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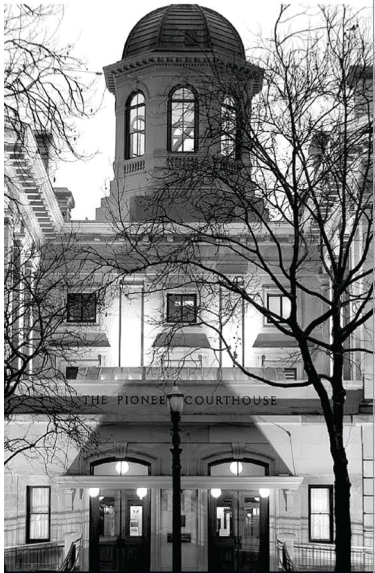
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ENERGY FACILITY SITING COUNCIL MEETING

AGENDA ITEMS A, B AND C

HELD ON
TUESDAY, SEPTEMBER 27, 2022
8:30 A.M.

OREGON DEPARTMENT OF ENERGY
550 CAPITOL STREET NORTHEAST
SALEM, OREGON 97301

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<p style="text-align: right;">2</p> <p>1 ATTENDANCE</p> <p>2</p> <p>3 ENERGY FACILITY SITING COUNCIL</p> <p>4 Marcy Grail, Chair</p> <p>5 Kent Howe, Vice Chair</p> <p>6 Hanley Jenkins, II</p> <p>7 Perry Chocktoo (via WebEx)</p> <p>8 Jordan Truitt</p> <p>9 Cinidy Condon</p> <p>10 Ann Beier</p> <p>11 Todd Cornett</p> <p>12</p> <p>13 OREGON DEPARTMENT OF ENERGY</p> <p>14 Kellen Tardaewether, Senior Siting Analyst</p> <p>15 Jesse Ratcliff, Senior Assistant Attorney General</p> <p>16 (via WebEx)</p> <p>17 Patrick Rowe, Counsel</p> <p>18 Walter Adams, Operations</p> <p>19 Sarah Esterson, Analyst</p> <p>20 Nancy Hatch, Administrative Specialist</p> <p>21</p> <p>22 PUBLIC SPEAKERS</p> <p>23 Karl G. Anuta, Counsel, STOP B2H</p> <p>24 Irene Gilbert, Representative, STOP B2H</p> <p>25 Jocelyn Pease, Counsel, Idaho Power Company</p>	<p style="text-align: right;">4</p> <p>1 MS. GRAIL: Thank you.</p> <p>2 Mr. Secretary, are there any agenda</p> <p>3 modifications?</p> <p>4 MR. CORNETT: Madam Chair, the only pseudo</p> <p>5 agenda modification is we will not be -- Council</p> <p>6 will not be voting on the August meeting minutes</p> <p>7 today. We had thought that would be the case, which</p> <p>8 is why we provided that and put it in the -- the</p> <p>9 agenda.</p> <p>10 However, the -- because it's a verbatim</p> <p>11 transcript, people were able to -- were given the</p> <p>12 opportunity to provide edits to that if that was</p> <p>13 incorrect of the verbatim transcript. And the</p> <p>14 October 10th was the date -- or sometime in early</p> <p>15 October was the date that was given to provide or</p> <p>16 submit potential updates on it.</p> <p>17 So -- so we'll bring those back to Council</p> <p>18 in -- at the October meeting.</p> <p>19 MS. GRAIL: Thank you.</p> <p>20 I have the following announcements: Please</p> <p>21 silence your cell phones. Those participating via</p> <p>22 phone or webinar, please mute your phone. And if</p> <p>23 you receive a phone call, please hang up from this</p> <p>24 call and dial back in after finishing your other</p> <p>25 call.</p>
<p style="text-align: right;">3</p> <p>1 ENERGY FACILITY SITING COUNCIL MEETING</p> <p>2 AGENDA ITEMS A, B AND C</p> <p>3 HELD ON</p> <p>4 TUESDAY, SEPTEMBER 27, 2022</p> <p>5 8:30 A.M.</p> <p>6</p> <p>7 MS. GRAIL: Call September 27th, 2022</p> <p>8 meeting of the Energy Facility Siting Council to</p> <p>9 order.</p> <p>10 Mr. Secretary, please call the roll.</p> <p>11 MR. CORNETT: Marcy Grail?</p> <p>12 MS. GRAIL: Here.</p> <p>13 MR. CORNETT: Kent Howe?</p> <p>14 MR. HOWE: Here.</p> <p>15 MR. CORNETT: Hanley Jenkins?</p> <p>16 MR. JENKINS: Here.</p> <p>17 MR. CORNETT: Cindy Condon?</p> <p>18 MS. CONDON: Here.</p> <p>19 MR. CORNETT: Perry Chocktoot?</p> <p>20 MR. CHOCKTOOT: Here.</p> <p>21 MR. CORNETT: Ann Beier?</p> <p>22 MS. BEIER: Here.</p> <p>23 MR. CORNETT: And just for the record,</p> <p>24 Madam Chair, Councilmember Truitt will be here. So</p> <p>25 make note of that when he arrives.</p>	<p style="text-align: right;">5</p> <p>1 For those signed on to the webinar, please</p> <p>2 do not broadcast your web cam.</p> <p>3 Reminder to Council and -- and to anyone</p> <p>4 addressing the Council to please remember to state</p> <p>5 your full name clearly, and not to use the</p> <p>6 speakerphone feature, as it will create feedback.</p> <p>7 I do want to reiterate what Wally just</p> <p>8 said, that the microphones, the (indiscernible) are</p> <p>9 very sensitive, so please restrict any sidebars and</p> <p>10 attempts at whispering because it will likely be</p> <p>11 broadcast.</p> <p>12 MR. CORNETT: Madam Chair, and then just</p> <p>13 also for those in the audience, they are very</p> <p>14 sensitive. So maybe, you know, your side</p> <p>15 conversations as well, so just a -- just a heads</p> <p>16 up.</p> <p>17 MS. GRAIL: We will remind you of that one</p> <p>18 more time. Thank you.</p> <p>19 MR. CORNETT: Sorry. Madam Chair, and one</p> <p>20 more -- I know we do this and -- and you've noted</p> <p>21 this, but we have a court reporter in -- present</p> <p>22 today, so getting verbatim transcript again. So</p> <p>23 please, a reminder, when you begin speaking, please</p> <p>24 state your name.</p> <p>25 MS. GRAIL: Thank you.</p>

<p style="text-align: right;">6</p> <p>1 For Agenda Item B, the Material Change</p> <p>2 Hearing, and Agenda Item C, Public Comment Period,</p> <p>3 there are three ways to let us know you are</p> <p>4 interested in providing comments to the Council.</p> <p>5 For those in person, please fill out a registration</p> <p>6 card, which is available on the table near the</p> <p>7 entrance, and submit to Sarah Esterson. For those</p> <p>8 using the WebEx, you will need to use the Raise Your</p> <p>9 Hand feature. For those on the phone only, you will</p> <p>10 need to press Star 3, which will alert us that you</p> <p>11 wish to speak.</p> <p>12 We will go over these options again during</p> <p>13 those agenda items.</p> <p>14 You may sign up for email notices by</p> <p>15 clicking the link on the agenda or the Council web</p> <p>16 page. You are also welcome to access the online</p> <p>17 mapping tool and any documents by visiting our</p> <p>18 website.</p> <p>19 Energy Facility Siting Council meeting</p> <p>20 shall be conducted in a respectful and courteous</p> <p>21 manner where everyone is allowed to state their</p> <p>22 positions at the appropriate times consistent with</p> <p>23 Council rules and procedures. Willful accusatory,</p> <p>24 offensive, insulting, threatening, insolent, or</p> <p>25 slanderous comments which disrupt the Council</p>	<p style="text-align: right;">8</p> <p>1 appointments and reappointments. And the whole</p> <p>2 Senate voted on those Commission appointments,</p> <p>3 reappointments, on Friday, the 23rd.</p> <p>4 So Chair Grail and Vice Chair Howe are</p> <p>5 appointed to two terms. Their new terms are July</p> <p>6 1st, 2022, through June 30th, 2026.</p> <p>7 In terms of staffing, yesterday we</p> <p>8 concluded the rulemaking coordinator recruitment</p> <p>9 again. So our -- our new rulemaking coordinator,</p> <p>10 his name is Thomas Jackman. He starts on October</p> <p>11 10th. Tom is currently the eDiscovery coordinator</p> <p>12 at DHS and OHA, so Department of Human Services and</p> <p>13 Oregon Health Authority, where he has been for the</p> <p>14 last six years.</p> <p>15 In that role, he advises on eDiscovery of</p> <p>16 a records request, provides Council on pending</p> <p>17 records legislation, brings together stakeholders</p> <p>18 across agencies to accept policy proposals, and</p> <p>19 drafts security policies and processes to assist</p> <p>20 agency compliance with security protocols, among</p> <p>21 other things part of his responsibilities.</p> <p>22 Tom was previously a practicing attorney</p> <p>23 who worked on intellectual property, commercial</p> <p>24 litigation, and patent litigation. He has a JD from</p> <p>25 the UCLA law school and a bachelor of science in</p>
<p style="text-align: right;">7</p> <p>1 meeting are not acceptable. Pursuant to Oregon</p> <p>2 Administrative Rule 345-011-0080, "Any person who</p> <p>3 engages in unacceptable conduct which disrupts the</p> <p>4 meeting may be expelled."</p> <p>5 We are going to move -- good morning.</p> <p>6 MR. TRUITT: Good morning.</p> <p>7 MS. GRAIL: For the record, Councilmember</p> <p>8 Truitt has arrived.</p> <p>9 Our next agenda item is Agenda Item A,</p> <p>10 which is the consent calendar. As previously</p> <p>11 indicated, we will not be voting on the August</p> <p>12 meeting minutes today. Approval of the August 29th,</p> <p>13 30th, 31st, 2022 meeting minutes are being held over</p> <p>14 to November to allow participants the ability to</p> <p>15 recommend corrections to the verbatim, which are</p> <p>16 part of those minutes. Participants have until</p> <p>17 October 10th, 2022, to submit their recommended</p> <p>18 corrections.</p> <p>19 Next up is the Council Secretary report.</p> <p>20 Mr. Secretary?</p> <p>21 MR. CORNETT: Madam Chair, first, I will</p> <p>22 do staff meeting Council updates.</p> <p>23 Last week was the legislative days for the</p> <p>24 Oregon State Legislature. And the Central Rules</p> <p>25 Committee evaluated Board and Commission</p>	<p style="text-align: right;">9</p> <p>1 sociology from Brigham Young University.</p> <p>2 So we are very happy to have him join our</p> <p>3 team and certainly bring him into probably the</p> <p>4 October Council meeting.</p> <p>5 Some project updates -- first, the</p> <p>6 Protected Area rulemaking. We had anticipated to</p> <p>7 have that rulemaking on this Council month's agenda</p> <p>8 -- this month's Council agenda, but there were</p> <p>9 several questions and issues that were raised by</p> <p>10 different groups related to the substance as well as</p> <p>11 some of the procedural aspects.</p> <p>12 And so we're still looking into those. We</p> <p>13 want to make sure that we get those responses</p> <p>14 correct. We anticipate having that on the October</p> <p>15 agenda. Unfortunately, what it means is that, as we</p> <p>16 had spent a little more time on that, that put us</p> <p>17 behind on a few other rulemakings.</p> <p>18 So next is the Oregon Trail solar project</p> <p>19 update. So on August 31st, the Department received</p> <p>20 the preliminary application for site certificate.</p> <p>21 Sorry. That's -- is it Oregon Trail or Wagon Trail?</p> <p>22 Oregon Trails.</p> <p>23 FEMALE SPEAKER: I think --</p> <p>24 MR. CORNETT: Yeah. I got that wrong, so</p> <p>25 -- so amendment number one. So Oregon Trail solar</p>

