the NSR property owners; and (3) the names, addresses, and phone numbers of the NSR owners.

g. The certificate holder shall provide necessary information to the complainant to support understanding of corona noise, corona noise levels and effects, and of the process to verify actual noise levels of events resulting in complaints. If the complainant opts not to authorize the certificate holder to conduct monitoring, and it is otherwise determined pursuant to the process described in subsection (e) of this condition that corona noise does not exceed the ambient antidegradation standard, the noise complaint shall be considered fully resolved and no mitigation shall be required.

Amended Recommended Noise Control Condition 4:

During operation:

a. Pursuant to OAR 340-035-0010, an exception to compliance with the ambient antidegradation standard at OAR 340-035-0035(1)(b)(B) (which prohibits an increase of more than 10 dBA above ambient sound pressure levels) is granted during facility operation when there is foul weather (a rain rate of 0.8 to 5 millimeters per hour), which Council finds constitutes an infrequent event under OAR 340-035-0035(6)(a).

b. The ambient antidegradation standard at OAR 340-035-0035(1)(b)(B) may be exceeded by the transmission line at any time of day or night during foul weather events (defined as a rain rate of 0.8 to 5 millimeters per hour). [OAR 340-035-0010(2)]

c. The quantity and quality of noise generated in exceedance of the ambient antidegradation standard at OAR 340-035-0035(1)(b)(B), during foul weather events (defined as a rain rate of 0.8 to 5 millimeters per hour), shall not be more than 10 dBA (i.e., ambient plus 20 dBA). [OAR 340-035-0010(2)]

Amended Recommended Noise Control Condition 5:

During operation:

- a. A variance to compliance with the ambient antidegradation standard at OAR 340-035-0035(1)(b)(B) (which prohibits an increase of more than 10 dBA above ambient sound pressure levels) is granted pursuant to OAR 340-035-0100(1) for the transmission line at any time of day or night during foul weather events (defined as a rain rate of 0.8 to 5 millimeters per hour).
- b. The quantity and quality of noise generated in exceedance of the ambient antidegradation standard shall not be more than 10 dBA (*i.e.*, ambient plus 20 dBA), as measured at any NSR location.

Public Services

Second Amended Recommended Public Services Condition 6: Prior to construction of a facility phase or segment, in accordance with the OAR 345-025-0016 agency consultation process outlined in the plan (Attachment U-3 of the Final Order on the ASC), the certificate holder shall submit final Fire Prevention and Suppression Plan(s) to the Department. The plan finalization process shall consider (a)(i) and (a)(ii) unless otherwise identified by a land management agency or other participating review agency:

- a) The protective measures as described in the draft Fire Prevention and Suppression Plan as provided in Attachment U-3 of the Final Order on the ASC and:
 - i. Wildfire training for onsite workers and facility personnel be conducted by individuals that are National Wildfire Coordination Group and Federal Emergency Management Agency certified.
 - ii. Specific seasonal work restrictions, onsite fire-fighting equipment and necessary fire protection resources based on: 1) documented evaluation of reasonably available sources related to wildfire risk and sensitive seasonal conditions such as high temperatures, drought and high winds; and, 2) update Table PS-9 of the Proposed Order based on information obtained from the LGRFPD on the number of full-time and volunteer employees, number and type of equipment/vehicles, and response times to the facility. Response time must consider LGRFPD crew mobilization time and access limitations (e.g., road condition, level of service and impact of multi-users from Morgan Lake Park, residents and emergency services).
- b) A description of the fire districts and rural fire protection districts that will provide emergency response services during construction and copies of any agreements between the certificate holder and the districts related to that

coverage.

c) All work must be conducted in compliance with the approved plan during construction and operation, as applicable, of the facility.

Amended Recommended Public Services Condition 7: The certificate holder shall:

- a. Prior to operation, provide a copy of its Wildfire Mitigation Plan to the Department and each affected county which provides a wildfire risk assessment and establishes action and preventative measures based on the assessed operational risk from and of wildfire in each county affected by the facility.
- b. During operation, the certificate holder shall update the Wildfire Mitigation Plan on an annual basis, or frequency determined acceptable by the Department in consultation with the Oregon Public Utilities Commission.
- c. During operation, for the service territories the facility would be located within, the certificate holder shall provide to each of the fire districts and rural fire protection a contact phone number to call in the event a district needs to request an outage as part of a fire response.
- d. Any Wildfire Mitigation Plan required by the Oregon Public Utilities Commission shall be considered by EFSC as meeting the requirements of this condition.

New Recommended Public Services Condition:

Prior to construction or road modification in any area designated as a geologic hazard zone by Oregon Department of Geology and Mineral Industries (DOGAMI) data and maps (e.g., as landslide or debris flow fan), or by relevant local zoning ordinances and maps, the site certificate holder and/or its construction contractors will consult with a licensed civil engineer to assess the proposed construction or road design in relation to potential geologic hazards.

Soil Protection/Blasting Plan

Amended Recommended Soil Protection Condition 4:

a. Prior to construction, in accordance with the OAR 345-025-0016 agency consultation process outlined in the draft Framework Blasting Plan (Attachment 20 G-5 of the Final Order on the ASC), the certificate holder shall finalize, and submit to the Department for approval, a final Blasting Plan. The final Blasting Plan shall meet all applicable federal, state and local requirements related to the transportation, storage, and use of explosives.

b. Prior to construction, the certificate holder will consult with landowners

regarding right-of-way acquisition, and during these consultations, the certificate holder will discuss with the landowner any blasting that the certificate holder plans to conduct on the landowner's property. If the landowner identifies a natural spring or well on the property, the certificate holder will notify the landowner that at the landowner's request, the certificate holder shall conduct pre-blasting baseline flow and water quality measurements for turbidity. The certificate holder shall compensate the landowner for adequate repair or replacement if damages to the flow or quality of the natural spring or well occur solely as a result of blasting.

c. During construction, the certificate holder shall conduct all work in compliance with the final Blasting Plan approved by the Department.

Fish Passage

Amended Recommended Fish Passage Condition 1(a):

a) Prior to construction, the certificate holder shall finalize, and submit to the Department for its approval in consultation with ODFW, a final Fish Passage Plan. As part of finalizing the Fish Passage Plan, the certificate holder shall request from ODFW any new information on the status of the streams within the site boundary and shall address the information in the final Fish Passage Plan. In addition, the certificate holder shall seek concurrence from ODFW on the fish-presence determinations for non-fish bearing streams within the Ladd Creek watershed, as presented in ASC Exhibit P1-7B Table 3. If the certificate holder in consultation with ODFW, determines any of the previously identified non-fish bearing streams within the Ladd Creek Watershed to be fish-bearing, the certificate holder shall complete a crossing risk evaluation and obtain concurrence from ODFW on applicability of fish passage requirements. If fish passage requirements apply, certificate holder shall seek approval from the Energy Facility Siting Council of a site certificate amendment to incorporate ODFW approval of new crossings and fish passage design/plans and conditions. The protective measures described in the draft Fish Passage Plan in Attachment BB-2 to the Final Order on the ASC, shall be included as part of the final Fish Passage Plan, unless otherwise approved by the Department.

[The remainder of Fish Passage Condition 1, paragraphs (b) and (c), remain unchanged from the Proposed Order.]

Issued by Council-Appointed Hearing Officer:

Alison Greene Webster

Senior Administrative Law Judge
Office of Administrative Hearings

Amended and Adopted by the Oregon Energy Facility Siting Council:

Exceptions to the Administrative Law Judge's Proposed Order

~~EXCEPTIONS. Pursuant to OAR 345-015-0085(5) parties and limited parties may file exceptions to this proposed contested case order. Any party or limited party filing an exception must: a) in the exception(s) specifically identify the finding of fact, conclusion of law or recommended site certificate conditions to which the party excepts and state the basis for the exception; and b) email the exception(s) to Jesse Ratcliffe, legal counsel to EFSC in this contested case at Jesse.D.Ratcliffe@state.or.us and to the other parties/limited parties and the Office of Administrative Hearings no later than 5:00 p.m. Pacific Time on **June 30, 2022**.~~

~~RESPONSES. Pursuant to OAR 345-015-0085(6), parties and limited parties may file responses to exceptions. All responses must be emailed to Mr. Ratcliffe, the other parties/limited parties and the Office of Administrative Hearings no later than 5:00 p.m. Pacific Time on **July 15, 2022**.~~

~~EFSC HEARING ON PROPOSED CONTESTED CASE ORDER AND EXCEPTIONS. The Council will conduct a hearing to review the Proposed Contested Case Order and the parties' and limited parties' exceptions and responses. Parties and limited parties will be provided notice of that hearing once scheduled.~~

APPENDIX 1
TABLE OF ADDITIONAL ADMITTED EVIDENCE

Issue	Offered By	Testimony/Exhibit	Document Description	
M-6	Marlette	JoAnn Marlette Declaration	Written testimony	
	Marlette	Irene Gilbert Declaration	Written testimony	
	Marlette	Marlette Exhibit 5	IPC Response to Discovery Request No. 2	
	Marlette	Marlette Exhibit 6	IPC Response to Discovery Request No. 1	
	Idaho Power	Joseph Stippel Rebuttal Testimony	Rebuttal testimony	
	Idaho Power	Stippel Rebuttal Exhibit A	Curriculum Vitae	
	Idaho Power	Stippel Rebuttal Exhibit B	Final Environmental Impact Statement excerpt	
FW-3	Gilbert	Irene Gilbert Declaration	Written testimony	
	Gilbert	Joann J. Harris Rode Declaration	Written testimony	
	Gilbert	Gilbert Exhibit 4	Union County Weed Control Comments	
	Gilbert	Gilbert Exhibit 9	ODOE Response to Discovery Request	
	Gilbert	Gilbert Exhibit 11	ODA - Economic Impact From Selected Noxious Weeds in Oregon	
	Gilbert	Gilbert Exhibit 12	ODA – Invasive Noxious Weed Control Program Annual Report 2020	
	Gilbert	Gilbert Exhibit 15	ODFW – Oregon Conservation Strategy, Chapter 2: Key Conservation Issues	
	Geer	Susan Geer Declaration	Written testimony	
	Geer	Karen Antell Declaration	Written testimony	
	Geer	Mark Darrach Declaration	Written testimony	
	Geer	Bryan Endress Declaration	Written testimony	
	Idaho Power	Jessica Taylor Rebuttal Testimony	Written testimony	
	Idaho Power	Taylor Rebuttal Exhibit A	Curriculum Vitae	
	Idaho Power	Taylor Rebuttal Exhibit B	Updated Draft Noxious Weed Plan, 11-12-21	
	Idaho Power	Taylor Rebuttal Exhibit C	ODA – Noxious Weed Policy and Classification System 2020	
	Idaho Power	Taylor Rebuttal Exhibit D	Union County Noxious Weed List - 2019	
	Idaho Power	Taylor Rebuttal Exhibit E	ODFW – Oregon Conservation Strategy, Chapter 1: Overview	
	ODOE	Tim Butler (ODA) Rebuttal Testimony	Written testimony	
	Gilbert	Irene Gilbert Surrebuttal Testimony	Written testimony	
	Geer	Susan Geer Surrebuttal Testimony	Written testimony	
	Geer	Ed Mosiman Surrebuttal Testimony	Written testimony	
	Idaho Power	Jessica Taylor Sur-surrebuttal Testimony	Written testimony	
	Idaho Power	Declaration of Jessica Taylor in Support of Idaho Power’s Response to ODOE’s Proposed Conditions	Written testimony	
	Idaho Power	Attachment 1 to Taylor Declaration	Malheur County Noxious Weeds List	
	Idaho Power	Attachment 2 to Taylor Declaration	Baker County Noxious Weeds List	
			Jessica Taylor Cross-Examination Hearing Testimony	Hearing Transcript – Day 4 (Jan. 14, 2022)
			Mark Porter (ODA) Cross-Examination Hearing Testimony	Hearing Transcript – Day 7 (Jan. 21, 2022)