<p style="text-align: right;">10</p> <p>1 amendment number one. Excuse me.</p> <p>2 So Department -- I'm going to have to go</p> <p>3 back to that one since I think I mixed and matched</p> <p>4 between Oregon Trail solar and Wagon Trail solar.</p> <p>5 So I've got the wrong information in here. My</p> <p>6 apologies for that.</p> <p>7 But that's the -- that's amendment number</p> <p>8 one, to extend the time frames, the beginning time</p> <p>9 frames for the Oregon Trail -- or Oregon Trail</p> <p>10 solar, right? Okay. So I'm going to update.</p> <p>11 I do have another update on West End</p> <p>12 Solar. So on September 19th, the Department</p> <p>13 determined that the West End Solar Energy Project</p> <p>14 application was complete. So the project is a</p> <p>15 proposed solar PE generation facility with a</p> <p>16 generating capacity of 50 megawatts. The facility</p> <p>17 would be located within an approximately 324-acre</p> <p>18 site boundary. The project is proposed in Umatilla</p> <p>19 County two miles southeast of the City of</p> <p>20 Hermiston.</p> <p>21 EE West -- EE West End Solar, LLC, is the</p> <p>22 applicant, and they are a subsidiary of Eurus Energy</p> <p>23 Corporation. The complete application was posted to</p> <p>24 the website, the project website. And the Laguni's</p> <p>25 (phonetic) memos were sent out yesterday, September</p>	<p style="text-align: right;">12</p> <p>1 EFSC and EFSC (indiscernible) project specifically,</p> <p>2 I thought it was valuable to share with you because</p> <p>3 of potential implications. But it does call out</p> <p>4 specifically the Land Conservation Development</p> <p>5 Commission and solar siting rules. It's important</p> <p>6 to remember that anything that LCDC does related to</p> <p>7 the solar siting rules will ultimately be</p> <p>8 incorporated and implemented through Council's land</p> <p>9 use standard.</p> <p>10 So while there may not be direct</p> <p>11 implication, there would be indirect implications.</p> <p>12 So it's important for us to keep -- keep up on those</p> <p>13 things and certainly for Council to be aware of</p> <p>14 those.</p> <p>15 Next is last -- during the last Council</p> <p>16 meeting I gave an update on the -- the Verde Group,</p> <p>17 who is doing sort of an overall working group</p> <p>18 associated with -- with a large group of</p> <p>19 stakeholders about the siting energy facilities and</p> <p>20 transmission in Oregon.</p> <p>21 So again, that puts a meeting every Friday</p> <p>22 from 1:00 to 3:00. It's all remote. It's a lot of</p> <p>23 people. I believe there was like 70 people at some</p> <p>24 of the meetings. So it's very broadly attended, a</p> <p>25 very broad array of stakeholders.</p>
<p style="text-align: right;">11</p> <p>1 26th. Tomorrow, September 28th, the public notice</p> <p>2 and the newspaper notice will go out. And we have</p> <p>3 established a remote public information meeting on</p> <p>4 the complete application on October 10th at 5:30</p> <p>5 p.m.</p> <p>6 So it's a rather small project, and we</p> <p>7 perceived and expedited review because of the size</p> <p>8 of it. We haven't received much in the way of</p> <p>9 interest and concern. So we determined that a</p> <p>10 remote public information meeting was -- was</p> <p>11 adequate rather than in person. And so if any</p> <p>12 Councilmembers want to attend that remotely, we can</p> <p>13 send you the information on the -- that meeting for</p> <p>14 October 10th.</p> <p>15 A couple of other updates -- so on</p> <p>16 September 8th, I sent Councilmembers a resolution by</p> <p>17 the Oregon Board of Agriculture related to concerns</p> <p>18 about the cumulative impacts of energy</p> <p>19 infrastructure to highly productive agricultural</p> <p>20 plans. Jim Johnson, the Oregon Department of</p> <p>21 Agriculture's Land Use & Water Planning</p> <p>22 Coordinator, had shared the resolution with me. And</p> <p>23 so I wanted to make sure that that was sent out to</p> <p>24 Council.</p> <p>25 So while this resolution does not mean</p>	<p style="text-align: right;">13</p> <p>1 Thus far, it's largely been just a lot of</p> <p>2 sharing of information about the varying groups,</p> <p>3 what they do, what they're interested in, what their</p> <p>4 concerns are. And so the -- at the last meeting,</p> <p>5 they did bring up potential -- a legislative concept</p> <p>6 -- it's really just a placeholder. Don't know at</p> <p>7 this point if they're being substantive or if they</p> <p>8 would just be potentially a study bill. But that</p> <p>9 was put in there. The related two clause was</p> <p>10 discussed and the -- sort of specifics of that was.</p> <p>11 As I said, it's still very early on, and</p> <p>12 the details of even that kind of placeholder</p> <p>13 legislative concept is still being evaluated. And</p> <p>14 they're taking input on -- on what that should</p> <p>15 include.</p> <p>16 Last on my list is the next Council</p> <p>17 meeting.</p> <p>18 So Friday, October 28th, we will need to</p> <p>19 have a Council meeting. We have an agenda. And I</p> <p>20 currently have everybody listed as available for</p> <p>21 participation. If that has changed or if that does</p> <p>22 change, please contact either Nancy or myself or</p> <p>23 both. Otherwise, that will be the date we have</p> <p>24 determined -- have not yet determined who will</p> <p>25 officiate.</p>

<p style="text-align: right;">14</p> <p>1 And then unless there are any questions by 2 Councilmembers, that concludes the Secretary. 3 MS. GRAIL: Thank you. 4 So the next agenda item is Agenda Item B. 5 And since I recuse myself -- this is Chair Grail for 6 the record -- since I recuse myself from any action 7 items associated with the Boardman to Hemingway 8 Transmission Line project, I'm going to hand over 9 the Item B to Vice Chair Howe. If it's okay, I'm 10 just going to stay here, but I will not be speaking 11 or say anything during this time. 12 Vice Chair Howe. 13 MR. HOWE: Thank you, Chair Grail. 14 We'll now begin the Boardman to Hemingway 15 Transmission Line Hearing to Adopt Final Order under 16 ORS 469.370(7), which includes a material change 17 hearing. 18 Kellen Tardaewether, Oregon Department of 19 Energy Senior Siting Analyst, and Jesse Ratcliffe, 20 Oregon Department of Justice Senior Assistant 21 Attorney General in the natural resources section 22 general counsel division, will be presenting. 23 We will first start with a project 24 overview. 25 Mr. Tardaewether?</p>	<p style="text-align: right;">16</p> <p>1 So I'm going to start off by doing a very 2 brief overview of the facility. And then I'm going 3 to pass off -- pass the ball over to Jesse, and 4 Jesse is going to go over the changes that were 5 discussed at the August meeting from the hearing 6 officer's proposed contested case order, or what we 7 were calling the PCCO, which now we've included, and 8 it's included in the draft final order as Attachment 9 6. And we're calling it now the CCO, the contested 10 case order, as amended by Council and the direction 11 that Council gave staff to reflect in that order. 12 So Jesse's going to walk through some of those 13 changes that were made in that order. 14 And then we're going to pass the ball back 15 over to me. And what I'm going to go over in my 16 presentation are the material changes that were 17 directed from Council that came out of the three-day 18 August Council meetings in La Grande. Council 19 provided direction to staff. And we went -- we went 20 through, and we reflected those, some of those 21 changes. 22 We -- Council looked at the exact 23 language. Some of the changes, Council, were kind 24 of -- Secretary Cornett captured in, like, a 25 concept. And that's what was provided in the straw</p>
<p style="text-align: right;">15</p> <p>1 MR. CORNETT: Thank you, Mr. Vice Chair. 2 Just so it is clear, Jesse is online. So 3 rather than being present today, he is online. So I 4 just wanted to make sure that nobody was sort of 5 missing the fact that he wasn't here in person. 6 And Jesse, just checking in and making 7 sure you can hear us correctly. 8 MR. RATCLIFFE: It's fine. Sorry I'm not 9 able to be here in person. I'm not feeling 10 (indiscernible) this morning. 11 MR. CORNETT: But the audio is working 12 well for you? 13 MR. RATCLIFFE: It is. 14 MR. CORNETT: It is. Okay. Thank you. 15 Ms. Tardaewether. 16 MS. TARDAEWETHER: All right. For the 17 record, Kellen Tardaewether. And so we don't have 18 our microphones, but so everything's, all right, 19 good to go. 20 All right. For the record, Kellen 21 Tardaewether, Oregon Department of Energy Senior 22 Siting Analyst. I'm going to be kicking off this 23 agenda item, which is a hearing to adopt the final 24 order. Here I have several steps that are going to 25 line out what we're going to cover today.</p>	<p style="text-align: right;">17</p> <p>1 poll. So we'll go and look at that actual language 2 today. 3 Now, when we sent and made available the 4 draft final order, we also provided a staff report, 5 which was 19 pages. A lot of that was because we 6 just actually pulled out the conditions, and some of 7 them were really quite long. However, some of those 8 long conditions maybe didn't have substantive 9 changes to them, but we pulled those out. 10 So I'm not going to be going through all 11 those conditions that had material changes in the 12 staff report in my presentation today. I really am 13 kind of -- it's very narrow to what Council talked 14 about at the August meeting. 15 But if Council wants to go to any of those 16 conditions that are listed in the staff report, we 17 can -- we can go there. And you know, it might take 18 a minute to pull that up. But we can -- we can look 19 at those. 20 As a reminder, in that staff report, there 21 are material changes to conditions. However, some 22 of the changes that we are saying are material 23 changes were actual changes to a plan and not 24 necessarily to a condition. So some of the 25 conditions, you know, just in a summary, say, hey,</p>