	Idaho Power	Transcript Corrections to Cross-Examination Hearing Days 4 and 7	Corrections to Hearing Transcripts – Days 4 and 7
FW-5	N/A	(no additional evidence offered)	
FW-6	Geer	Susan Geer Declaration	Written testimony
	Geer	Karen Antell Declaration	Written testimony
	Geer	Mark Darrach Declaration	Written testimony
	Geer	Bryan Endress Declaration	Written testimony
	Geer	Geer Exhibit 3	ODA – Invasive Noxious Weed Control Program Annual Report 2020
	Geer	Geer Exhibit 6	Vegetation of Winn Meadow, Glass Hill, Union Co., Oregon, August 16, 2011
	Idaho Power	Jessica Taylor Rebuttal Testimony	Written testimony
	Idaho Power	Taylor Rebuttal Exhibit A	Curriculum Vitae
	Idaho Power	Taylor Rebuttal Exhibit B	Updated Draft Noxious Weed Plan, 11-12-21
	Idaho Power	Taylor Rebuttal Exhibit C	ODA – Noxious Weed Policy and Classification System 2020
	Idaho Power	Taylor Rebuttal Exhibit D	Union County Noxious Weed List - 2019
	Idaho Power	Taylor Rebuttal Exhibit E	ODFW – Oregon Conservation Strategy, Chapter 1: Overview
	Geer	Susan Geer Surrebuttal Testimony	Written testimony
	Geer	Ed Mosiman Surrebuttal Testimony	Written testimony
	Geer	Geer Surrebuttal Exhibit 1S	Article: Managing Invasive Plants in Natural Areas: Moving Beyond Weed Control, 2009
	Geer	Geer Surrebuttal Exhibit 2S	Article: Management Strategies for Invasive Plants in Pacific Northwest Prairies, Savannas, and Oak Woodlands.
	Geer	Geer Surrebuttal Exhibit 3S	Safeguarding the Nation from Impacts of Invasive Species
	Geer	Geer Surrebuttal Exhibit 4S	Oregon Natural Areas Plan 2020
	Idaho Power	Jessica Taylor Sur-surrebuttal Testimony	Written testimony
	Idaho Power	Declaration of Jessica Taylor in Support of Idaho Power’s Response to ODOE’s Proposed Conditions	Written testimony
	Idaho Power	Attachment 1 to Taylor Declaration	Malheur County Noxious Weeds List
	Idaho Power	Attachment 2 to Taylor Declaration	Baker County Noxious Weeds List
FW-7	March	Kevin and Anne March Testimony	Written testimony
	March	March Exhibit 1	ODFW Response to March Discovery Request
	March	March Exhibit 2	USDA B2H Record of Decision
	March	March Exhibit 3	Ladd Steelhead Habitat Map
	March	March Exhibit 4	2016 Ladd Creek Sts SGS Notes
	March	March Exhibit 5	2018 ODOT Ladd Canyon Project
	March	March Exhibit 6	ODOT News Release 12-18-20
	March	March Exhibit 7	ODFW Sensitive Species List
	March	March Exhibit 8	ODFW Fish Passage webpage
	March	March Exhibit 9	Ladd Marsh Wildlife Area Management Plan
	March	March Exhibit 10	Catherine Creek Tributary Assessment

	March	March Exhibit 11	ODOT Culvert Replacement Report
	March	March Exhibit 12	Endangered Species Act of 1973
	March	March Exhibit 13	NOAA – Snake River Basin Steelhead
	March	March Exhibit 14	ODFW Habitat Mitigation webpage
	March	March Exhibit 15	Article – Summer Steelhead fishing, 8-28-21
	March	March Exhibit 16	Article – Record Low Numbers of Steelhead Returning to Columbia River, 8-28-21
	March	March Exhibit 17	NOAA – Ladd Canyon Protected Resources
	ODOE	Greg Apke (ODFW) Rebuttal Testimony	Written testimony
	ODOE	Sara Reif (ODFW) Rebuttal Testimony	Written testimony
	Idaho Power	Chris James Rebuttal Testimony	Written testimony
	Idaho Power	James Rebuttal Exhibit A	Curriculum Vitae
	Idaho Power	James Rebuttal Exhibit B	Project Crossings in Upper Ladd Creek Watershed Proposed on Streams Identified in 2021 ODFW Summer Steelhead Distribution Map
	Idaho Power	James Rebuttal Exhibit C	Project Crossings in Upper Ladd Creek Watershed Proposed Outside Streams Identified in 2021 Summer Steelhead Distribution Map
	Idaho Power	James Rebuttal Exhibit D	Fish Habitat and Stream Crossing Assessment Summary Report, October 2014
	Idaho Power	James Rebuttal Exhibit E	Fish Habitat and Crossing Assessment Plan, May 2014
	Idaho Power	James Rebuttal Exhibit F	Fish Habitat and Stream Crossing Assessment Summary, December 2016
	Idaho Power	James Rebuttal Exhibit G	ODFW Responses to March Discovery Requests
	Idaho Power	James Rebuttal Exhibit H	ODFW Geodatabase Data
	March	Kevin and Anne March Surrebuttal Testimony	Written testimony
	March	March Surrebuttal Exhibit A	<u>ODFW Memo re: Clarification of Fish Passage Triggers and Guidelines for Bridges, March 28, 2008</u>
	March	March Surrebuttal Exhibit B	<u>ODFW Fish Passage Priority List, Feb. 1, 2013</u>
	March	March Surrebuttal Exhibit C	<u>ODFW Fish Passage Requirements</u>
		Greg Apke (ODFW) Cross-Examination Hearing Testimony	Hearing Transcript – Day 5 (Jan. 18, 2022)
		Sarah Reif (ODFW) Cross-Examination Hearing Testimony	Hearing Transcript – Day 5 (Jan 18, 2022)
		Chris James Cross-Examination Hearing Testimony	Hearing Transcript – Day 5 (Jan 18, 2022)
	<u>March</u>	<u>March Cross-Examination Exhibit 6A - video clip</u>	<u>ODOT Safety Projects Region 5 – video regarding ODOT’s I-84 fish passage improvements project (Aug. 18, 2020)</u>
	March	March Corrections to January 18, 2022 Hearing Transcript	Corrections to Hearing Transcript – Day 5
	Idaho Power	Idaho Power Transcript Corrections to Cross-Examination Hearing Transcript Day 5	Corrections to Hearing Transcript – Day 5

	ODOE	ODOE Corrections to Cross-Examination Hearing Transcript Day 5	Corrections to Hearing Transcript – Day 5
HCA-3	Marlette	JoAnn Marlette Affidavit	Written testimony
	Marlette	Marlette Exhibit 1-J	Sarah LeCompte letter, August 14, 2021
	Marlette	Marlette Exhibit 1	Chicago Tribune article, Follow the Footsteps – or Wagon Ruts – of Pioneer’s Historic Trail, June 18, 2018
	Marlette	Marlette Exhibit 2	Oregon VIA Magazine excerpt, page 6, July-August 2018
	Marlette	Marlette Exhibit 3	Baker City Herald article, Tourism Spending Continues to Rise, May 8, 2019
	Marlette	Marlette Exhibit 4	Baker City Herald article, Selling Baker County, May 10, 2019
	Marlette	Marlette Exhibit 5	Article, Electric Transmission Visibility and Visual Contrast Threshold Distances in Western Landscapes
	Marlette	Marlette Exhibit 8	B2H Historic Properties Management Plan, pages 20-22, September 2018
	Marlette	Marlette Exhibit 9	IPC’s Response to Gilbert’s Discovery Request No. 4, February 5, 2021
	Marlette	Marlette Exhibit 10	IPC’s Response to Gilbert’s Discovery Requests, March 12, 2021
	Marlette	Marlette Exhibit 11	IPC’s Response to Deschner’s Discovery Request No. 4, February 5, 2021
	Marlette	Marlette Exhibit 16	NHOTIC Overlay Zone
	Marlette	Marlette Exhibit 17	Photos taken at NHOTIC
	Gilbert	Irene Gilbert Testimony	Written testimony
	Gilbert	Gilbert Exhibit 4	IPC Supplemental Response to Gilbert’s Discovery Requests
	Idaho Power	Kirk Ranzetta Rebuttal Testimony	Written testimony
	Idaho Power	Ranzetta Rebuttal Exhibit A	Curriculum Vitae
	Idaho Power	Ranzetta Rebuttal Exhibit B	BLM – Best Management Practices for Reducing Visual Impacts of Renewable Energy Facilities on BLM Lands, 2013
	Idaho Power	Ranzetta Rebuttal Exhibit C	National Registration of Historic Places Registration Form for Oregon Trail: La Grande to Hilgard Segment
	Idaho Power	Ranzetta Rebuttal Exhibit D	Letter from Tetra Tech to John Williams
HCA-4	Horst/Cavinato	Joe Horst Direct Testimony	Written testimony
	Horst/Cavinato	Horst Exhibit C	Arial photograph – Hawthorne Dr.
	Horst/Cavinato	Horst Exhibit I	State Historic Preservation Office letter to Joe Horst, July 28, 2021
	Idaho Power	Kirk Ranzetta Rebuttal Testimony	Written testimony
	Idaho Power	Ranzetta Rebuttal Exhibit A	Curriculum Vitae
	Idaho Power	Ranzetta Rebuttal Exhibit B	BLM – Best Management Practices for Reducing Visual Impacts of Renewable Energy Facilities on BLM Lands, 2013
	Idaho Power	Ranzetta Rebuttal Exhibit C	National Registration of Historic Places Registration Form for Oregon Trail: La Grande to Hilgard Segment

	Idaho Power	Ranzetta Rebuttal Exhibit D	Letter from Tetra Tech to John Williams
HCA-6	N/A	(no additional evidence offered)	
HCA-7	Williams	John Williams Testimony	Written testimony
	Idaho Power	Kirk Ranzetta Rebuttal Testimony	Written testimony
	Idaho Power	Ranzetta Rebuttal Exhibit A	Curriculum Vitae
	Idaho Power	Ranzetta Rebuttal Exhibit B	BLM – Best Management Practices for Reducing Visual Impacts of Renewable Energy Facilities on BLM Lands, 2013
	Idaho Power	Ranzetta Rebuttal Exhibit C	National Registration of Historic Places Registration Form for Oregon Trail: La Grande to Hilgard Segment
	Idaho Power	Ranzetta Rebuttal Exhibit D	Letter from Tetra Tech to John Williams
	Williams	John Williams Surrebuttal Testimony	Written testimony (second bullet point excluded)
LU-4	N/A	(no additional evidence offered)	
LU-7	N/A	(no additional evidence offered)	
LU-8	N/A	(no additional evidence offered)	
LU-9	Myers	Sam Myers Direct Testimony	Written testimony
	Idaho Power	Kurtis Funke Rebuttal Testimony	Written testimony
	Idaho Power	Funke Rebuttal Exhibit A	Curriculum Vitae
	Idaho Power	Funke Rebuttal Exhibit B	Article, Assessing the Accuracy and Integrity of PTK GPS Beneath High Voltage Power Line (2001)_
	Idaho Power	Funke Rebuttal Exhibit C	Updated Table 5-7 from Idaho Power’s Agricultural Lands Assessment (Sept. 2005)
	Idaho Power	Mark Madison Rebuttal Testimony	Written testimony
	Idaho Power	Madison Rebuttal Exhibit A	Curriculum Vitae
	Idaho Power	Madison Rebuttal Exhibit M	USDA, Wildland Fire in Ecosystems
	Idaho Power	Madison Rebuttal Exhibit N	Benefits of Prescribed Burning (Aug. 2013)
	Idaho Power	Christopher Lautenberger Rebuttal Testimony	Written testimony
	Myers	Sam Myers Surrebuttal Testimony	Written testimony
	Idaho Power	Mark Madison Sur-surrebuttal Testimony	Written testimony
LU-11	Gilbert	Irene Gilbert Testimony	Written testimony
	Gilbert	Gilbert Exhibit 8	Article, A Weedy Scourge: 20 Invasive Plant Species That Cost Oregon Millions
	Gilbert	Gilbert Exhibit 11	ODOE Response to Gilbert Discovery Requests
	Gilbert	Gilbert Exhibit 18	Article, Crop Duster Strikes Arizona T-Line
	Idaho Power	Douglas Dockter Rebuttal Testimony	Written testimony
	Idaho Power	Dockter Exhibit A	Curriculum Vitae
	Idaho Power	Jessica Taylor Rebuttal Testimony	Written testimony

	Idaho Power	Taylor Rebuttal Exhibit A	Curriculum Vitae
	Idaho Power	Taylor Rebuttal Exhibit B	Updated Draft Noxious Weed Plan, 11-12-21
	Idaho Power	Taylor Rebuttal Exhibit C	ODA – Noxious Weed Policy and Classification System 2020
	Idaho Power	Taylor Rebuttal Exhibit D	Union County Noxious Weed List - 2019
	Idaho Power	Taylor Rebuttal Exhibit E	ODFW – Oregon Conservation Strategy, Chapter 1: Overview
	Idaho Power	Kurtis Funke Rebuttal Testimony	Written testimony
	Idaho Power	Funke Rebuttal Exhibit A	Curriculum Vitae
	Idaho Power	Funke Rebuttal Exhibit B	Article, Assessing the Accuracy and Integrity of PTK GPS Beneath High Voltage Power Line (2001)_
	Idaho Power	Funke Rebuttal Exhibit C	Updated Table 5-7 from Idaho Power’s Agricultural Lands Assessment (Sept. 2005)
		Mark Porter (ODA) Cross-Examination Hearing Testimony	Hearing Transcript – Day 7 (Jan. 21, 2022)
	Idaho Power	Transcript Corrections to Cross-Examination Hearing Days 4 and 7	Corrections to Hearing Transcript – Days 4 and 7
NC-1, NC-2, NC-3, and NC-4	Stop B2H	Fuji Kreider Direct Testimony Regarding Issue NC-1	Written testimony
	Stop B2H	Fuji Kreider Direct Testimony on Issue NC-2	Written testimony
	Stop B2H	Fuji Kreider Direct Testimony on Issue NC-3	Written testimony
	Stop B2H	Fuji Kreider Direct Testimony on Issue NC-4	Written testimony
	Stop B2H	Kerrie Standlee Direct Testimony Regarding Issues NC-2, NC-3 and NC-4	Written testimony
	Stop B2H	Stop B2H Exhibit 1	Fuji Kreider Declaration, with attachment
	Stop B2H	Stop B2H Exhibit 2	Lois Barry Declaration on NC-1, NC-2 and NC-4
	Stop B2H	Stop B2H Exhibit 3	Colburn letter to BLM, July 10, 2015
	Stop B2H	Stop B2H Exhibit 4	Jim Kreider Declaration on NC-2
	Stop B2H	Stop B2H Exhibit 5	Standlee Report, September 15, 2021
	Stop B2H	Stop B2H Exhibit 6	Email exchanges between ODOE and Fuji Kreider
	Stop B2H	Stop B2H Exhibit 10	Irene Gilbert Declaration on Issues NC-2 and NC-3
	Stop B2H	Stop B2H Exhibit 11	Ashley O’Toole Declaration on NC-3
	Stop B2H	Stop B2H Exhibit 12	Greg Larkin Declaration
	Gilbert	Irene Gilbert Testimony Regarding Issue NC-2	Written testimony
	Gilbert	Gilbert Exhibit 1	US Dept. of the Interior, Director’s Order #47, Soundscape Preservation and Noise Management, December 1, 2000
	Gilbert	Gilbert Exhibit 7	Williams v. Invenergy LLC and Willow Creek Energy LLC, Complaint filed 8/9/13
	Gilbert	Gilbert Exhibits 14 - 17	Photographs of Larkin property

	Gilbert	Gilbert Exhibits 18 - 21	Photographs of MP 11 location
	Gilbert	Gilbert Exhibit 27	OHA, Strategic Health Impact Assessment on Wind Energy Development in Oregon, March 2013
	Horst	Joe Horst Direct Testimony	Regarding Issue NC-2
	Horst	Horst Exhibit Q	Gilbert and Kreider Discovery Requests to ODOE
	Myers	Sam Myers Direct Testimony	Regarding Issue NC-2
	ODOE	Ken Kosky, Golder Assoc. Rebuttal Testimony	Written testimony
	ODOE	Kosky Attachment 1	Resume, Kennard F. Kosky, PE
	ODOE	Kosky Attachment 2	Resume, Gage Miller
	ODOE	Kosky Attachment 3	Technical Memorandum, Review of Additional Baseline Data Collected in October 2021
	ODOE	Patrick Rowe Declaration	Written testimony explaining attachments
	ODOE	Rowe Attachment 1	Oregon DEQ Internal Management Directive re: Staff Guidance on Noise Control Issues
	ODOE	Rowe Attachment 2	Stop B2H Discovery Request to Oregon DEQ
	ODOE	Rowe Attachment 3	Oregon DEQ Response to Discovery Request
	ODOE	Rowe Attachment 4	A-Engrossed version of Oregon Senate Bill 951 (1995)
	ODOE	Rowe Attachment 5	Legislative History, SB 951 (1995)
	Idaho Power	Mark Bastasch Rebuttal Testimony	Written testimony
	Idaho Power	Bastasch Rebuttal Exhibit A	Curriculum Vitae
	Idaho Power	Bastasch Rebuttal Exhibit B	Oregon DEQ, Staff Guidance on Noise Control Issues (July 2003)
	Idaho Power	Bastasch Rebuttal Exhibit C	Oregon DEQ, Sound Measurement Procedure Manual (Sept. 4, 1974)
	Idaho Power	Bastasch Rebuttal Exhibit D	Article, Sound Levels of Rain and of Wind in the Trees (Nov. – Dec. 1998)
	Idaho Power	Bastasch Rebuttal Exhibit E	Merriam-Webster Online Dictionary, Definition of “Infrequent”
	Idaho Power	Bastasch Rebuttal Exhibit F	BPA, I-5 Corridor Reinforcement Final EIS (Feb. 2016)
	Idaho Power	Bastasch Rebuttal Exhibit G	Federal Highway Administration, Highway Traffic Noise: Analysis and Abatement Guidance (Dec. 2011)
	Idaho Power	Bastasch Rebuttal Exhibit H	Oregon DEQ, Adoption of Statewide Rules Related to Noise Pollution from Industrial and Commission Sources and Changes to the Sound Measurement Procedures Manuals, NPC-1, 2 (Sept. 4, 1974)
	Idaho Power	Bastasch Rebuttal Exhibit I	Photo Log of Supplemental Monitoring Equipment Stations (October 10-11, 2021)
	Idaho Power	Bastasch Rebuttal Exhibit J	Tabulated Hourly Data from Supplemental Monitoring (October 10, 2021-November 1, 2021)
	Idaho Power	Bastasch Rebuttal Exhibit K	Extracted Sound Level Meter Files (October 10, 2021-November 1, 2021)
	Idaho Power	Bastasch Rebuttal Exhibit L	Reanalysis of MP 11 Area (November 12, 2021)

	Idaho Power	Bastasch Rebuttal Exhibit M	BPA, Audible Noise Policy (October 2005)
	Idaho Power	Joseph Stippel Rebuttal Testimony Regarding Issues NC-1 and NC-2	Written testimony
	Idaho Power	Stippel Rebuttal Exhibit A	Oregon DEQ, Staff Guidance on Noise Control Issues (July 2003)
	Idaho Power	Lisa Rackner Declaration	Explaining attached exhibits regarding Noise Control Issues
	Idaho Power	Rackner Exhibit A	Email Correspondence between Stop B2H and Lisa Rackner
	Idaho Power	Rackner Exhibit B	Email Correspondence between Karl Juengling and Lisa Rackner
	STOP B2H	Fuji Kreider Surrebuttal Testimony	Regarding Issues NC-2, NC-3 and NC-4, with photographs embedded
	STOP B2H	Stop B2H Surrebuttal Exhibit A	Kerrie Standlee Review of Rebuttal Testimony
	STOP B2H	Stop B2H Surrebuttal Exhibit B	Supplemental Information Regarding Sound Monitoring Requests and Selection of Locations
	STOP B2H	Stop B2H Surrebuttal Exhibit C	Email Exchange between Jim Kreider and City of La Grande Officials (Nov. 30 – Dec. 1, 2021)
	STOP B2H	Stop B2H Surrebuttal Exhibit D	Video of Supplemental Monitoring Position MP 103
	STOP B2H	Stop B2H Cross-Examination Exhibit 1	Sound Level and Wind Speed Data graphs
	STOP B2H	Stop B2H Cross-Examination Exhibit 2	Measurement notes
	Idaho Power	Bastasch Sur-surrebuttal Exhibit A	MP 102 Analysis for October 15-16, 2021
	Idaho Power	Bastasch Sur-surrebuttal Exhibit B	Reanalysis of MP 11 Area – Morgan Lake Alternative
	Idaho Power	Bastasch Sur-surrebuttal Exhibit C	Reanalysis of MP 11 Area – Proposed Mill Creek Route – Map 1
	Idaho Power	Bastasch Sur-surrebuttal Exhibit D	Reanalysis of MP 11 Area – Proposed Mill Creek Route – Map 2
	Idaho Power	Bastasch Sur-surrebuttal Exhibit E	Statistical Distribution of October Windspeeds (2008-2021, La Grande National Weather Service Station)
	Idaho Power	Bastasch Sur-surrebuttal Exhibit F	Email Exchange between Lisa Rackner and Karl Anuta regarding equipment calibration
	Idaho Power	Bastasch Sur-surrebuttal Exhibit G	Annual Laboratory Calibration Records
	Idaho Power	Bastasch Sur-surrebuttal Exhibit H	Post-monitoring Field Calibration information
	Idaho Power	Bastasch Sur-surrebuttal Exhibit I	Corrected Tables 1 and 2 of Bastasch Rebuttal Testimony
	Idaho Power	Bastasch Sur-surrebuttal Exhibit J	Declaration of Rodrigo Gonzalez-Abraham regarding Noise Control Issues
		Mark Bastasch Cross-Examination Hearing Testimony	Hearing Transcript – Day 1 (Jan. 10, 2022)
		Gage Miller Cross-Examination Hearing Testimony	Hearing Transcript – Day 1 (Jan. 10, 2022)
		Kerri Standlee Cross-Examination Hearing Testimony	Hearing Transcript – Day 1 (Jan. 10, 2022)
	Idaho Power	Idaho Power Corrections to Cross-Exam Hearing Transcript Day 1	Corrections to Hearing Transcript Day 1