<p style="text-align: right;">18</p> <p>1 do this plan, submit and follow this plan. And so 2 we actually have to go through the plan because then 3 there were some changes in the actual plans. But 4 because that is a change in an action, we are 5 capturing that as a material change. 6 And then I'll also kind of talk about in 7 my presentation of what are material changes because 8 I'm sure, as -- as Council and members of the public 9 can scroll through that draft final order, you maybe 10 said, wow, there's really a lot of red lines in this 11 document. But what is actually captured as a 12 material change is very narrow in scope. 13 So in that draft final order, there were, 14 you know -- to support a material change or a change 15 in a condition or -- or some of the changes in the 16 plans, we updated findings of facts, the findings 17 and/or the facts to support that condition change, 18 particularly where it may have been conflicting some 19 of the previous information. 20 So also, going back to that staff report, 21 to note that a lot of those -- the conditions in 22 there were in the contested case order. So the 23 hearing officer -- at the very end, there was a list 24 of conditions. However, there were also conditions 25 that were in her -- in her Opinion section that kind</p>	<p style="text-align: right;">20</p> <p>1 those presentations. And then we're going -- and 2 then Council will go into its deliberation after 3 hearing the oral testimony on the material changes 4 to make its final decision. 5 So a very brief overview, this is a slide 6 we've seen before. We've come a long ways over a 7 long period of time, and we are here. And we've 8 come out of the contested case. The contested case 9 was a contested case on the proposed order, right? 10 And the result of that was the hearing officer's 11 proposed contested case order, which then we looked 12 at in August, which then all of that is reflected in 13 this draft final order. And so how we're at the 14 point where Council may make its final decision at 15 this meeting. 16 Here is a kind of more recent procedural 17 history. We've looked at this before, which leads 18 us to today. I don't really need to go through any 19 of this. We've all kind of been here for it, living 20 this reality. 21 What I wanted to make a note -- and I can 22 -- if Council has questions later on when we -- when 23 we're -- when you're getting to it -- but I just 24 wanted to make a note that, either way, whether if 25 Council approves or -- or denies the application for</p>
<p style="text-align: right;">19</p> <p>1 of gave a narrative story of, you know, how it came 2 about and who agreed and based on which testimony or 3 evidence that led to her recommendation for such 4 conditions. So some -- the conditions in the staff 5 report and in the draft final order captured those. 6 On that staff report, and when I get to 7 going through some of the material changes, just 8 because of the -- the production cycle of doing the 9 draft final order and the staff report, making them 10 available, there are a couple changes that were 11 reflected in the staff report that are not in the 12 draft final order. But I just want to make sure 13 that the -- everybody understands the draft final 14 order and not the staff report is really what we're 15 looking at today. 16 So after I do that, then we're going to 17 transition into the material change hearing. And 18 Jesse is available for Council. So if Council 19 really does have any questions for Jesse, we really 20 encourage you to ask him. 21 And then -- and then, you know, all of 22 this is the hearing to adopt the final order. So 23 during Jesse's presentation and my presentation, if 24 Council wants clarity or questions or, you know, has 25 a reason to see a change, then we can do that during</p>	<p style="text-align: right;">21</p> <p>1 site certificate today, staff still has some work to 2 do. 3 So upon Council's decision, staff, we're 4 going to go into that draft final order, and we're 5 going to accept those changes, which may reflect any 6 changes made today. Generally, when we do that, it's 7 an administrative task. But we'll get kind of some 8 wonky formatting. So we're going to have to go in 9 and, you know, move some paragraphs and maybe some 10 things underlined. So we're going to do that. 11 We would also be doing that with the 12 attachments that have some red lines in them. We 13 would be doing that in the contested case order. 14 There's also some -- because of the -- the 15 formatting, may have to like add some footnotes, et 16 cetera, in the final order. We would be updating 17 the procedural history to reflect what happened 18 today. 19 And then same thing with the site 20 certificate, so we would accept -- because right now 21 the site certificate is in red line to reflect the 22 changes and the conditions that are in the draft 23 final order. So we would accept those, clean up any 24 formatting. 25 And then the -- and in the final order, we</p>

<p style="text-align: right;">22</p> <p>1 would be adding an appeal statement. And then those 2 documents would be needed -- needed to be routed for 3 signatures. So -- so we would be doing that, 4 hopefully, by the -- the end of this week. So just 5 so, you know, procedurally, Council understands that 6 there's still -- we still have a little bit of work 7 to do in that.</p> <p>8 Is there anything?</p> <p>9 Okay. So the proposed facility includes a 10 predominantly 500 kV transmission line. However, 11 there are some removal and rebuild of existing 12 transmission lines. I have another slide where I'm 13 going to note the alternative routes on my next one.</p> <p>14 The proposed facility also includes the 15 Longhorn Substation, communication stations. I 16 don't have a slide for the relator (phonetic) or 17 supporting facilities, but relator supporting 18 facilities include roads and -- and lots of them. 19 And then it also includes construction staging 20 areas, pulling -- and pulling and tensioning sites.</p> <p>21 In the application, the applicant is 22 requesting that the site boundary be considered a 23 micro-siting corridor. So the site boundary for the 24 500 kV transmission line is 500 feet, but the actual 25 right of way at -- at -- at the facility as</p>	<p style="text-align: right;">24</p> <p>1 and applicable laws and statutes. And the 2 preponderance of evidence, again, is more likely 3 than not that they can do so. That's a very short 4 (indiscernible), but Jesse can supplement my 5 rudimentary summary there.</p> <p>6 The outcome of Council's decision today 7 and how Council's process handles alternative 8 routes, or proposed routes, is basically an up or 9 down. Council does not have the jurisdiction to 10 propose or recommend or approve routes that are not 11 in the application.</p> <p>12 Okay. Was that -- that was -- great. 13 That's what I was going to say. Okay. So is that 14 what I was going to say? Yes.</p> <p>15 Okay. So Mr. Ratcliffe, I'm going to pass 16 it over to you, sir.</p> <p>17 MR. RATCLIFFE: Thank you, Kellen. 18 Good morning, Vice Chair Howe and members 19 of the Council. And again, I apologize for not 20 being in person today.</p> <p>21 So my piece of the presentation here 22 before we get into the material change hearing is 23 going to be fairly brief. What I'm going to be 24 talking about are changes to the contested case 25 order that resulted from our prior meeting. And</p>
<p style="text-align: right;">23</p> <p>1 constructed and operated is going to be more narrow 2 than that 500 feet. It just gives them an 3 opportunity to move the transmission line around 4 within that micro-sited corridor to minimize or 5 avoid impacts to resources that are evaluated under 6 Council standards.</p> <p>7 Here's -- I know the -- the map is -- is 8 hard to see. We've seen this slide before. But 9 without going through any painstaking detail of 10 describing these alternative routes, what staff has 11 provided and what's in that draft final order is the 12 -- the -- the Department and Council has evaluated 13 the alternative routes underneath the Council 14 standards with the proposed route.</p> <p>15 So any recommendations or site certificate 16 conditions apply to all of them unless specifically 17 identified in a condition that would only apply to 18 one of the alternative routes. And -- and the 19 example of that is underneath the -- the recreation 20 standard. There's a condition that specifically 21 applies to the Morgan Lake alternative.</p> <p>22 Also, on here, Council's tasked today with 23 approving or denying the site certificate based on 24 preponderance of evidence that the applicant has 25 demonstrated that it has met the Council standards</p>	<p style="text-align: right;">25</p> <p>1 these, though, are changes that are not material 2 changes.</p> <p>3 So Kellen talked about this a little bit. 4 But just to go over it again because this one can be 5 a little confusing is that, when we've gotten to 6 this stage in the process, the Council may be -- you 7 know, may have considered making some changes to the 8 hearing officer's proposed contested case order. 9 She has done a lot of work on this. This is a 10 lengthy order. And the Council had -- had some 11 recommended changes. Not all of those are 12 considered to be material changes.</p> <p>13 So what we're talking about here are not 14 changes in the outcome to any condition or the 15 overall recommended order. So these may be changes 16 in some reasoning, some additions of findings of 17 fact, and basically, you know, extra details as the 18 Council may have suggested is necessary. And so 19 that's what I'm going to be talking about here.</p> <p>20 So if you have any questions about these, 21 I'm happy to answer them. But otherwise I will just 22 go ahead and get into this.</p> <p>23 So we have three categories of -- 24 FEMALE SPEAKER: (Audio disruption.) 25 MS. TARDAEWETHER: Sorry?</p>

<p style="text-align: right;">26</p> <p>1 (No audible response).</p> <p>2 MR. RATCLIFFE: Okay. We have three</p> <p>3 categories of changes to talk about here. The first</p> <p>4 is an additional finding of fact that was added to</p> <p>5 after Finding of Fact 68 to support the evaluation</p> <p>6 of Issue HCA-3. And this finding of fact has to do</p> <p>7 with the HPMP and just clarifying that this is going</p> <p>8 to be based on a visual assessment of historic</p> <p>9 properties that is conducted in accordance with</p> <p>10 another plan, the Visual Assessment of Historic</p> <p>11 Properties Study Plan. And that will all then be</p> <p>12 reviewed and commented on by both federal and state</p> <p>13 agencies and consulting parties through the federal</p> <p>14 process, the Section 106 process. And specifically,</p> <p>15 it's the Bureau of Land Management's programmatic</p> <p>16 agreement.</p> <p>17 And the other addition here is the -- just</p> <p>18 reflecting the Oregon-California Trails Association,</p> <p>19 which is an NGO that is concerned with Oregon Trail</p> <p>20 resources, is also a concurring party to this</p> <p>21 programmatic agreement and will be involved in the</p> <p>22 visual assessment. So that's the change there.</p> <p>23 The next change is a correction</p> <p>24 incorporating into the Opinion for Issue SS-5 simply</p> <p>25 to clarify that the extent of work conducted to date</p>	<p style="text-align: right;">28</p> <p>1 And the overarching reason here is simply</p> <p>2 that, you know, we've gone through -- we've done all</p> <p>3 these straw polls on the various standards. And the</p> <p>4 Council has concluded with some modifications that</p> <p>5 -- that Kellen will be talking about here shortly</p> <p>6 but has otherwise concluded that the standards have</p> <p>7 been met. And fundamentally as part of that, that</p> <p>8 means that there -- that no other conditions are</p> <p>9 required to meet the standards.</p> <p>10 So there had been a number of other</p> <p>11 conditions that had been proposed but are not</p> <p>12 necessary to meet the standard. And some additional</p> <p>13 explanation is given in some instances as you go</p> <p>14 through the issues and the specific proposed</p> <p>15 conditions in the revisions to the proposed</p> <p>16 contested case order. But that is kind of the --</p> <p>17 the overarching reason here.</p> <p>18 So those are the set of changes then that</p> <p>19 don't meet this material change threshold, but I</p> <p>20 wanted to highlight them since the Council hasn't</p> <p>21 seen them in -- down on paper yet and have an</p> <p>22 opportunity to ask any questions that you might</p> <p>23 have.</p> <p>24 MR. HOWE: Any questions for Counsel --</p> <p>25 Counsel Ratcliffe?</p>
<p style="text-align: right;">27</p> <p>1 has been done at a reconnaissance level. We talked</p> <p>2 about this briefly at the -- the last meeting.</p> <p>3 There was some ambiguity in the hearing officer's</p> <p>4 contested case -- proposed contested case orders to</p> <p>5 the level of detail of review that had been</p> <p>6 conducted. And -- and so this is just a change to</p> <p>7 reflect the record that the work is reconnaissance-</p> <p>8 level work at this point.</p> <p>9 The final step of the changes has to do</p> <p>10 with an issue that we talked about at the -- the end</p> <p>11 of the August meeting where the hearing officer had</p> <p>12 dismissed a number of conditions that had been</p> <p>13 proposed by limited parties as untimely. They had</p> <p>14 been proposed in closing briefing.</p> <p>15 Now, in -- with respect to some of these</p> <p>16 conditions, proposed conditions, the hearing officer</p> <p>17 had provided an alternate rationale as to why the</p> <p>18 conditions were not being incorporated. However,</p> <p>19 with certain of the conditions, she didn't go beyond</p> <p>20 her finding that they were untimely.</p> <p>21 So it is my recommendation that the</p> <p>22 proposed contested case order be corrected, that the</p> <p>23 untimely rationale be replaced and that the Council</p> <p>24 is -- is providing specific other rationales for --</p> <p>25 for why these conditions are not being adopted.</p>	<p style="text-align: right;">29</p> <p>1 (No audible response).</p> <p>2 MR. HOWE: Okay. I guess we're back to</p> <p>3 Ms. Tardaewether.</p> <p>4 MS. TARDAEWETHER: All right. For the</p> <p>5 record, Kellen Tardaewether.</p> <p>6 I'm going to now walk Council through the</p> <p>7 material changes that were directed -- discussed and</p> <p>8 directed by Council at the -- the August Council</p> <p>9 meeting. I just do -- do want to note that, in the</p> <p>10 draft final order -- well, in Council's review of</p> <p>11 the proposed contested case order, proposed order,</p> <p>12 and exceptions to the proposed contested case order</p> <p>13 and responses to exceptions to the proposed</p> <p>14 contested case order. August was a big meeting.</p> <p>15 Council, also, you asked staff to include</p> <p>16 items to -- to be reflected in the draft final order</p> <p>17 that were more of a -- of a reflection or updating</p> <p>18 findings of -- of fact.</p> <p>19 One of those, just as an example, is,</p> <p>20 under the (indiscernible) standard, the discussion</p> <p>21 about the application and the proposed order relied</p> <p>22 upon the 2017 acknowledgment, Oregon Public Utility</p> <p>23 Commission -- Commission's acknowledgment of Idaho</p> <p>24 Power's IRP, or Integrated Resource Plan. And</p> <p>25 through the contested case, Idaho Power actually</p>

<p style="text-align: right;">30</p> <p>1 submitted the 2019 IRP and PUC's acknowledgment of 2 that. And Council asked staff to just weave in or 3 acknowledge that that had happened so that, in the 4 final order, that is reflected.</p> <p>5 So that is an update -- that's an example 6 of an updated fact which does not constitute a 7 material change. Therefore, it's not in the staff 8 report, and it's not being covered today. I think 9 my presentation that I just -- as Council walked 10 through that draft final order, there -- that is 11 just one of those examples of an updated fact that 12 the -- that provided to the contested case 13 proceeding and reflected in the contested case order 14 that Council reviewed and it is amending.</p> <p>15 So material changes are substantive 16 changes to conditions, or action. For instance, if 17 for some reason in August Council reversed a 18 recommendation -- I -- we don't have any examples of 19 that -- but that would be considered a material 20 change that -- that would be open for today. 21 Really, what happened from August and what's 22 reflected in the draft final order are changes to 23 conditions or, you know, a plan that a condition 24 points to.</p> <p>25 So here are a couple statutes. The</p>	<p style="text-align: right;">32</p> <p>1 again, Council, if you have questions, let me know. 2 And I'm trying to make this as -- you know, 3 informative and helpful for Council. So I'm going 4 to, like, leave the PowerPoint presentation and try 5 to pull up the documents to look at particularly the 6 draft final order. But I just -- so just bear with 7 me as I kind of toggle in between these items.</p> <p>8 Now, I wanted to -- this is the staff 9 report. In the staff report -- remove this. Stay 10 over here. Okay. We have this -- oh, we're not on 11 it. Oh, it's only letting me share one thing. 12 Okay. Hold on. Bear with me here.</p> <p>13 Okay. In the staff report, there was this 14 change reflected in the general standard of review. 15 Is that bigger? Okay.</p> <p>16 This change is not reflected. This did 17 not get carried. This was not -- this was an edit 18 that accidentally got carried over into that staff 19 report. But it is not in the draft -- I'm -- pardon 20 me as I scroll through here.</p> <p>21 What's that? Number 6. 6. Okay.</p> <p>22 So now here is our -- what it actually 23 looks like, which in the draft final order. And 24 this is just -- this is a mandatory condition. So 25 it -- that's-- the certificate holder shall design,</p>
<p style="text-align: right;">31</p> <p>1 statute that's ORS 469.370(7) is the governing 2 statute that really tells us what we're doing today. 3 This is this hearing to adopt a final order to which 4 we're allowing participants in the contested case 5 proceeding to comment on any of these material 6 changes.</p> <p>7 So -- and this statute points us to -- so 8 "changes to the proposed order, including material 9 changes to conditions of approval resulting from the 10 Council's review."</p> <p>11 The other statute I have here is 12 469.370(5)(b). This is -- this is the statute that 13 kind of provides direction of how participants may 14 enter into the contested case. However, here is -- 15 it kind of gives an insight to, again, what a 16 material change is, an action that's recommended, 17 including any recommended conditions of approval.</p> <p>18 So this is the scope of what we're looking 19 at today and, really, why maybe that -- the staff 20 report was -- was wrong. It really -- some of those 21 material changes are -- are -- are pretty minor. 22 However, we did -- if there was a change to a 23 condition, we counted it as a material change.</p> <p>24 I'm going to go back here. So also, in my 25 presentation, because I just want -- and -- and</p>	<p style="text-align: right;">33</p> <p>1 construct, and operate the retire -- this -- 2 retirement of the facility. And the first one here 3 is, "Substantially as described in the site 4 certificate." So there -- no change, so just 5 pointing out that there is a discrepancy in the 6 staff report there for Council.</p> <p>7 On this note, this is also something, as I 8 noted, that staff does have work to do after 9 Council's decision today. One of those is -- you -- 10 completing the -- you know, accepting the changes in 11 the site certificate, but to -- what -- we also add 12 in the description of the facility in the front end 13 of the site certificate. And that description is 14 pulled from -- I don't know if you can see my mouse 15 over here. In the draft final order, we describe 16 the facility and relator our supporting facilities. 17 So all that would be pulled into that site 18 certificate.</p> <p>19 So really, as this -- and the -- this 20 works with this mandatory condition because the 21 applicant certificate holder would have to 22 substantially construct and operate and retire a 23 facility and consistent with that description -- 24 pointing out the discrepancy there.</p> <p>25 Okay. So in August, Council reviewed --</p>