	ODOE	ODOE Corrections to Cross-Examination Hearing Day 1	Corrections to Hearing Transcript Day 1
	STOP B2H	STOP B2H Corrections to January 10, 2022 Hearing Transcript	Corrections to Hearing Transcript Day 1
NC-6	Gray	Dianne B. Gray Direct Testimony	Written testimony
	ODOE	Ken Kosky, Golder Assoc. Rebuttal Testimony	Written testimony
	ODOE	Kosky Attachment 1	Resume, Kennard F. Kosky, PE
	ODOE	Kosky Attachment 2	Resume, Gage Miller
	ODOE	Kosky Attachment 3	Technical Memorandum, Review of Additional Baseline Data Collected in October 2021
	Idaho Power	Mark Bastasch Rebuttal Testimony	Written testimony
	Idaho Power	Bastasch Rebuttal Exhibit A	Curriculum Vitae
	Idaho Power	Bastasch Rebuttal Exhibit B	Oregon DEQ, Staff Guidance on Noise Control Issues (July 2003)
	Idaho Power	Bastasch Rebuttal Exhibit C	Oregon DEQ, Sound Measurement Procedure Manual (Sept. 4, 1974)
	Idaho Power	Bastasch Rebuttal Exhibit D	Article, Sound Levels of Rain and of Wind in the Trees (Nov. – Dec. 1998)
	Idaho Power	Bastasch Rebuttal Exhibit E	Merriam-Webster Online Dictionary, Definition of “Infrequent”
	Idaho Power	Bastasch Rebuttal Exhibit F	BPA. I-5 Corridor Reinforcement Final EIS (Feb. 2016)
	Idaho Power	Bastasch Rebuttal Exhibit G	Federal Highway Administration, Highway Traffic Noise: Analysis and Abatement Guidance (Dec. 2011)
	Idaho Power	Bastasch Rebuttal Exhibit H	Oregon DEQ, Adoption of Statewide Rules Related to Noise Pollution from Industrial and Commission Sources and Changes to the Sound Measurement Procedures Manuals, NPC-1, 2 (Sept. 4, 1974)
	Idaho Power	Bastasch Rebuttal Exhibit I	Photo Log of Supplemental Monitoring Equipment Stations (October 10-11, 2021)
	Idaho Power	Bastasch Rebuttal Exhibit J	Tabulated Hourly Data from Supplemental Monitoring (October 10, 2021-November 1, 2021)
	Idaho Power	Bastasch Rebuttal Exhibit K	Extracted Sound Level Meter Files (October 10, 2021-November 1, 2021)
	Idaho Power	Bastasch Rebuttal Exhibit L	Reanalysis of MP 11 Area (November 12, 2021)
	Idaho Power	Bastasch Rebuttal Exhibit M	BPA, Audible Noise Policy (October 2005)
	Idaho Power	Joseph Stippel Rebuttal Testimony	Regarding Issues NC-1 and NC-2
	Idaho Power	Stippel Rebuttal Exhibit A	Oregon DEQ, Staff Guidance on Noise Control Issues (July 2003)
	Idaho Power	Lisa Rackner Declaration	Explaining attached exhibits regarding Noise Control Issues
	Idaho Power	Rackner Exhibit A	Email Correspondence between Stop B2H and Lisa Rackner
	Idaho Power	Rackner Exhibit B	Email Correspondence between Karl Juengling and Lisa Rackner
PS-1	N/A	(no additional evidence offered)	

PS-2 and PS-3	Carbiener/OCTA	Gail Carbiener Direct Testimony Regarding Issues PS-2 and PS-3	Written testimony
	Idaho Power	Christopher Lautenberger Rebuttal Testimony	Written testimony
	Idaho Power	Lautenberger Rebuttal Exhibit A	Standard Fire Behavior Fuel Models: A Comprehensive Set for Use with Rothermel's Surface Fire Spread Model, USDA, General Technical Report RMRS-GTR-153 (June 2005)
	Idaho Power	Lautenberger Rebuttal Exhibit B	Data from LANDFIRE (filed Nov. 12, 2021)
	Idaho Power	Lautenberger Rebuttal Exhibit C	How to Generate and Interpret Fire Characteristics Charts for Surface and Crown Fire Behavior, USDA, General Technical Report RMRS-GTR-253 (Mar. 2011)
	Idaho Power	Lautenberger Rebuttal Exhibit D	Data from Fire Occurrence Database (filed Nov. 12, 2021)
	Idaho Power	Lautenberger Rebuttal Exhibit E	Data from Mesowest (filed Nov. 12, 2021)
	Idaho Power	Lautenberger Rebuttal Exhibit F	Article: Power Lines and Catastrophic Wildland Fire in Southern California (2009)
	Idaho Power	Lautenberger Rebuttal Exhibit G	NWS Text Products by Issuing Center by Date, Iowa Environmental Mesonet, Iowa State University (Mar. 18, 2021)
	Idaho Power	Lautenberger Rebuttal Exhibit H	USDA and Department of the Interior, "Urban Wildland Interface Communities Within the Vicinity of Federal Lands that Are at High Risk from Wildfire," Fed. Reg., 66: 753 (2001)
	Idaho Power	Lautenberger Rebuttal Exhibit I	Data from SILVIS Labs (filed Nov. 12, 2021)
	Idaho Power	Lautenberger Rebuttal Exhibit J	Exhibit J, Data from Wildland Fire Decision Support System (filed Nov. 12, 2021)
	Idaho Power	Lautenberger Rebuttal Exhibit K	Butte County District Attorney's Office, The Camp Fire Public Report: A Summary of the Camp Fire Investigation (June 16, 2020)
	Idaho Power	Lautenberger Rebuttal Exhibit L	Article: NBC Bay Area, PG&E Criminally Charged for Kincade Fire (Apr. 6, 2021)
	Idaho Power	Lautenberger Rebuttal Exhibit M	Article: PacifiCorp Agrees to Pay 3.4 Million for 2018 Ramsey Canyon Fire Near Sams Valley, KDRV (June 10, 2020)
	Idaho Power	Lautenberger Rebuttal Exhibit N	PG&E Fire Incident Data 2020
	Idaho Power	Lautenberger Rebuttal Exhibit O	Pacific Northwest Wildfire Coordinating Group, 2020 Northwest Area Fire Weather Annual Operating Plan" (July 1, 2020)
	Idaho Power	Lautenberger Rebuttal Exhibit P	Archived NWS Watch, Warnings, Advisories Iowa Environmental Mesonet (filed Nov. 12, 2021)
	Idaho Power	Lautenberger Rebuttal Exhibit Q	Executive Order No. 19-01 (Jan. 30, 2019)
	Idaho Power	Lautenberger Rebuttal Exhibit R	EFSC Staff Report, Agenda Item G (Action Item): Update on PUC Wildfire Mitigation Rulemaking and Initiation of Council Rulemaking for the October 22, 2021, EFSC Meeting (Oct. 8, 2021)

	Idaho Power	Lautenberger Rebuttal Exhibit S	Article: Fire Induced Flashovers of Transmission Lines: Theoretical Models, Institute of Electrical and Electronics Engineers, Africon (2002)
	Idaho Power	Lautenberger Rebuttal Exhibit T	“The 10% Wind Speed Rule of Thumb for Estimating a Wildfire’s Forward Rate of Spread in Forests and Shrublands,” Annals of Forest Science 76: 44 (2019)
	Idaho Power	Lautenberger Rebuttal Exhibit U	Oregon Natural Hazards Mitigation Plan (Sept. 24, 2020)
	Idaho Power	Lautenberger Rebuttal Exhibit V	Article: Using Expert Judgment to Model Initial Attack Fire Crew Effectiveness, Forest Science 44.4 (1998)
PS-4	Cooper	Matthew Cooper Direct Testimony	Written testimony
	Cooper	Lois Barry Direct Testimony	Written testimony
	Cooper	Corinne Dutto Direct Testimony	Written testimony
	Cooper	Joann Harris Direct Testimony	Written testimony
	Cooper	Jim Kreider Direct Testimony	Written testimony
	Cooper	Cooper Exhibit 1	Photograph
	Cooper	Cooper Exhibit 2	La Grande Observer articles on the Rooster Peak Fire (August 1973)
	Cooper	Cooper Exhibit 3	La Grande Observer article: “Recalling the Fire of August 1973” (August 18, 2003)
	Cooper	Cooper Exhibit 4	Union County Community Wildfire Protection Plan (2005)
	Cooper	Cooper Exhibit 5	Union County Community Wildfire Protection Plan (2016)
	Cooper	Cooper Exhibit 6	Deposition of Craig Kretschmer (May 13, 2021)
	Cooper	Cooper Exhibit 7	City of La Grande response to PRR on fire truck travel times to Morgan Lake Road
	Cooper	Cooper Exhibit 8	Table of fire truck travel time to Morgan Lake Road area
	Cooper	Cooper Exhibit 9	Wildfire Risk by County, Oregon Forestland-Urban Interface Fire Protection Act
	Cooper	Cooper Exhibit 17	NE Oregon Regional Natural Hazards Mitigation Plan (2014)
	Cooper	Cooper Exhibit 21	Article: Southern California Edison says its equipment may have caused Orange County fire
	Cooper	Cooper Exhibit 22	Baker City Herald article, Missing Mountains (Aug. 1, 2020)
	Cooper	Cooper Exhibit 23	Oregonian article: PacifiCorp could face substantial liability if downed power lines caused Oregon wildfires (Oct. 7, 2020)
	Cooper	Cooper Exhibit 24	Blue Mountain Times article (Aug. 22, 1868)
	Cooper	Cooper Exhibit 25	Tax Map of SW La Grande
	Idaho Power	Douglas Dockter Rebuttal Testimony	Written testimony
	Idaho Power	Dockter Rebuttal Exhibit A	Curriculum Vitae
	Idaho Power	Dennis Johnson Rebuttal Testimony	Written testimony
	Idaho Power	Johnson Rebuttal Exhibit A	Curriculum Vitae

	Idaho Power	Johnson Rebuttal Exhibit B	Class 4 Cost Estimate Report for an Underground Installation Within the Viewshed of the NHOTIC
	Idaho Power	Johnson Rebuttal Exhibit C	Southern California Edison Company application concerning the Tehachapi Renewable Transmission Project (Segments 4 through 11) (Jan. 18, 2017)
	Idaho Power	Christopher Lautenberger Rebuttal Testimony	Written testimony
	Idaho Power	Lautenberger Rebuttal Exhibits A through V	(See descriptions for Lautenberger Rebuttal Exhibits A through V set out above with Issues PS-2 and PS-3)
	Cooper	Matt Cooper Surrebuttal to Christopher Lautenberger's Rebuttal Testimony	Written testimony
	Cooper	Matt Cooper Surrebuttal to Douglas Dockter's Rebuttal Testimony	Written testimony
	Cooper	Cooper Surrebuttal Exhibit A	USGS Topological Map, La Grande Quadrangle (2017)
	Cooper	Cooper Surrebuttal Exhibit B	Topo Graph and interval contour lines
	Cooper	Cooper Surrebuttal Exhibit C	Mountaineering: Freedom of the Hills (1997)
	Idaho Power	Dockter Sur-surrebuttal Exhibit A	Cooper response to discovery request, email thread
	Idaho Power	Dockter Sur-surrebuttal Exhibit B	Idaho Power Wildfire Mitigation Plan 2022 (Dec. 2021)
	Idaho Power	Dockter Sur-surrebuttal Exhibit C	Map of La Grande Area Fire Response Agencies
	Idaho Power	Dockter Sur-surrebuttal Exhibit D	Blue Mountain Interagency Fire Center Annual Report (2020)
		Douglas Dockter Cross-Examination Hearing Testimony	Hearing Transcript – Day 3 (Jan. 13, 2022)
		Christopher Lautenberger Cross-Examination Hearing Testimony	Hearing Transcript – Day 3 (Jan. 13, 2022)
	Cooper	Cooper Transcript Corrections to Hearing Transcript Day 3	Corrections to Hearing Transcript – Day 3
	Idaho Power	Idaho Power Transcript Corrections to Hearing Transcript Day 3	Corrections to Hearing Transcript – Day 3
PS-5	N/A	(no additional evidence offered)	
PS-6	Mammen	Dale and Virginia Mammen Direct Testimony on Issue PS-6	Written testimony
	Mammen	Mammen Exhibit 1	Excerpts from Idaho Power's summary determination pleadings on Issue SS-4, and Affidavit of Luke Grebe
	Mammen	Mammen Exhibit 2	Union County Warranty Deed with attachments
	Mammen	Mammen Exhibit 3	Union County May 1-3, showing West Hawthorne Drive
	Mammen	Mammen Exhibit 4	Union County Warranty Deed with attachments
	Mammen	Mammen Exhibit 6	City of La Grande Geologic Hazard Zone Map
	Mammen	Mammen Exhibit 7	Photographs, Declaration of Joe Horst,

			Declaration of Chris and Erin Stauffer
	Horst/Cavinato	Joe Horst Direct Testimony	Written testimony
	Horst/Cavinato	Horst Exhibits A-1, A-2 and A-3	Maps showing Hawthorne Drive location
	Horst/Cavinato	Horst Exhibit B	Arial photo of Hawthorne Drive
	Horst/Cavinato	Horst Exhibit C	Arial photo of Hawthorne Drive/Oregon Trail route
	Horst/Cavinato	Horst Exhibit D	Arial photo showing new development near Hawthorne Drive
	Horst/Cavinato	Horst Exhibit E-1 and E-2	Arial photo and ground level photo of Hawthorne Drive/Modelaire Loop
	Horst/Cavinato	Horst Exhibit E-2	Affidavit of Luke Grebe regarding Idaho Power's MSD on Issue SS-4
	Horst/Cavinato	Horst Exhibit F	Arial photo of Hawthorne Drive and creek
	Horst/Cavinato	Horst Exhibits G-1 and G-2	Arial photo and ground level photo of city boundary
	Horst/Cavinato	Horst Exhibit I	Letter re Oregon Trail, La Grande to Hilgard Segment (July 28, 2021)
	Horst/Cavinato	Horst Exhibit J-1 and J-2	Photos showing Hawthorne Drive width
	Horst/Cavinato	Horst Exhibit L	Excerpt from B2H Transportation and Traffic Plan
	Horst/Cavinato	Horst Exhibit M-1 and M-2	Photographs showing home, person on Hawthorne Dr.
	Horst/Cavinato	Horst Exhibit O	City of La Grande's Compliance Review of B2H ASC (Oct. 8, 2018)
	Horst/Cavinato	Horst Exhibit P	Excerpt Idaho Power's MSD Response on Issue SS-4
	Horst/Cavinato	Horst Exhibit R	Update Letter re Mill Creek Route (March 24, 2020)
	Idaho Power	Luke Grebe Rebuttal Testimony	Written testimony
	Idaho Power	Grebe Rebuttal Exhibit A	Curriculum Vitae
	Idaho Power	Grebe Rebuttal Exhibit B	Access Road Field Review (August 18, 2021)
	Idaho Power	Grebe Rebuttal Exhibit C	ODOT, Transportation System Planning Guidelines (2008)
	Idaho Power	Grebe Rebuttal Exhibit D	BPA, Transmission Line Access Road Geometrics Design SDT-DT-000101 (Nov. 6, 2017)
	Idaho Power	Grebe Rebuttal Exhibit E	PAC, TA 501 Roads – Construction (April 7, 2008)
	Idaho Power	Grebe Rebuttal Exhibit F	Federal Highway Administration, Manual of Uniform Traffic Control Devices (Dec. 2009)
PS-8 and PS-9	Idaho Power	Declaration of Douglas J. Dockter	Written testimony
	Idaho Power	Dockter Exhibit A	Idaho Power's 2021 Wildfire Mitigation Plan
	Idaho Power	Dockter Exhibit B	In re Rulemaking for Risk-based Wildfire Protection Plans and Planned Activities Consistent with Executive Order 20-04, OPUC Docket AR 638, Docket Strategy Change Announcement (July 28, 2021)
	Idaho Power	Dockter Exhibit C	In re Wildfire Mitigation Rulemaking – Phase 1, OPUC Docket AR 648, Staff's UPDATED AR 648 Draft Phase I Wildfire

			Mitigation Rules (Aug. 20, 2021)
	Idaho Power	Dockter Exhibit D	OPUC Docket AR 648, Notice of Proposed Rulemaking (Sept. 14, 2021)
	Idaho Power	Dockter Exhibit E	In re Risk-Based Wildfire Protection Plans and Planned Activities Consistent with Executive Order 20-04, OPUC Docket AR 638, Order No. 21-167 (May 27, 2021)
	Idaho Power	Dockter Exhibit F	In re Idaho Power Company Application for Waiver of OAR 860-024-0050 and OAR 860-024-0060 through OAR 860-024-0160 Wildfire Rules, OPUC Docket UM 2179, Order No. 21-269 (Aug. 26, 2021)
	Idaho Power	Dockter Exhibit G	In re Application of Idaho Power Company for an Accounting Order Authorizing the Deferral of Incremental Wildfire Mitigation and Insurance Costs, IPUC Case No. IPC-E-21-02, Order No. 35077 (June 17, 2021)
	Idaho Power	Christopher W. Lautenberger Direct Testimony	Written testimony
	Idaho Power	Lautenberger Exhibit A	Curriculum Vitae
	Idaho Power	Lautenberger Exhibit B	Application of San Diego Gas & Electric Company (U 902 E) for the Sunrise Powerlink Transmission Project, A.06-08-010, D.08-12-058 (Dec. 18, 2008)
	Idaho Power	Lautenberger Exhibit C	Application of San Diego Gas & Electric Company (U 902 E) for the Sunrise Powerlink Transmission Project, A.06-08-010, D.08-12-058, Appendix C (Dec. 24, 2008)
	Idaho Power	Lautenberger Exhibit D	Snow Fire Incident Information Fact Sheet (June 5, 2015)
	Idaho Power	Lautenberger Exhibit E	U.S. Attorney's Office, Dist. of Or., PacifiCorp to Pay \$3.4 Million in Civil Settlement for Ramsey Canyon Fire (June 9, 2020)
	Idaho Power	Lautenberger Exhibit F	Pacific Gas and Electric Fire Incident Report Data Compiled from 2014-2019
	Idaho Power	Lautenberger Exhibit G	Southern California Edison Fire Incident Report Data Compiled from 2014-2019
	Idaho Power	Lautenberger Exhibit H	San Diego Gas and Electric Fire Incident Report Data Compiled from 2014-2019
	Idaho Power	Lautenberger Exhibit I	Data from Department of Homeland Security Homeland Infrastructure Foundation-Level Data Regarding Transmission and Subtransmission Lines in the United States
PS-10	Lyons	Charles Lyons Direct Testimony	Written testimony
	Lyons	Lyons Exhibit 2a	Excerpt from Union County Wildfire Protection Plan, Chapter 6 (June 30, 2016)
	Lyons	Lyons Exhibit 2b	Union County Wildfire Protection Plan Appendix E Scoring Criteria 2016 Pages 1-5
	Lyons	Lyons Exhibit 2c	Union County Community Wildfire Protection Plan 8-10-05 Table 6 Pages 36-37
	Lyons	Lyons Exhibit 3	Idaho Power Response to Lyons Discovery

			Requests
	Lyons	Lyons Exhibit 4	Article Oregon's Emergency Responders and Utilities are Oregonian 6/4/2021
	Lyons	Lyons Exhibit 5	Oregonian Article: "Utility had plan in place, but didn't" (March 28, 2021)
	Webster	Stacia Webster Direct Testimony	Written testimony
	Webster	Lois Barry Testimony on Issue PS-10	Written testimony
	Webster	Webster Exhibit 3	Photograph
	Webster	Webster Exhibit 4	Photograph
	Webster	Webster Exhibit 5	Response times from LGRFPD to Morgan Lake Road
	Webster	Webster Exhibit 6	Deposition of Craig Kretschmer (May 13, 2021)
	Webster	Webster Exhibit 7	Adrian Fire Survey
	Webster	Webster Exhibit 8	Echo Fire Survey, page 1
	Webster	Webster Exhibit 9	Echo Fire Survey, page 2
	Webster	Webster Exhibit 11	Pilot Rock Fire Survey
	Webster	Webster Exhibit 12	Umatilla County Fire Survey, page 1
	Webster	Webster Exhibit 13	Umatilla County Fire Survey, page 2
	Webster	Webster Exhibits 14-16	La Grande Observer articles - Rooster Peak Fire (Aug. 1973)
	Webster	Webster Exhibits 17-19	La Grande Observer articles - Rooster Peak Fire (Aug. 1973)
	Webster	Webster Exhibits 20-24	La Grande Observer articles - Rooster Peak Fire (Aug. 1973)
	Webster	Webster Exhibit 27	Article: Evaluating 10% Wind Speed Rule of Thumb
	Webster	Webster Exhibit 28	Article on So Cal Edison and Orange County fires
	Idaho Power	Robert A. Cummings Rebuttal Testimony	Written testimony
	Idaho Power	Cummings Rebuttal Exhibit A	Curriculum Vitae
	Idaho Power	Cummings Rebuttal Exhibit B	Video – Blasting (June 24, 2021)
	Idaho Power	Cummings Rebuttal Exhibit C	Survey of Blasting Effects on Ground Water Supplies in Appalachia, Volume 1 (1980)
	Idaho Power	Cummings Rebuttal Exhibit D	Impacts of Blasting on Domestic Water Wells (2000)
	Idaho Power	Cummings Rebuttal Exhibit E	Blasting Effects on Appalachian Water Wells (April 15, 1987)
	Idaho Power	Cummings Rebuttal Exhibit F	Blast Vibration Damage to Water Supply Well Water Quality and Quantity (1997)
	Idaho Power	Cummings Rebuttal Exhibit G	Idaho Power Company Wildfire Mitigation Plan (June 2021)
	Idaho Power	Douglas Dockter Rebuttal Testimony	Written testimony
	Idaho Power	Dockter Rebuttal Exhibit A	Curriculum Vitae
	Idaho Power	Dennis Johnson Rebuttal Testimony	Written testimony
	Idaho Power	Johnson Rebuttal Exhibits A through C	(See descriptions for Johnson Rebuttal Exhibits A through C set out above with Issue PS-4)
	Idaho Power	Christopher Lautenberger Rebuttal Testimony	Written testimony

	Idaho Power	Lautenberger Rebuttal Exhibits A through V	(See descriptions for Lautenberger Rebuttal Exhibits A through V set out above with Issues PS-2 and PS-3)
R-1, R-2, R-3, and R-4	C. Andrew	Colin Andrew Direct Testimony on Issue R-1	Written testimony
	Andrew/McAllister/Barry	Cynthia Carper Direct Testimony on Issues R-1 and R-2	Written testimony
	Andrew/McAllister/Barry	Levi Edvalson Direct Testimony on Issues R-1 and R-2	Written testimony
	Andrew/McAllister/Barry	Eric Griffith Direct Testimony Issues R-1 and R-2	Written testimony
	Andrew/McAllister/Barry	Christopher Jones Direct Testimony on Issues R-1 and R-2	Written testimony
	Andrew/McAllister/Barry	Michael McAllister Direct Testimony on Issues R-1 and R-2	Written testimony
	Andrew/McAllister/Barry	Kyann Sholtes Direct Testimony	Written testimony
	Andrew/McAllister/Barry	Geoffrey Witek Direct Testimony	Written testimony
	McAllister	McAllister Exhibit 1	City of La Grande Comments on the Amended Preliminary ASC (August 31, 2017)
	McAllister	McAllister Exhibit 2	Idaho Power Responses to City of La Grande Comments on the Amended Preliminary ASC (August 27, 2018)
	McAllister	McAllister Exhibit 3	City of La Grande Proclamation - Declaring and Clarifying Opposition to the Boardman to Hemingway Powerline Project (2019)
	McAllister	McAllister Exhibit 4	Morgan Lake Park Recreational Use and Development Plan
	McAllister	McAllister Exhibit 5	McAllister's Opposition to Idaho Power's MSD on Issue R-2
	McAllister	McAllister Exhibit 6	Photographs of Morgan Lake Park/Twin Lakes Wetland
	L. Barry	Lois Barry Testimony on Issue R-2	Written testimony
	L. Barry	Lois Barry Testimony on Issue R-3	Written testimony
	P. Barry	Peter Barry Testimony on Issue R-3	Written testimony
	L. Barry	Steve Antell Testimony on Issue R-3	Written testimony
	L. Barry	Susan Badger-Jones Testimony on Issue R-3	Written testimony
	L. Barry	Michael S. Daugherty Testimony on Issue R-3	Written testimony
	L. Barry	Jim Kreider Testimony on Issues R-2 and R-3	Written testimony
	L. Barry	Jennifer Williams Testimony on Issue R-3	Written testimony
	L. Barry	Barry Exhibit 6, Issue R-3	Visual Assessment Work Group Minutes