<p style="text-align: right;">34</p> <p>1 now, this is -- it's a little bit -- it's -- in our 2 draft final order, we also give Council a summary of 3 the material changes. And that is up here. 4 Okay. So here -- so this -- this is -- 5 this is basically a summary of the staff report, but 6 this is accurate. For instance, the general 7 standard of review isn't on here. 8 So we have Section V.D. for soil 9 protection. And the -- the blasting plan, the draft 10 blasting plan, is Attachment G-5 of the final -- of 11 the draft final order. And it's imposed under soil 12 protection condition. But Council actually -- we 13 talked about the blasting plan in response to an 14 exception filed underneath the structural standard. 15 So it kind of fits in both. 16 And that's where we reflected under 17 structural, correct? The changes in the blasting 18 plan in the findings in the draft final order, we -- 19 we talked about those changes in the plan under the 20 structural standard. So this really should say Soil 21 Protection/Structural. But I'm going to go there. 22 So Council did look, and our esteemed 23 colleague, Chris Clark looked into potential 24 regulatory requirements for notice distance to 25 landowners that may be impacted or adjacent to any</p>	<p style="text-align: right;">36</p> <p>1 MS. ESTERSON: This is Sarah Esterson, for 2 the record. 3 The blasting plan doesn't have a dispute 4 as we move through the process. But I would point 5 to our compliance program internally. If an 6 individual is not satisfied with the outcome of an 7 impact, they can report to the Department or request 8 an inspection. 9 I mean, this plan -- and we talked about 10 before -- does have requirements for seismic 11 monitoring at the nearest structures in proximity to 12 blasting. So that would monitor shaking. 13 Then they also have built in here talking 14 with landowners that would have -- I think it's 15 wells, specifically. And so if those landowners are 16 interested in, like, pre-blasting testing, they can 17 work together. But I don't think that was your 18 specific question. 19 So if they're still concerned after 20 receiving a notification of either what's going to 21 happen or what happened after, I would say they're 22 going to have to contact us. 23 MR. HOWE: Okay. 24 MS. ESTERSON: But this says the 25 contractor contact information was there. It's just</p>
<p style="text-align: right;">35</p> <p>1 blasting activities. And we looked at that 2 language, but I'm just going to go to the plan now 3 and have Council look and see what -- what it ended 4 up with. This was in the section of the blasting 5 plan that already talked about notification. 6 And just does Council have -- does that 7 look okay? Does Council have any questions? 8 Okay. Yes, Councilmember Condon? 9 MR. HOWE: Councilor Condon? 10 MS. CONDON: All right. Thank you. Cindy 11 Condon, for the record. 12 I had a question -- or had a question just 13 related to -- so this talks about the construction 14 contractor. It identifies the responsibility there. 15 It wasn't clear to me what comes next. The -- if 16 the -- if the landowner said -- says I don't -- or 17 not that I don't agree, but I'm still concerned 18 about X, Y, Z. This is a requirement we discussed. 19 But it -- is there a process built in when 20 it's not just one party telling, you know -- telling 21 a landowner that there's a response to the -- that 22 the landowner has? I don't -- sometimes a dispute, 23 or I might have missed it in the -- in the other 24 labeling. But I was just curious what the -- what 25 the other side is.</p>	<p style="text-align: right;">37</p> <p>1 the plan doesn't have the process where we would 2 come in and be part of it unless they notify us. 3 Yeah. 4 MS. CONDON: Okay. Just looking for 5 clarity. But that would be my guess. Thank you. 6 MR. JENKINS: Yeah. So this is Hanley. 7 I think it was wells and springs. 8 MS. CONDON: Right. 9 MS. ESTERSON: We can go to -- I think 10 it's -- actually, they brought into the (inaudible), 11 I think. I'm just -- 12 THE REPORTER: Sorry, ma'am. I'm having a 13 little trouble hearing you. 14 MS. ESTERSON: Okay. I'll talk louder -- 15 THE REPORTER: Thank you. 16 MS. TARDAEWETHER: So there just in the 17 draft final order, this is an example of the updated 18 findings of fact right to that point to those 19 changes where I'm just looking for -- okay. So it 20 did that. I'm -- oh, and soil protection and then 21 -- right. So make that bigger. 22 So -- and this was -- this was in -- whoa, 23 whoa, whoa -- the -- the contested case order, and 24 this, you know, as -- as a summary of -- it was 25 applicant representation through the contested case</p>

<p style="text-align: right;">38</p> <p>1 that was then reflected in the condition.</p> <p>2 So this also is -- is -- is interesting</p> <p>3 because in the -- the staff reports -- so this is a</p> <p>4 condition, the Soil Protection Condition 4 is a</p> <p>5 material change because of this. But then the</p> <p>6 blasting plan is a material change because of the</p> <p>7 added notification. So this is kind of a good</p> <p>8 example of, you know, this dual -- dual parts.</p> <p>9 MS. CONDON: Thank you.</p> <p>10 MS. TARDAEWETHER: Yeah.</p> <p>11 There we go. Okay. So that's our -- yes?</p> <p>12 Oh.</p> <p>13 MR. JENKINS: So I think this -- this is</p> <p>14 in the soil protection standard, and I think that</p> <p>15 addresses your concern about what if you don't</p> <p>16 agree. And so then there's the requirement to do a</p> <p>17 pre-blasting evaluation of the natural springs and</p> <p>18 wells, and then the certificate holder shall</p> <p>19 compensated the landowner for adequate repairs or</p> <p>20 replacement.</p> <p>21 MS. CONDON: For springs and wells.</p> <p>22 MR. JENKINS: Yeah.</p> <p>23 MS. CONDON: Okay.</p> <p>24 MR. JENKINS: Yeah.</p> <p>25 MS. CONDON: Thank you.</p>	<p style="text-align: right;">40</p> <p>1 reflect the hearing officer's conclusions and also</p> <p>2 the Council -- the -- the -- the Council decision</p> <p>3 to modify this condition, which is down here. And</p> <p>4 so those are just the -- those are kind of the</p> <p>5 updated in-text findings, which also means that we</p> <p>6 kind of strike out some that maybe have been</p> <p>7 updated.</p> <p>8 Okay. So this sub A is -- I'll make that</p> <p>9 bigger -- is what -- okay. So this is one aspect of</p> <p>10 it. I just wanted to note on this because of the</p> <p>11 added lettering, we did update in this -- and was it</p> <p>12 just this condition or --</p> <p>13 (Simultaneous speaking.)</p> <p>14 MS. TARDAEWETHER: Yeah. Sorry, Kent.</p> <p>15 MR. JENKINS: You have another edit -- an</p> <p>16 edit there that you need on the last line, the red.</p> <p>17 It should be -- I think it should be "restore the</p> <p>18 site to a useful nonhazardous..." It says "retore."</p> <p>19 MS. TARDAEWETHER: So --</p> <p>20 (Simultaneous speaking.)</p> <p>21 MS. TARDAEWETHER: There we go. Okay.</p> <p>22 Okay. So then -- okay. So this is that -- the</p> <p>23 aspect of -- this is the -- basically, this is the</p> <p>24 part that gives Council ultimately authority. So at</p> <p>25 any point in time, Council can require the</p>
<p style="text-align: right;">39</p> <p>1 MR. HOWE: Any other comments or questions</p> <p>2 or anything this one from Council?</p> <p>3 (No audible response).</p> <p>4 MR. HOWE: Okay.</p> <p>5 MS. TARDAEWETHER: Okay.</p> <p>6 MR. HOWE: Ms. Tardaewether.</p> <p>7 MS. TARDAEWETHER: Alrighty. Moving on,</p> <p>8 Council, we took quite a bit of time looking at</p> <p>9 underneath the Retirement and Financial Assurance</p> <p>10 standard, Retirement and Financial Assurance</p> <p>11 Condition 5, which in Council's review of the draft</p> <p>12 proposed order, Council at that time wanted some, I</p> <p>13 think, the -- the ability to be able to receive</p> <p>14 updates on several items that are outlined in the</p> <p>15 condition, but -- but basically every five years. I</p> <p>16 just want to do a head nod to Max's favorite word --</p> <p>17 Max was previous senior policy advisor -- is that we</p> <p>18 got (indiscernible) into -- into a condition, which</p> <p>19 is very exciting.</p> <p>20 Okay. So now I'm going to go -- I'm going</p> <p>21 to go to the draft final order, and I'm going to</p> <p>22 find this condition here so we can just work -- look</p> <p>23 at it and see if we like it.</p> <p>24 Okay. All right. So here we have the</p> <p>25 updated findings to reflect the -- you know, that</p>	<p style="text-align: right;">41</p> <p>1 certificate holder to submit a bond that -- also</p> <p>2 that the Council, if desired, can request the</p> <p>3 applicant to come back and -- I'm sorry. I'm just</p> <p>4 -- it's -- I'm not -- I'm not capturing it very</p> <p>5 well.</p> <p>6 But at -- at this point, Council really</p> <p>7 retains the ultimate authority to update the bond or</p> <p>8 letter of credit at any point in time. And so if</p> <p>9 Council chose to exercise this, Council could say,</p> <p>10 you know, within two weeks, within 30 days, please</p> <p>11 come to Council and -- and provide this evidence, or</p> <p>12 we can have a discussion, et cetera. So that is</p> <p>13 this part.</p> <p>14 And I'm just going to go down here -- yes.</p> <p>15 MS. CONDON: Cindy Condon. So a question</p> <p>16 for you.</p> <p>17 What I heard you just say -- so one of the</p> <p>18 -- or and this one here, was it time certain, so</p> <p>19 that we have the right to request it, and we have</p> <p>20 the -- we're -- the right to say within 30 days?</p> <p>21 And did I understand you to say that that</p> <p>22 doesn't need to be in the condition, the time -- 30</p> <p>23 days, 60 days, whatever -- or it can be in another</p> <p>24 document?</p> <p>25 MR. CORNETT: For the record, Todd</p>

<p style="text-align: right;">42</p> <p>1 Cornett. I can respond to that.</p> <p>2 So Councilmember Condon, I think it's</p> <p>3 implicit within the language up here. Council has</p> <p>4 the authority to establish whatever time frame they</p> <p>5 want for (indiscernible) Idaho Power to submit a</p> <p>6 bond. You can certainly be more explicit if you</p> <p>7 want to, you know, unless than -- you know, if -- if</p> <p>8 you wanted changes to put some very specific</p> <p>9 guardrails.</p> <p>10 But I believe at least the Department's</p> <p>11 reading of this is you have that authority implicit</p> <p>12 within this language already. And so if you're</p> <p>13 doing that review, you come to the conclusion -- the</p> <p>14 Council comes to the conclusion that a bond or</p> <p>15 letter of credit needs to be submitted, there is</p> <p>16 justification for that. And I believe, you know,</p> <p>17 that will require a vote of the Council. And within</p> <p>18 that vote, you could establish what time frames you</p> <p>19 are interested in for that being submitted.</p> <p>20 MR. HOWE: Councilor Condon?</p> <p>21 MS. CONDON: So just to respond, so -- so</p> <p>22 the applicant, Idaho Power in this case, has some</p> <p>23 uncertainty around the beginning -- at -- at the</p> <p>24 beginning at this time as to what that time frame</p> <p>25 would be. So would their first notice be we -- we</p>	<p style="text-align: right;">44</p> <p>1 yes, would also be to establish a time frame with --</p> <p>2 within -- within which to submit that bond or letter</p> <p>3 of credit to the Department so we have it on file.</p> <p>4 Whether it's 2 weeks or 30 days or 60</p> <p>5 days, I -- I think that probably part of that</p> <p>6 discussion -- I can certainly say I am not familiar</p> <p>7 with the -- the -- the nuances of going to a</p> <p>8 financial institution and gain, you know, a bond or</p> <p>9 letter of credit. I don't know how quickly that</p> <p>10 could happen. I think that probably part of that</p> <p>11 discussion during that Council meeting, if Council</p> <p>12 chose to require that, we'd probably want to have</p> <p>13 some input from Idaho Power to understand what the</p> <p>14 reasonableness would -- would be for that time</p> <p>15 frame. And I think you would have the ability to</p> <p>16 establish that time frame within that vote itself.</p> <p>17 MR. HOWE: Councilor Condon?</p> <p>18 MS. CONDON: Respond. So I just want -- I</p> <p>19 -- I do want to express my concern here is at the</p> <p>20 point that I -- how this plays out in my mind is</p> <p>21 that we come to that decision in an emergency, or --</p> <p>22 yeah, an emergency case that we say, okay, we need a</p> <p>23 security instrument. And if we're thinking that,</p> <p>24 others are thinking it, especially financial</p> <p>25 institutions whose job it is to assess risk.</p>
<p style="text-align: right;">43</p> <p>1 want the security posted in this form? Or is there</p> <p>2 conversation with the applicant? You get -- I'm</p> <p>3 trying to get certainty for us and the applicant</p> <p>4 about this is what this really means.</p> <p>5 MR. CORNETT: Again for the record, Todd</p> <p>6 Cornett.</p> <p>7 The way I see this playing out is, you</p> <p>8 know, if some information comes to light that the</p> <p>9 Council is interested in, then you would say we want</p> <p>10 to evaluate whether, you know, a financial</p> <p>11 instrument is required at this point in time.</p> <p>12 Idaho Power would be required to submit</p> <p>13 information. We would evaluate that. We may rely</p> <p>14 upon, you know, a third-party contractor to help us</p> <p>15 evaluate that to understand the power context of,</p> <p>16 you know, the energy sector and, specifically,</p> <p>17 transmission lines at that time.</p> <p>18 We would come to Council with a</p> <p>19 presentation. Certainly, Idaho Power would be</p> <p>20 allowed to present at that time.</p> <p>21 Ultimately, Council would come to a</p> <p>22 conclusion: Is a financial instrument needed,</p> <p>23 required, by Council at that point in time? And you</p> <p>24 would either say yes or no. And I believe within</p> <p>25 that vote, your authority would be to, if you voted</p>	<p style="text-align: right;">45</p> <p>1 And so I realize that if we don't post the</p> <p>2 security, there are consequences. But the longer</p> <p>3 that time takes, the more risk I think we have. And</p> <p>4 so I just -- I just want to state that, that I do</p> <p>5 think there is some risk here.</p> <p>6 MR. ROWE: If -- if I may? Patrick Rowe,</p> <p>7 Department of Justice.</p> <p>8 To address your concern, Councilmember</p> <p>9 Condon, and still meet flexibility for you to</p> <p>10 address a time frame should this come up, you might</p> <p>11 consider inserting into this provision that we're</p> <p>12 looking at states notwithstanding subsection (b) to</p> <p>13 (g) of this condition, the Council retains the</p> <p>14 authority to require the certificate holder to</p> <p>15 submit a bond or letter of credit. Here you can</p> <p>16 insert language: "...in a time frame identified by</p> <p>17 the Council, and in an amount equal to the estimated</p> <p>18 total decommissioning..." et cetera.</p> <p>19 MS. CONDON: So the -- that -- that would</p> <p>20 -- I -- that would be acceptable to me.</p> <p>21 MR. CORNETT: Can you type that in just so</p> <p>22 Council can see that?</p> <p>23 MS. CONDON: Thank you.</p> <p>24 MR. ROWE: It does --</p> <p>25 MS. TARDAEWETHER: What was the last part?</p>

<p style="text-align: right;">46</p> <p>1 "Identified by"?</p> <p>2 MR. ROWE: That's it.</p> <p>3 (Simultaneous speaking.)</p> <p>4 MS. TARDAEWETHER: And then -- and just</p> <p>5 "an," right?</p> <p>6 MR. ROWE: Correct.</p> <p>7 MR. CORNETT: So again, for the record,</p> <p>8 I'm Todd Cornett.</p> <p>9 Looking at it procedurally, I'm guessing,</p> <p>10 looking for your input here, so it says it would be,</p> <p>11 you know -- this -- a straw poll at the August</p> <p>12 meeting to establish this, you know, is there a</p> <p>13 straw poll needed if the Council wants to change it</p> <p>14 at this time or just basically sort of a head</p> <p>15 nodding acknowledgment? We'll look for your</p> <p>16 direction on that.</p> <p>17 MR. RATCLIFFE: Yeah. This is Jesse</p> <p>18 Ratcliffe for the record. Just a head nod would be</p> <p>19 fine.</p> <p>20 MR. CORNETT: Okay.</p> <p>21 MR. HOWE: Okay. Any -- I'm seeing head</p> <p>22 nods all around.</p> <p>23 Okay. We've got Councilor Chocktoot.</p> <p>24 Councilor Chocktoot, I'm just wondering if you were</p> <p>25 in -- yes, I saw your thumbs up.</p>	<p style="text-align: right;">48</p> <p>1 that we have financial statements, no -- no</p> <p>2 different than any other financial. Quite frankly,</p> <p>3 in this case, we're playing a financial services</p> <p>4 provider.</p> <p>5 MR. JENKINS: So what we -- this is Hanley</p> <p>6 -- what would you propose, Cindy?</p> <p>7 MS. CONDON: That include it -- I -- I</p> <p>8 would be explicit about the financial statement is</p> <p>9 required, you know, including but not limited to a</p> <p>10 current financial statement. I -- I would prefer it</p> <p>11 to be audited, but that it be named specifically so</p> <p>12 we're looking for it and they're expecting to submit</p> <p>13 it.</p> <p>14 FEMALE SPEAKER: Including -- (inaudible).</p> <p>15 MS. CONDON: "And current financial</p> <p>16 statement."</p> <p>17 Could you make that "current" before</p> <p>18 "financial," please? Thank you.</p> <p>19 MR. HOWE: Comments?</p> <p>20 MS. CONDON: Just really quickly, so I'm</p> <p>21 -- I'm not sure the current financial statement for</p> <p>22 that five-year reporting period. It's the -- the --</p> <p>23 it's the latest financial statement within that five</p> <p>24 years, or however ...</p> <p>25 MS. TARDAEWETHER: Well, Councilmember</p>
<p style="text-align: right;">47</p> <p>1 MR. CHOCKTOOT: Yes.</p> <p>2 MR. HOWE: Okay. So we've got that</p> <p>3 unanimous.</p> <p>4 Councilor Condon?</p> <p>5 MS. CONDON: That (audio disruption) we</p> <p>6 wouldn't be getting to it. But in the -- can you go</p> <p>7 down to the language about the financial report --</p> <p>8 the five-year report?</p> <p>9 Okay. I believe we talked about this in</p> <p>10 August -- in the August meeting that it be explicit</p> <p>11 in here that in the five-year report, financial</p> <p>12 statements are required. There -- there's no</p> <p>13 language that suggests. Further down, there's --</p> <p>14 sorry. I'm trying to find it on my computer as fast</p> <p>15 as you could where we talk about what's included in</p> <p>16 the financial report.</p> <p>17 MR. HOWE: There. (Inaudible) -- but not</p> <p>18 limited to.</p> <p>19 MS. CONDON: Yeah.</p> <p>20 So the -- a financial statement is not</p> <p>21 required of them or not? You know, I'm not sure</p> <p>22 what the expertise in the Department is for</p> <p>23 analyzing financial statements. But a financial</p> <p>24 statement tells the condition of the -- of the</p> <p>25 organization. And so I would like it to be explicit</p>	<p style="text-align: right;">49</p> <p>1 Condon, yeah, that's what we were looking at. We --</p> <p>2 so I just added an "s", right, so because it's like</p> <p>3 we're trying to capture if Council decides we write</p> <p>4 this to -- in the -- the time in between the five</p> <p>5 years, if Council wants this information, the -- the</p> <p>6 certificate holder provides it, but we don't really</p> <p>7 know at what point in time -- (indiscernible).</p> <p>8 Anyways, so I think "current financial</p> <p>9 statements" --</p> <p>10 MS. CONDON: Sorry.</p> <p>11 MS. TARDAEWETHER: -- capture that --</p> <p>12 MS. CONDON: Yeah, yeah. And as long as</p> <p>13 --</p> <p>14 MR. TRUITT: Supporting financial</p> <p>15 information?</p> <p>16 MS. TARDAEWETHER: Pardon?</p> <p>17 MR. TRUITT: Supporting financial</p> <p>18 information as an alternative?</p> <p>19 MR. HOWE: So Councilor Truitt, are you</p> <p>20 just -- are you saying in a current financial state</p> <p>21 -- and current financial statements or supporting</p> <p>22 financial information?</p> <p>23 MR. TRUITT: I suppose I was just kind of</p> <p>24 lobbying that out there as -- as an alternative. I</p> <p>25 don't disagree with how it's written. It's just</p>