	L. Barry	Barry Exhibit 10, Issue R-3	Excerpt from Landscape Aesthetics: A Handbook for Scenery Management USFS SMS (1995)
	L. Barry	Barry Exhibit 16, Issue R-3	Article: From Overhead to Underground: It Pays to Bury Power Lines
	L. Barry	Barry Exhibit 17, Issue R-3	Article: PG&E to Bury Transmission Lines at Cost of \$2 Million per Mile (Aug. 21, 2021)
	L. Barry	Barry Exhibit 19, Issue R-3	Article: Burying High Voltage and Benefits of Burying Lines, RETA
	L. Barry	Lois Barry Testimony on Issue R-4	Written testimony
	L. Barry	Barry Exhibit 22	Photos of undeveloped areas of Morgan Lake Park
	Idaho Power	Joseph Stippel Declaration	Written testimony
	Idaho Power	Stippel Exhibit A	Morgan Lake Lattice vs. H-Frame (Nov. 11, 2021)
	Idaho Power	Stippel Exhibit B	NHOTIC Lattice vs. H-Frame (Nov. 11, 2021)
	Idaho Power	Dennis Johnson Rebuttal Testimony on Issue R-3	Written testimony
	Idaho Power	Johnson Rebuttal Exhibit A	Curriculum Vitae
	Idaho Power	Johnson Rebuttal Exhibit B	Class 4 Cost Estimate Report for an Underground Installation Within the Viewshed of the NHOTIC
	Idaho Power	Johnson Rebuttal Exhibit C	Southern California Edison Company application concerning the Tehachapi Renewable Transmission Project (Segments 4 through 11) (Jan. 18, 2017)
	Idaho Power	Louise Kling Rebuttal Testimony	Written testimony
	Idaho Power	Kling Rebuttal Exhibit A	Curriculum Vitae
	Idaho Power	Kling Rebuttal Exhibit B	Electric Transmission Visibility and Visual Contrast Threshold Distances in Western Landscapes (Apr. 2014)
	Idaho Power	Kling Rebuttal Exhibit C	BLM Manual H-8410-1, Visual Resource Inventory (Jan. 17, 1986)
	Idaho Power	Kling Rebuttal Exhibit D	Photosimulation of Project Components Near NHOTIC (filed Nov. 12, 2021)
	Idaho Power	Kling Rebuttal Exhibit E	Revised Morgan Lake Park Supplemental Analysis (Nov. 12, 2021)
	Idaho Power	Kling Rebuttal Exhibits F1, F2 and F3	Videos: Simulation of Potential Visual Impacts to Morgan Lake Park
	Idaho Power	Kling Rebuttal Exhibit G	Tree Heights and Locations at Morgan Lake Park
	Idaho Power	Kling Rebuttal Exhibit H	BLM, Best Management Practices for Reducing Visual Impacts of Renewable Energy Facilities on BLM-Administered Lands (2013)
	Idaho Power	Kling Rebuttal Exhibit I	NHOTIC Supplemental Analysis
	Idaho Power	Kling Rebuttal Exhibits J1, J2, J3, and J4	Videos: Simulation of Potential Visual Impacts to the NHOTIC
	L. Barry	Barry Cross-Examination Exhibit 4	Article: Changes and Challenges in USDA Forest Service Scenic Resource Management Under the 2012 Forest Planning Rule
	L. Barry	Barry Cross-Examination Exhibits	B2H Visual Resources Workgroup Meeting

		1 and 2	Minutes (July 27, 2011)
		Dennis Johnson Cross-Examination Hearing Testimony	Hearing Transcript – Day 6 (January 19, 2022)
		Louise Kling Cross-Examination Hearing Testimony	Hearing Transcript – Day 6 (January 19, 2022)
	L. Barry	Barry Corrections to Hearing Transcript Day 6	Corrections to Hearing Transcript Day 6
	Idaho Power	Idaho Power Corrections to Hearing Transcript Day 6	Corrections to Hearing Transcript Day 6
RFA-1 and RFA-2	Carbiener	Gail Carbiener Direct Testimony on Issue RFA-1	Written testimony
	Carbiener	Gail Carbiener Direct Testimony on Issue RFA-2	Written testimony
	Gilbert	Irene Gilbert Opening Arguments Regarding Issue RFA-1	(Legal brief, not direct testimony)
	Gilbert	Gilbert Exhibit 1	Memo to EFSC from Christopher M. Clark, Siting Policy Analyst & Rules Coordinator, Surety Bond Template Update (August 13, 2021)
	Gilbert	Gilbert Exhibit 2	Memo to EFSC from Sarah Esterson, Senior Policy Advisor, Overview of the Energy Facility Siting Process Retirement and Financial Assurance Standard (August 13, 2021)
	Gilbert	Gilbert Exhibit 4	EFSC Meeting Minutes (January 23-24, 2020)
	Gilbert	Gilbert Exhibit 7	Excerpt from Bakeoven Final Order
	Gilbert	Gilbert Exhibit 9	Docket No. LC 74 for the 2019 Integrated Resource Plan staff report for the Oregon Public Utilities Commission (March 5, 2021)
	Gilbert	Gilbert Exhibit 11	WECC RPCG 2026 Common Case Transmission Assumptions Report (June 30, 2016)
	Gilbert	Gilbert Exhibit 12	Idaho Power’s 2019 10K and 10Q Securities and Exchange Commission reports
	Gilbert	Gilbert Exhibit 15	Report of the Independent Consultants on the Greenhat Default (March 26, 2019)
	Idaho Power	Jared Ellsworth Rebuttal Testimony	Written testimony
	Idaho Power	Ellsworth Rebuttal Exhibit A	Curriculum Vitae
	Idaho Power	Ellsworth Rebuttal Exhibit B	Idaho Power Company’s Second Amended 2019 Integrated Resource Plan (Oct. 2020)
	Idaho Power	Ellsworth Rebuttal Exhibit C	Transmission Emerging as Major Stumbling Block for State Renewable Targets (Jan. 15, 2020)
	Idaho Power	Ellsworth Rebuttal Exhibit D	American Wind Energy Association, Grid Vision: The Electric Highway to a 21st Century Economy (May 2019)
	Idaho Power	Ellsworth Rebuttal Exhibit E	Department of Energy, Obama Administration Announces Job-Creating Grid Modernization Pilot Projects (Oct. 5, 2011)
	Idaho Power	Ellsworth Rebuttal Exhibit F	FERC Begins Reform Process to Build the Transmission System of the Future (July 15,

			2021)
	Idaho Power	Ellsworth Rebuttal Exhibit G	Idaho Power Company, 2019 Integrated Resource Plan, OPUC Docket LC 74, Order No. 21-184 (June 4, 2021)
	Idaho Power	Ellsworth Rebuttal Exhibit H	EFSC Meeting Minutes (January 23-24, 2020)
	Idaho Power	Ellsworth Rebuttal Exhibit I	National Renewable Energy Laboratory, The North American Renewable Integration Study: A U.S. Perspective (June 2021)
	Idaho Power	Ellsworth Rebuttal Exhibit J	Enrolled Senate Bill 589 (May 21, 2021)
	Idaho Power	Randy Mills Rebuttal Testimony	Written testimony
	Idaho Power	Mills Rebuttal Exhibit A	Curriculum Vitae
	Idaho Power	Mills Rebuttal Exhibit B	Updated Letter of Willingness from Wells Fargo (Oct. 12, 2021)
	Idaho Power	Mills Rebuttal Exhibit C	EFSC 2021 Pre-approved List of Financial Institutions (Jan. 22, 2021)
	Idaho Power	Mills Rebuttal Exhibit D	Bakeoven Solar Project – Exhibit W Facility Retirement and Site Restoration (Nov. 2019)
	Idaho Power	Mills Rebuttal Exhibit E	Review of Bakeoven Solar Project, Exhibit W (Nov. 5, 2019)
	Idaho Power	Mills Rebuttal Exhibit F	Bakeoven Solar Project – Final Order on Application for Site Certificate (April 24, 2020)
	Idaho Power	Mills Rebuttal Exhibit G	Obsidian Solar Center – Proposed Order on Application for Site Certificate (Oct. 9, 2020)
	Idaho Power	Mills Rebuttal Exhibit H	IDACORP Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (Dec. 11, 2020)
	Idaho Power	Mills Rebuttal Exhibit I	<i>In re Pacific Gas and Electric Corp and Pacific Gas Electric Co.</i> , Case No. 19-30088 (May 28, 2020)
	Idaho Power	Mills Rebuttal Exhibit J	Order to Show Cause and Notice of Proposed Penalty (May 20, 2021)
	Idaho Power	Mills Rebuttal Exhibit K	Federal Register Vol. 79, No. 141 (July 23, 2014)
SR-2, SR-3, and SR-7	Carbiener	Gail Carbiener Direct Testimony on Issue SR-2	Written testimony
	Carbiener	John Briggs Direct Testimony on Issue SR-2	Written testimony
	Carbiener	Isobel Lingenfelter Direct Testimony on Issue SR-2	Written testimony
	Carbiener	Lingenfelter Exhibits 1 through 35	3D model of NHOTIC and surrounding area, with videos and still shots
	Carbiener	Lingenfelter Exhibit 36	BLM Visual Resource Management Classes and Objectives
	Carbiener	Lingenfelter Exhibit 37	BLM Visual Resources Clearinghouse website
	Deschner	Whit Deschner Direct Testimony - Issue SR-3	Witness testimony (with embedded photographs and images)
	Deschner	George Venn statement	Written statement
	Deschner	Zea Young statement	Written statement

	STOP B2H	Lois Barry Direct Testimony	Written testimony
	Idaho Power	Dennis Johnson Rebuttal Testimony on Issue SR-2	Written testimony
	Idaho Power	Johnson Rebuttal Exhibits A through C	(See descriptions for Johnson Rebuttal Exhibits A through C set out above with Issue PS-4)
	Idaho Power	Louise Kling Rebuttal Testimony	Written testimony
	Idaho Power	Louise Kling Rebuttal Exhibits A through J	(See descriptions for Kling Rebuttal Exhibits A through J set out above with Issues R-1, R-2, R-3 and R-4)
	Idaho Power	Joseph Stippel Declaration	Written testimony
	Idaho Power	Stippel Rebuttal Exhibits A and B	(See descriptions for Stippel Rebuttal Exhibits A and B set out above with Issues R-1, R-2, R-3 and R-4)
		Dennis Johnson Cross-Examination Hearing Testimony	Hearing Transcript – Day 6 (January 19, 2022)
		Louise Kling Cross-Examination Hearing Testimony	Hearing Transcript – Day 6 (January 19, 2022)
		Isobel Lingenfelter Cross-Examination Hearing Testimony	Hearing Transcript – Day 6 (January 19, 2022)
	Idaho Power	Idaho Power Transcript Corrections to Cross-Examination Hearing Day 6	Corrections to Hearing Transcript – Day 6 (January 19, 2022)
	STOP B2H	STOP B2H’s Corrections to Cross-Examination Hearing Transcript, January 19, 2022	Corrections to Hearing Transcript – Day 6 (January 19, 2022)
SP-1	Fouty/STOP B2H	Suzanne Fouty Direct Testimony on Issue SP-1	Written testimony
	Idaho Power	Mark Madison Rebuttal Testimony	Written testimony
	Idaho Power	Madison Rebuttal Exhibit A	Curriculum Vitae of Mark Madison
	Idaho Power	Madison Rebuttal Exhibit B	Curriculum Vitae of Denny Mengel
	Idaho Power	Madison Rebuttal Exhibit C	Curriculum Vitae of Guerry Holm
	Idaho Power	Madison Rebuttal Exhibit D	Updated Table I-2-1
	Idaho Power	Madison Rebuttal Exhibit E	U.S. Dept. of Agriculture, Land-Capability Classification (Sept. 1961)
	Idaho Power	Madison Rebuttal Exhibit F	Madras Solar Energy Facility - Final Order on Application for Site Certificate (June 25, 2021)
	Idaho Power	Madison Rebuttal Exhibit G	Northwest Natural South Mist Feeder Extension - Final Order on Site Certificate (Mar. 13, 2003)
	Idaho Power	Madison Rebuttal Exhibit H	Natural Resources Conservation Service, Custom Soil Resource Report for Morrow County Area, Oregon (Oct. 28, 2021)
	Idaho Power	Madison Rebuttal Exhibit I	Figures for Soil Orders and Productivity
	Idaho Power	Madison Rebuttal Exhibit J	Article: A Taxonomically Based, Ordinal Estimate of Soil Productivity for Landscape-Scale Analyses (Apr. 4, 2012)
	Idaho Power	Madison Rebuttal Exhibit K	Article: Long-Term Changes in Mollisol Organic Carbon and Nitrogen, Errata (Jan-Feb. 2010)
	Idaho Power	Madison Rebuttal Exhibit L	Article: Simulating Soil Organic Carbon Responses to Cropping Intensity, Tillage, and