<p>50</p> <p>1 providing another context.</p> <p>2 MS. CONDON: Cindy Condon.</p> <p>3 I -- I do think it works. I didn't catch</p> <p>4 the --</p> <p>5 MR. HOWE: Okay. So Counsel Ratcliffe,</p> <p>6 head nods again --</p> <p>7 MR. RATCLIFFE: Yeah --</p> <p>8 MR. HOWE: -- adequate?</p> <p>9 MR. RATCLIFFE: -- that's fine.</p> <p>10 MR. HOWE: I'm seeing head nods.</p> <p>11 Councilor Chocktoot?</p> <p>12 Okay. Unanimous head nods.</p> <p>13 MS. TARDAEWETHER: Thank you. Thank you.</p> <p>14 I believe that that, aside from</p> <p>15 administrative edits, is the extent.</p> <p>16 I have a question for Counselor Ratcliffe.</p> <p>17 So this condition was already on the list of -- for</p> <p>18 material changes, which parties and the applicant</p> <p>19 will have an opportunity to comment on. So then the</p> <p>20 -- the parties at the material change hearing would</p> <p>21 also be commenting on these changes that Council</p> <p>22 just directed, correct?</p> <p>23 MR. RATCLIFFE: Yes. Yes, that's correct.</p> <p>24 MS. TARDAEWETHER: Okay. Okay. Very</p> <p>25 good. Thank you.</p>	<p>52</p> <p>1 condition to support this change. The Department</p> <p>2 did update those draft findings, or the findings in</p> <p>3 the -- underneath the recreation standard, to</p> <p>4 reflect that additional work that needed to be done</p> <p>5 because what was previously in the proposed order</p> <p>6 was the supplemental evaluation applicant did and</p> <p>7 the subsequent condition change from their response</p> <p>8 to the DPO comments.</p> <p>9 And now through the contested case to</p> <p>10 respond to the -- to the concerns of this -- the --</p> <p>11 this expanded area for the recreational opportunity,</p> <p>12 the applicant did this bigger evaluation. So all of</p> <p>13 those -- it -- it no longer made sense to keep kind</p> <p>14 of old findings to support an old -- an older</p> <p>15 condition for these H-frames. So now the findings</p> <p>16 are updated. Those facts are updated to support</p> <p>17 this longer H-frame span.</p> <p>18 So does Council want to go there? Or is</p> <p>19 this okay?</p> <p>20 MR. HOWE: Okay. Council, do we need to</p> <p>21 drill down anymore? Does this show that it captures</p> <p>22 the interest we had in that condition?</p> <p>23 (No audible response).</p> <p>24 MS. TARDAEWETHER: Very good.</p> <p>25 MR. HOWE: And head nods. So ...</p>
<p>51</p> <p>1 All right. So moving over onto</p> <p>2 Recreation, I had kind of noted this in my</p> <p>3 introduction about conditions applying to the entire</p> <p>4 facility, including the proposed route and</p> <p>5 alternative routes unless specifically identified in</p> <p>6 a condition.</p> <p>7 So this is one of those conditions that</p> <p>8 would apply to the Morgan Lake alternative. And</p> <p>9 this is the area near Morgan Lake Park, to which was</p> <p>10 evaluated underneath the recreation standard as well</p> <p>11 as other ones. But this condition is imposed here</p> <p>12 now through the contested case proceeding to address</p> <p>13 concerns from parties about potential impacts to the</p> <p>14 recreational opportunity from not only the developed</p> <p>15 areas, but the undeveloped areas around -- within</p> <p>16 Morgan Lake Park, which includes two lakes.</p> <p>17 (Indiscernible) went and did supplement --</p> <p>18 supplemental or additional on visual impact</p> <p>19 assessments and then, through that process,</p> <p>20 represented a longer span for the shorter H-frame</p> <p>21 towers, which Council wanted, that reflected -- it</p> <p>22 -- also consistent with the contested case order.</p> <p>23 I have a snippet of the -- it's a very</p> <p>24 minor change to this condition. However, it's a</p> <p>25 pretty significant change. I can go to this</p>	<p>53</p> <p>1 MS. TARDAEWETHER: All right. For this</p> <p>2 Public Services conditions, I'm going to go to the</p> <p>3 draft final order. I -- Public Services Condition 2</p> <p>4 -- I'm going to go to that one. The other one,</p> <p>5 Public Services Condition 6, was a very minor</p> <p>6 change. Council just wanted to see approved by</p> <p>7 Council in it. So we can go there, but just give me</p> <p>8 one moment to find this.</p> <p>9 One second here. Public Services</p> <p>10 Condition ...</p> <p>11 So this is in advance of the condition.</p> <p>12 This is where we update the facts to support the</p> <p>13 condition revision. Bear with me. I will find it</p> <p>14 here somewhere. Okay.</p> <p>15 So this Public Services Condition 2 is the</p> <p>16 traffic management plan and that whether the -- a</p> <p>17 plan specific for each county. And now, what we did</p> <p>18 here is that this is the hearing officer suggested</p> <p>19 this as its own new Public Services condition in the</p> <p>20 contested case order. And this, you know, through</p> <p>21 the contested case came out of an applicant</p> <p>22 representation to address concerns.</p> <p>23 So rather than adding it in as its own</p> <p>24 separate standalone condition, we added it in as one</p> <p>25 of these components of the traffic management plan</p>

<p style="text-align: right;">54</p> <p>1 that we included for each county. But this is --</p> <p>2 this is verbatim how it's reflected in the contested</p> <p>3 case order.</p> <p>4 MR. HOWE: Comments or questions from</p> <p>5 Council?</p> <p>6 (No audible response).</p> <p>7 MR. HOWE: I think it looks good.</p> <p>8 MS. TARDAEWETHER: Okay. All right. I'm</p> <p>9 just -- I'm just going to move forward with Public</p> <p>10 Services; is that okay?</p> <p>11 (No audible response).</p> <p>12 MS. TARDAEWETHER: All right. Now</p> <p>13 everybody's favorite topic. Let's make some noise.</p> <p>14 All right. We're going to go down and</p> <p>15 just look at the noise control conditions. And --</p> <p>16 and pardon me as I scroll madly through here.</p> <p>17 Now, I guess, as -- as we're going -- as</p> <p>18 I'm getting to the conditions -- and this is just,</p> <p>19 for context for Council, again, we're not</p> <p>20 considering these material changes. But the noise</p> <p>21 section is one of those sections where there were,</p> <p>22 you know, pretty significant red lines. And -- and</p> <p>23 the reason was, is that through the contested case,</p> <p>24 and also for Council to keep in mind that -- that,</p> <p>25 through the application process, the record is open.</p>	<p style="text-align: right;">56</p> <p>1 and this was really -- because in the order from the</p> <p>2 -- the -- from the comments on the DPO, the issue of</p> <p>3 this Monitoring Position 11 and whether or not it</p> <p>4 was representative really was one of the primary</p> <p>5 issues in the contested case to which the applicant</p> <p>6 went out and did additional ambient noise monitoring</p> <p>7 at three other monitoring positions.</p> <p>8 But -- but, you know, well, so what the</p> <p>9 proposed order reflected was asking this question of</p> <p>10 whether or not MP, Monitoring Position, 11 was</p> <p>11 representative. But now, so really through the</p> <p>12 contested case, the findings are now reflected to</p> <p>13 show that -- that there was additional monitoring</p> <p>14 that -- that was conducted and that that is</p> <p>15 reflected now in this section.</p> <p>16 And I'm going to scroll -- scroll. It's a</p> <p>17 big section, so I'm going to get us right on those</p> <p>18 conditions here.</p> <p>19 Okay. So we have -- so I'm on Noise</p> <p>20 Control Condition 1. I know that Council went</p> <p>21 through Noise Control Condition 2. We kind of went</p> <p>22 through that. And we -- actually, at the August</p> <p>23 meetings, we went through all of the noise</p> <p>24 conditions at -- at length with the applicant and</p> <p>25 representatives of STOP B2H. And this was</p>
<p style="text-align: right;">55</p> <p>1 But once the record of the hearing on the draft</p> <p>2 proposed order closes, the record is closed, right?</p> <p>3 And that includes comments on the DPO, applicant's</p> <p>4 responses to comments, Council direction, et cetera.</p> <p>5 It's closed -- closed.</p> <p>6 But once the contested case opens, it</p> <p>7 opens back up, and it's a filtering process of what</p> <p>8 the issues are. And during the contested case</p> <p>9 proceeding, the record is now open. So really, the</p> <p>10 record on the application for site certificate --</p> <p>11 which reminds me I wanted to talk about records with</p> <p>12 Council, but we'll get to that later because it's a</p> <p>13 very exciting topic.</p> <p>14 But the record on the application, the</p> <p>15 decision-making record in Council's rules includes</p> <p>16 the record of the proposed order, so which it</p> <p>17 basically -- everything -- you know, the -- once --</p> <p>18 once the record closes, and also the record of the</p> <p>19 contested case. So all of that is what we're</p> <p>20 looking at there and boiling this down to for</p> <p>21 Council to ask the question of whether or not the</p> <p>22 preponderance of evidence has been met.</p> <p>23 So under -- underneath the Noise section</p> <p>24 -- and I'll just go here -- table, table, table --</p> <p>25 there's pretty significant strikeout here. So --</p>	<p style="text-align: right;">57</p> <p>1 addressing their sections, which also included</p> <p>2 Council Kirk (phonetic), and we went through this</p> <p>3 process of looking at potential proposed changes</p> <p>4 that STOP B2H had proposed through -- through the --</p> <p>5 the proceeding. So we looked at those.</p> <p>6 And would you -- I -- right.</p> <p>7 So I have -- I have -- in my presentation,</p> <p>8 I was going to talk about Noise Control Condition 1.</p> <p>9 They're very interrelated with Condition 2. But</p> <p>10 actually, Council just did directed changes to the</p> <p>11 Noise Control Condition 2, which I'll go there and</p> <p>12 -- but it does relate to Condition 1. So I'll go</p> <p>13 down to Condition 2.</p> <p>14 Oh, Councilor --</p> <p>15 MR. JENKINS: Before you go to 2.</p> <p>16 MS. TARDAEWETHER: Yes. Okay.</p> <p>17 MR. JENKINS: So I'm -- this is Hanley,</p> <p>18 and I have a question on Noise Control Condition 1.</p> <p>19 I'm working off the staff report. I'm not working</p> <p>20 off of --</p> <p>21 MS. TARDAEWETHER: Okay.</p> <p>22 MR. JENKINS: -- the final order.</p> <p>23 So on page 11 of the staff report, it</p> <p>24 identifies the changes in Noise Control Condition 1,</p> <p>25 and there's changes in (a) and (b). Then go to the</p>