			Climate Change in Pacific Northwest Dryland (Mar. 1,2018)
	Idaho Power	Madison Rebuttal Exhibit M	United States Department of Agriculture, Wildland Fire in Ecosystems (Sept. 2005)
	Idaho Power	Madison Rebuttal Exhibit N	Article: Benefits of Prescribed Burning (Aug. 2, 2013)
	Fouty/STOP B2H	Suzanne Fouty Surrebuttal Testimony on Issue SP-1	Written testimony
	Fouty/STOP B2H	Fouty Surrebuttal Exhibit A	Article: Land use and climate change impacts on global soil erosion by water (2015-2070) (2020)
	Fouty/STOP B2H	Fouty Surrebuttal Exhibit B	Article: Organic Carbon in Soils of the World (chapter 3) in The Role of Terrestrial Vegetation in the Global Carbon Cycle: Measurement by Remote Sensing (1984)
	Fouty/STOP B2H	Fouty Surrebuttal Exhibit C	Article: Long-Term Effectiveness of Restoration Treatments on Closed Wilderness Campsites (2013)
	Fouty/STOP B2H	Fouty Surrebuttal Exhibit D	Article: Minimizing Soil Compaction in Pacific Northwest Forests (1983)
	Fouty/STOP B2H	Fouty Surrebuttal Exhibit E	Article: Influence of road reclamation techniques on forest ecosystem recovery (2013)
	Fouty/STOP B2H	Fouty Surrebuttal Exhibit F	Article: Effectiveness of Road Ripping in Restoring Infiltration Capacity of Forest Roads (1997)
	Fouty/STOP B2H	Fouty Surrebuttal Exhibit G	Article: Physical and Chemical Characteristics of Ash-influenced soils of Inland Northwest Forests (2007)
	Fouty/STOP B2H	Fouty Surrebuttal Exhibit H	Article: Soil physical property changes at the North American Long-Term Soil Productivity study sites: 1 and 5 years after compaction (2006)
	Fouty/STOP B2H	Fouty Surrebuttal Exhibit I	Article: The effect of sparse vegetative cover on erosion and sediment yield (1991)
	Fouty/STOP B2H	Fouty Surrebuttal Exhibit J	Article: Landscape-scale carbon storage associated with beaver dams (2013)
	Fouty/STOP B2H	Fouty Surrebuttal Exhibit K	Article: Land use types and geomorphic settings reflected in soil organic carbon distribution at the scale of watershed (2018)
	Fouty/STOP B2H	Fouty Surrebuttal Exhibit L	Article: Land-use/cover conversion affects soil organic-carbon stocks: A case study along the main channel of the Tarim River, China (2018)
	Idaho Power	Mark Madison Sur-surrebuttal Testimony	Written Testimony
	Idaho Power	Madison Sur-surrebuttal Exhibit A	Revised Exhibit D of Madison Rebuttal Testimony – Updated Table I-2-1
	Idaho Power	Madison Sur-surrebuttal Exhibit B	Annual Data Refresh of Soil Survey Data - NRCS
	Idaho Power	Madison Sur-surrebuttal Exhibit C	Idaho Power’s Supplemental Response to STOP B2H’s Request for Production No. 5 (March 5, 2021)
	Fouty	Fouty Cross-Examination Exhibit M	Idaho Power’s Responses to STOP B2H’s Discovery Requests (Feb. 5, 2021)

	Fouty	Fouty Cross-Examination Exhibit N	Forest Service Manual: FSM 2500- Watershed and Air Management, Chapter 2250 – Soil Management (2010)
		Mark Madison Cross-Examination Testimony	Hearing Transcript – Day 2 (January 11, 2022)
	Fouty	Fouty Transcript Corrections to Day 2 Hearing Transcript	Corrections to Hearing Transcript – Day 2
	Idaho Power	Idaho Power Transcript Corrections to Day 2 Hearing Transcript	Corrections to Hearing Transcript – Day 2
	ODOE	ODOE Corrections to Cross-Examination Hearing Day 2	Corrections to Hearing Transcript – Day 2
SS-1	N/A	(no additional evidence offered)	
SS-2	N/A	(no additional evidence offered)	
SS-3 and SS-5	Horst/Cavinato	Joe Horst Direct Testimony on Issue SS-3	Written testimony
	Horst/Cavinato	Horst Exhibit A-3	Map: City of La Grande Geologic Hazard Zone
	White	Jonathan D. White Direct Testimony on Issue SS-5	Written testimony
	Idaho Power	Robert A. Cummings Rebuttal Testimony	Written testimony
	Idaho Power	Cummings Rebuttal Exhibits A through G	(See descriptions for Cummings Rebuttal Exhibits A through G set out above with Issue PS-10)
	Idaho Power	Kekoa Cody Sorensen Rebuttal Testimony – Issues SS-3 and SS-5	Written testimony
	Idaho Power	Sorensen Rebuttal Exhibit A	Curriculum Vitae
	Idaho Power	Sorensen Rebuttal Exhibit B	Article: Electrical Resistivity Survey in Soil Science: A Review, 83 Soil & Tillage Rsch. 173 (2005)

APPENDIX 2
TABLE OF EXHIBITS ADMITTED – SUMMARY DETERMINATION PHASE

Issue	Offered By	Testimony/Exhibit	Document Description
M-1	Idaho Power	MSD Exhibit A	Wheatridge Wind Energy Facility Final Order
	Idaho Power	MSD Exhibit B	Zachary Funkhouser Affidavit, May 25, 2021
M-2	Idaho Power	MSD Exhibit A	Wheatridge Wind Energy Facility Final Order
	Idaho Power	MSD Exhibit B	Zachary Funkhouser Affidavit, May 25, 2021
	Gilbert	Response Exhibit 1	Gilbert Declaration (undated)
M-3	Idaho Power	MSD Exhibit A	Wheatridge Final Order
	Idaho Power	MSD Exhibit B	Zachary Funkhouser Affidavit, May 25, 2021
	Idaho Power	MSD Exhibit C	Jocelyn Pease Affidavit
	Idaho Power	MSD Exhibit C, Attachment 1	Discovery requests to Cooper
	Idaho Power	MSD Exhibit C, Attachment 2	Cooper Response to Interrogatories
M-4⁴⁴⁶	Idaho Power	MSD Exhibit A	Wheatridge Final Order
	Idaho Power	MSD Exhibit B	Zachary Funkhouser Affidavit
M-5⁴⁴⁷	Idaho Power	MSD Exhibit A	Wheatridge Wind Energy Facility Final Order
	Idaho Power	MSD Exhibit B	Zachary Funkhouser Affidavit, May 25, 2021
M-7	Idaho Power	MSD Exhibit B	Zachary Funkhouser Affidavit, May 25, 2021
	Idaho Power	MSD Exhibit C, Attachment 3	Discovery requests to Proesch
	Idaho Power	MSD Exhibit C, Attachment 4	Email from Rackner to Proesch, Feb. 11, 2021
	Idaho Power	MSD Exhibit C, Attachment 5	Email from Proesch, April 16, 2021
	Idaho Power	MSD Exhibit C, Attachment 6	Email from Pease to Proesch, April 19, 2021
	Idaho Power	MSD Exhibit C, Attachment 7	Email from Garcia to Proesch, April 19, 2021
	Idaho Power	MSD Exhibit D	Affidavit of Kurtis Funke
	Idaho Power	MSD Exhibit D, Attachment 1	Aston Property Title Report, May 17, 2018
	Idaho Power	MSD Exhibit D, Attachment 2	Warranty Deed from Wright to Aston
	Idaho Power	MSD Exhibit D, Attachment 3	Aston Property Supplemental Title Report, Jan. 21, 2021
FW-1	Idaho Power	MSD Exhibit A	EO 15-18, Adopting the Oregon Sage-Grouse Action Plan
		MSD Exhibit B	Sage-Grouse Conservation Partnership, 2015
		MSD Exhibit C	Greater Sage-Grouse Habitat Mitigation

⁴⁴⁶ Limited parties Jim and Jane Howell withdrew from the contested case after Issues M-4 and M-5 were dismissed on summary determination.

⁴⁴⁷ See note 1 above.

			Program Manual, Oct. 2019
		MSD Exhibit D	Zachary Funkhouser Affidavit, May 25, 2021
		MSD Exhibit E	ODFW Oregon Sage-Grouse Habitat Quantification Tool User Guide
	STOP B2H/Squire	(no additional evidence submitted with memos in opposition to MSD)	
FW-4	ODOE	(no evidence in addition to documents included in the B2H Project Record)	
	Gilbert	(no supporting documents submitted with Gilbert Objection and Response)	
FW-9, FW-10, and FW-11	Idaho Power	(no evidence in addition to documents included in the B2H Project Record)	
FW-12	Idaho Power	MSD Exhibit D	Zachary Funkhouser Affidavit, May 25, 2021
	March	(no supporting documents submitted with March Response to MSD Issue FW-12)	
	Idaho Power	Reply Exhibit A	Chris James Affidavit, July 8, 2021
FW-13	Idaho Power	MSD Exhibit A	Jocelyn Pease Affidavit, May 28, 2021
	Idaho Power	MSD Exhibit A, Attachment 1	Discovery Requests to McAllister
	Idaho Power	MSD Exhibit A, Attachment 2	McAllister Response to Interrogatory No. 4
	Idaho Power	MSD Exhibit A, Attachment 3	McAllister Response to Interrogatory No. 5
	Idaho Power	MSD Exhibit B	Zachary Funkhouser Affidavit, May 25, 2021
	ODOE	(no evidence in addition to documents included in the B2H Project Record)	
	McAllister	McAllister Affidavit 2	McAllister Affidavit in Opposition to MSDs, July 8, 2021
	McAllister	McAllister Affidavit 2, Exhibit 1	Supplemental discovery responses, May 8, 2021
	McAllister	McAllister Affidavit 2, Exhibit 2	Discovery Requests to Idaho Power
		McAllister Affidavit 2, Exhibit 3	Idaho Power Response to Discovery Requests, Feb. 5, 2021
	McAllister	McAllister Affidavit 2, Exhibit 4	Vascular Plants of Morgan Lake Park, 2021
	McAllister	McAllister Affidavit 2, Exhibit 5	Discovery Requests to ODOE
	McAllister	McAllister Affidavit 2, Exhibit 6	ODOE Response to Discovery Requests
	McAllister	McAllister Affidavit 2, Exhibit 7	McAllister Response to Idaho Power Discovery Requests, Feb. 5, 2021
	McAllister	Susan Geer Declaration	Geer Declaration in support of McAllister's Opposition to MSDs, Issue FW-13, July 9, 2021
HCA-2	Idaho Power	MSD Exhibit A	Zachary Funkhouser Affidavit, May 25, 2021
	Carbiener	(no supporting documents submitted with Carbiener Response)	

		to MSD Issue HCA-2)	
HCA-5	Idaho Power	MSD Exhibit A	Zachary Funkhouser Affidavit, May 25, 2021
	Idaho Power	MSD Exhibit B	Wheatridge Wind Energy Facility Final Order
LU-2 and LU-3	Idaho Power	MSD Exhibit A	Jocelyn Pease Affidavit, May 28, 2021
	Idaho Power	MSD Exhibit A, Attachment 1	Discovery Request to Kathryn Andrew
	Idaho Power	MSD Exhibit A, Attachment 2	Andrew Response to Interrogatories
	Idaho Power	MSD Exhibit C	Zachary Funkhouser Affidavit, May 25, 2021
	K. Andrew	Andrew Affidavit in Response to MSD Issue LU-3	Kathryn Andrew Affidavit, June 25m 2021
	K. Andrew	Andrew Response Exhibit 1	Potts v. Clackamas Co., LUBA 2001-201
	K. Andrew	Andrew Response Exhibit 2	Rogue Advocates v. Josephine Co, LUBA 2012
	K. Andrew	Andrew Response Exhibit	Scott Hartell Deposition transcript, June 10, 2021
	K. Andrew	Andrew Response Exhibit	Cattoche v. Lane Co., LUBA 2018-109
	K. Andrew	Andrew Response Exhibit	Wetherell v. Douglas Co., LUBA 2010-052
LU-5 and LU-6	Idaho Power	MSD Exhibit A	Jocelyn Pease Affidavit, May 28, 2021
	Idaho Power	MSD Exhibit A, Attachment 3	Discovery Request to Irene Gilbert
	Idaho Power	MSD Exhibit A, Attachment 4	Gilbert Response to Discovery Requests
	Idaho Power	MSD Exhibit C	Zachary Funkhouser Affidavit, May 25, 2021
	Gilbert	Gilbert Affidavit in Response to MSD Issue LU-5	Irene Gilbert Affidavit, June 25, 2021
	Gilbert	Gilbert Response Exhibit 1	Potts v. Clackamas Co., LUBA 2001-201
	K. Andrew	Gilbert Response Exhibit 2	Rogue Advocates v. Josephine Co, LUBA 2012
	K. Andrew	Gilbert Response Exhibit	Scott Hartell Deposition transcript, June 10, 2021
	K. Andrew	Gilbert Response Exhibit	Cattoche v. Lane Co., LUBA 2018-109
	K. Andrew	Gilbert Response Exhibit	Wetherell v. Douglas Co., LUBA 2010-052
LU-10	Idaho Power	(no evidence in addition to documents included in the B2H Project Record)	
N-1, N-2 and N-3	Idaho Power	MSD Exhibit A	Zachary Funkhouser Affidavit, May 25, 2021
	Idaho Power	MSD Exhibit B	Lisa Rackner Affidavit, May 28, 2021
	Idaho Power	MSD Exhibit B, Attachment 1	Idaho Power Company Final Comments in OPUC Docket LC 74
	Idaho Power	MSD Exhibit B, Attachment 2	STOP B2H Final Comments in OPUC Docket LC 74
	ODOE	(no evidence in addition to documents included in the B2H Project Record)	
	STOP B2H	(no additional evidence in response to MSDs)	

	Idaho Power	Reply Exhibit A	OPUC Docket LC 74, Order No. 21-184, June 4, 2021
	Idaho Power	Reply Exhibit B	Jared Ellsworth Affidavit, July 8, 2021
NC-5	Idaho Power	MSD Exhibit A	ODEQ Internal Management Directive, July 2003
	Idaho Power	MSD Exhibit B	Zachary Funkhouser Affidavit, May 25, 2021
R-2	Idaho Power	MSD Exhibit A	Zachary Funkhouser Affidavit, May 25, 2021
	Idaho Power	MSD Exhibit B	Morgan Lake Park Recreational Use and Development Plan
	McAllister	McAllister Affidavit in Opposition to MSD Issue R-2	Michael McAllister Affidavit, June 24, 2021
	McAllister	McAllister Response Exhibit 1	City of La Grande Comments on Amended Preliminary ASC, Aug. 31, 2017
	McAllister	McAllister Response Exhibit 2	Idaho Power Response to City of La Grande Comments, April 27, 2018
	McAllister	McAllister Response Exhibit 3	City of La Grande Proclamation, April 3, 2019
	McAllister	McAllister Response Exhibit 4	B2H ASC Union County Map 65
	McAllister	McAllister Response Exhibit 5	B2H Proposed Route and Morgan Lake Alternative, Map 3
	McAllister	McAllister Response Exhibit 6	McAllister Response to Idaho Power Ex Parte Communication with EFSC, May 28, 2021
	McAllister	Charles Gillis Affidavit in Opposition to MSD Issue R-2	Charles Gillis Affidavit, June 20, 2021
	McAllister	Kyann Sholtes Declaration in Opposition to MSD Issue R-2	Kyann Sholtes Declaration, June 21, 2021
	McAllister	Geoffrey Witek Declaration in Opposition to MSD Issue R-2	Geoffrey Witek Declaration, June 21, 2021
	L. Barry	Lois Barry Statement in Opposition to MSD Issue R-2	Lois Barry Statement, June 25, 2021
	Idaho Power	Reply Exhibit A	Zachary Funkhouser Affidavit, July 1, 2021
	Idaho Power	Reply Exhibit B	Scott Flinders Affidavit, July 8, 2021
	Idaho Power	Reply Exhibit B, Exhibit A to Flinders Affidavit	ASC Exhibit C, Attachment C-3, Map 8 Errata
	Idaho Power	Reply Exhibit B, Exhibit B to Flinders Affidavit	Detailed Map of Site Boundary near Morgan Lake Park
RFA-3	Idaho Power	MSD Exhibit A	Zachary Funkhouser Affidavit, May 25, 2021
	Gillis	Charles Gillis Affidavit in Opposition to MSD Issue RFA-3	Charles Gillis Affidavit, June 25, 2021
	Gillis	Response Exhibit 1	News article re Wells Fargo Bank, Dec. 28, 2018
	Gillis	Response Exhibit 2	Washington Post article re former Wells Fargo Bank executive, Jan. 23, 2020
	Gillis	Response Exhibit 3	LA Times article re Wells Fargo CEO, March 28, 2019
	Idaho Power	Reply Exhibit A	Jocelyn Pease Affidavit, July 9, 2021
	Idaho Power	Reply Exhibit A, Attachment 1	EFSC Public Meeting Minutes, Jan. 22, 2021
	Idaho Power	Reply Exhibit A, Attachment 2	EFSC Staff Report, Jan. 8, 2021
	Idaho Power	Reply Exhibit A, Attachment 3	EFSC Staff Report, Attachment 3, Proposed

			2021 Pre-Approved Financial Institutions
SR-1	Idaho Power	MSD Exhibit A	Zachary Funkhouser Affidavit, May 25, 2021
	Idaho Power	MSD Exhibit B	City of La Grande Comprehensive Plan
	Idaho Power	MSD Exhibit C	Morgan Lake Recreational Use and Development Plan
	ODOE	(no evidence in addition to documents included in the B2H Project Record)	
SR-4	Idaho Power	MSD Exhibit A	Zachary Funkhouser Affidavit, May 25, 2021
	Idaho Power	MSD Exhibit D	Union County Land Use Plan, page 45
	ODOE	(no evidence in addition to documents included in the B2H Project Record)	
SR-5	Idaho Power	MSD Exhibit A	Zachary Funkhouser Affidavit, May 25, 2021
	Idaho Power	MSD Exhibit E	Glass Hill Registration Confirmation Letter, Oct. 17, 2019
	Geer	(no additional evidence submitted in response)	
SR-6	Idaho Power	MSD Exhibit A	Zachary Funkhouser Affidavit, May 25, 2021
	Idaho Power	MSD Exhibit F	BLM Visual Resource Management System
	Idaho Power	MSD Exhibit G	USFS Landscape Aesthetics Handbook
	L. Barry	Lois Barry Affidavit	Lois Barry Affidavit, June 25, 2021
	L. Barry	Response Exhibit B	EFSC Order on Appeals,
	L. Barry	Response Exhibit C	USFS 1995 Agriculture Handbook
	L. Barry	Response Exhibit D	USFS 1974 Visual Management System
	STOP B2H	(no additional evidence submitted in response)	
SP-2	Idaho Power	MSD Exhibit A	Jocelyn Pease Affidavit, May 28, 2021
	Idaho Power	MSD Exhibit A, Attachment 1	Discovery Requests to McAllister
	Idaho Power	MSD Exhibit A, Attachment 2	McAllister Response to Interrogatory No. 4
	Idaho Power	MSD Exhibit A, Attachment 3	McAllister Response to Interrogatory No. 5
	Idaho Power	MSD Exhibit B	Zachary Funkhouser Affidavit, May 25, 2021
	ODOE	(no evidence in addition to documents included in the B2H Project Record)	
	McAllister	McAllister Affidavit 2	McAllister Affidavit in Opposition to MSDs, July 8, 2021
	McAllister	McAllister Affidavit 2, Exhibit 1	Supplemental discovery responses, May 8, 2021
	McAllister	McAllister Affidavit 2, Exhibit 2	Discovery Requests to Idaho Power
		McAllister Affidavit 2, Exhibit 3	Idaho Power Response to Discovery Requests, Feb. 5, 2021
	McAllister	McAllister Affidavit 2, Exhibit 4	Vascular Plants of Morgan Lake Park, 2021
	McAllister	McAllister Affidavit 2, Exhibit 5	Discovery Requests to ODOE
	McAllister	McAllister Affidavit 2, Exhibit 6	ODOE Response to Discovery Requests
	McAllister	McAllister Affidavit 2, Exhibit 7	McAllister Response to Idaho Power Discovery Requests, Feb. 5, 2021

SS-4	Idaho Power	MSD Exhibit A	Jocelyn Pease Affidavit, May 28, 2021
	Idaho Power	MSD Exhibit A, Attachment 1	Discovery Requests to Virginia and Dale Mammen
	Idaho Power	MSD Exhibit A, Attachment 2	Mammen Response to Discovery Requests, Feb. 4, 2021
	Idaho Power	MSD Exhibit B	Wheatridge Wind Energy Facility Final Order
	Idaho Power	MSD Exhibit C	Zachary Funkhouser Affidavit, May 25, 2021
	Mammen	Dale and Virginia Mammen Affidavit	Dale and Virginia Mammen Affidavit, June 25, 2021
	Mammen	Response Exhibit 1	Letter to EFSC, August 10, 2019C
	Mammen	Response Exhibit 2(a), (b), (c) and (d)	City of La Grande Official Record Documents
	Mammen	Response Exhibit 3	Scott Hartell letter, June 22, 2021
	Mammen	Response Exhibit 4	Bart Barlow report, June 23, 2021
	Idaho Power	Reply Exhibit A	Luke Grebe Affidavit, July 12, 2021
TE-1	ODOE	Patrick Rowe Affidavit	Patrick Rowe Affidavit, May 27, 2021
	ODOE	MSD Exhibit 1	ODA Responses to Geer Discovery Requests, Feb. 19, 2021
	Idaho Power	(no evidence in addition to documents included in the B2H Project Record)	
	Geer	(no additional evidence submitted in response to MSDs)	

CERTIFICATE OF MAILING

On May 31, 2022, I mailed the foregoing PROPOSED CONTESTED CASE ORDER issued on this date in OAH Case No. 2019-ABC-02833.

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