<p style="text-align: right;">58</p> <p>1 next page and there is number 1 (a) and (b). So 2 there's something wrong there with your -- with your 3 -- 4 MS. TARDAEWETHER: Yeah. And that was 5 just -- and that was a carryover. I do want to note 6 when we get to -- to the, yeah, the staff report. 7 But it's one of these formatting things. 8 So in the -- in the -- it is correct in 9 the draft -- 10 MR. JENKINS: Okay. So -- so my 11 substantive question is under -- on -- on page 12 on 12 a.iv. It says, "At the request of the noise 13 sensitive receptor property owner, certificate 14 holder will offer alternative mitigation 15 proposals..." 16 Is that alternative to the windows, or is 17 that in addition to the windows? I -- you know, it 18 just says "alternative," so I don't know whether 19 it's a replacement for or in addition to. 20 MS. TARDAEWETHER: It's (inaudible). 21 Just one -- one minute, Councilmember -- 22 MR. JENKINS: Sure. 23 MS. TARDAEWETHER: We will read again. 24 This was an applicant -- well, the noise conditions 25 went back and forth pretty consider -- considerably.</p>	<p style="text-align: right;">60</p> <p>1 and have their request to do so, these are some of 2 the other options that they would be -- could be 3 employed or negotiated with them to address those 4 concerns. 5 MR. JENKINS: As a replacement? So -- so 6 at the request of the NSR property owner, a 7 certificate holder will offer as an alternative to 8 -- 9 MS. BEIER: Three. 10 MR. JENKINS: -- one, two, and three 11 mitigation proposals. Yeah. 12 MR. RATCLIFFE: And Councilmember Jenkins, 13 this is Jesse Ratcliffe for the record. 14 If I may, I -- you know, I think that the 15 -- the goal here is to provide an opportunity for a 16 negotiation to attempt to resolve the issue. And so 17 I don't -- you know, this sub 4, to me, provides 18 some guideposts from the Council to Idaho Power and 19 to the NSR owners to how that might occur. 20 And so, you know, we're -- the Council 21 would be saying, well, you know, if the NSR property 22 owner isn't satisfied with the measures that are 23 listed or above, we're asking Idaho Power to go 24 ahead and -- and offer up alternatives. 25 I don't know that this, you know,</p>
<p style="text-align: right;">59</p> <p>1 MR. JENKINS: So what this section does, 2 is it sets out based upon the level of impact the 3 opportunities for resolving an impact. And in one, 4 it's between 11 and 14 decibels at sound level, and 5 you've got one option. If you're exceeding the 14, 6 then you've got another. And then if -- and then 7 there's an opportunity to negotiate between the 8 landowner and the applicant. 9 So I think what we were trying to do was 10 identify a way for there to be some negotiation, I 11 guess, and come up with other options. I don't 12 think it was in addition to. I think it was as a 13 replacement for. But that's kind of where I'm ... 14 MS. TARDAEWETHER: If I recall -- and we 15 do have the -- the transcripts from the August 16 meetings -- but if I recall, Ms. Rackner, in her 17 discussions of this -- and I think the scenario she 18 provided is say somebody had a brand -- brand-new 19 house -- 20 MR. JENKINS: Right. 21 MS. TARDAEWETHER: -- and like -- and they 22 have lovely Andersen windows, and they don't want -- 23 they don't want any windows. I think that this is 24 -- this isn't an -- intended to be an "or." If 25 somebody doesn't want the noise-attenuating windows</p>	<p style="text-align: right;">61</p> <p>1 prohibits the -- the parties from coming to a 2 resolution that includes windows and something else. 3 But I think that the idea here is just that we're -- 4 we're trying to set up a process to resolve this 5 through negotiation. 6 MR. JENKINS: Yeah. This is Hanley. I'm 7 just trying to come up with a more clear way of 8 saying that. 9 MR. HOWE: Well, maybe -- this is Kent -- 10 and maybe "including but not limited to" -- 11 MR. JENKINS: Yeah. 12 MR. HOWE: -- language. 13 MR. JENKINS: Well, it probably should say 14 that anyway because it's -- it -- it -- what we have 15 are examples. And we won't limit the examples to 16 just those. 17 MR. HOWE: And you can use "including but 18 not limited to" then -- 19 MR. JENKINS: Yeah, including -- including 20 windows. 21 Does that work, Jesse? 22 MR. RATCLIFFE: Yes. 23 MR. TRUITT: What about the inclusion of 24 reasonable -- reasonable alternative mitigation for 25 (inaudible)?</p>

<p style="text-align: right;">62</p> <p>1 (Simultaneous speaking.)</p> <p>2 MR. JENKINS: Yeah.</p> <p>3 MALE SPEAKER: Yeah.</p> <p>4 MR. JENKINS: I hesitate -- I hesitate to</p> <p>5 use words that have to be defined. I just -- I</p> <p>6 guess the reason I say it is -- is each situation is</p> <p>7 unique. If it's -- if it's a brand-new house and</p> <p>8 they don't need new windows or new insulation, a</p> <p>9 reasonable alternative could be landscaping --</p> <p>10 FEMALE SPEAKER: Yeah.</p> <p>11 MR. JENKINS: -- (indiscernible) trees, et</p> <p>12 cetera. But I see what you're saying. I mean, so I</p> <p>13 want to (indiscernible). Yeah, it's -- it's</p> <p>14 negotiable. That's the -- that's the point here, is</p> <p>15 we're providing an opportunity to negotiate between</p> <p>16 the landowner and the applicant. So I think that's</p> <p>17 an important piece. Just I was -- here's where we</p> <p>18 were trying to come up with something different. So</p> <p>19 I think "including but not limited to" can resolve</p> <p>20 that whole issue.</p> <p>21 MR. HOWE: Where's the rest of the</p> <p>22 Council?</p> <p>23 FEMALE SPEAKER: Absolutely.</p> <p>24 MR. HOWE: Heads nodding.</p> <p>25 Councilor Chocktoot?</p>	<p style="text-align: right;">64</p> <p>1 order. It's -- and I'll pull up -- because it's</p> <p>2 just at the place where Council gave directions. So</p> <p>3 let me find it here. Okay.</p> <p>4 And so this is -- oh, wait. Is this --</p> <p>5 (Simultaneous speaking.)</p> <p>6 MALE SPEAKER: -- under 698 on the draft</p> <p>7 final order. Then it would be projected on the</p> <p>8 screen. It doesn't --</p> <p>9 THE REPORTER: I'm sorry, sir. Can you</p> <p>10 repeat that?</p> <p>11 MALE SPEAKER: I -- I indicated to Ms.</p> <p>12 Tardaewether that what is being projected on the</p> <p>13 screen is not what's on page 698 of the draft final</p> <p>14 order.</p> <p>15 MS. BEIER: Chairman Howe, while we're --</p> <p>16 while we're getting this posted, there is a</p> <p>17 paragraph. It's on line 699 of the final order.</p> <p>18 It's sub E, sub ii. That first sentence doesn't</p> <p>19 make any sense to me, but maybe it's a technical</p> <p>20 statement -- if it is determined the burn noise is</p> <p>21 not typical burn in period noise?</p> <p>22 MR. TRUITT: Page 706.</p> <p>23 MS. BEIER: On the -- yeah, on the</p> <p>24 computer, yeah. And it's that on paragraph sub ii,</p> <p>25 the last paragraph on 706, which it -- that sentence</p>
<p style="text-align: right;">63</p> <p>1 Okay. I think we have that.</p> <p>2 Will that be enough on that, Counsel</p> <p>3 Ratcliffe?</p> <p>4 MR. RATCLIFFE: Yes.</p> <p>5 MR. HOWE: Okay. Back to you, Ms.</p> <p>6 Tardaewether.</p> <p>7 MS. TARDAEWETHER: Thank you.</p> <p>8 Noise Control Condition 2, even the -- the</p> <p>9 hearing officer noted in -- in her proposed</p> <p>10 contested case order that, because this condition</p> <p>11 really went back and forth so much, that she</p> <p>12 actually ultimately in her order kind of reflected</p> <p>13 the final changes to this condition. And then we</p> <p>14 also modified this condition in August.</p> <p>15 This is to say what -- what I did in the</p> <p>16 draft final order, I just -- rather than redline, I</p> <p>17 just totally deleted the original Noise Control</p> <p>18 Condition 2. And I just put in the one from the</p> <p>19 contested case order and then made the changes that</p> <p>20 Council talked about in August. So that said, I'm</p> <p>21 -- and I apologize again. But this was just the --</p> <p>22 the nature of -- of how it works when several people</p> <p>23 are working on something.</p> <p>24 This condition is a little bit different</p> <p>25 in the staff report than it is in the draft final</p>	<p style="text-align: right;">65</p> <p>1 doesn't make any sense to me. But ...</p> <p>2 MR. HOWE: Councilor Beier, hold that</p> <p>3 thought while we finish --</p> <p>4 MS. TARDAEWETHER: Yeah. That's fine. I</p> <p>5 didn't -- I didn't catch that. So it's -- it's</p> <p>6 okay. I'm -- we're here. It's fine. That is to</p> <p>7 say, we'll just -- let's look at the -- what is in</p> <p>8 front of us.</p> <p>9 MS. BEIER: Yeah.</p> <p>10 MS. TARDAEWETHER: And this was just</p> <p>11 within our discussion of, you know, addressing the</p> <p>12 condition length of STOP B2H, and this is what we</p> <p>13 talked about in August and the straw poll.</p> <p>14 But this was the discussion of what is</p> <p>15 provided to the landowners, what is their -- right.</p> <p>16 So we wanted it to be -- we wanted them to have all</p> <p>17 of the condition language. And Council also wanted</p> <p>18 there to be an easy-to- read guidebook of what the</p> <p>19 opportunities for landowners are. And so this is</p> <p>20 staff and DOJ's Cut Act reflecting that.</p> <p>21 MR. HOWE: Comments from Council or</p> <p>22 questions?</p> <p>23 Councilor Condon, I remember that was a</p> <p>24 lot of the concerns you were having. Do they seem</p> <p>25 to capture and address what you were interested in?</p>

<p style="text-align: right;">66</p> <p>1 MS. CONDON: Thank you.</p> <p>2 Yes. When I was reading, I -- I was</p> <p>3 curious. You know, looking at it from a distance</p> <p>4 might be different than looking at a close-up as a</p> <p>5 property owner. Would the -- any comment -- there</p> <p>6 was no comment that I saw from the property owner</p> <p>7 that had issues with this. So, you know, I -- I</p> <p>8 don't know if there's any inside information on</p> <p>9 that.</p> <p>10 But if it's understandable to a property</p> <p>11 owner that, yeah, got a plan and I go with it --</p> <p>12 what my actions can be, then this is fine. It</p> <p>13 certainly speaks to the conversation last night.</p> <p>14 MR. HOWE: Any other Councilors want to go</p> <p>15 over this Condition number 2 language?</p> <p>16 MS. BEIER: Except -- this is Councilor</p> <p>17 Beier. I still don't know what sub E, sub ii --</p> <p>18 MR. HOWE: Okay. Let's --</p> <p>19 (Simultaneous speaking.)</p> <p>20 MS. TARDAEWETHER: Let's go down there.</p> <p>21 Now, on our way down, Council, I'm going to take a</p> <p>22 stop here. And again, I don't think for some reason</p> <p>23 the edit didn't get carried over into the staff</p> <p>24 report. And I apologize about that. But this was</p> <p>25 -- we did this in the draft final rule -- order,</p>	<p style="text-align: right;">68</p> <p>1 MR. JENKINS: Okay. So it's the -- so is</p> <p>2 your concern in the (indiscernible)?</p> <p>3 (Simultaneous speaking.)</p> <p>4 MS. BEIER: I think that's what it's</p> <p>5 referring to, but it's not clear there. So it's</p> <p>6 probably -- it's probably the "burn in period"</p> <p>7 mentioned in sub i.</p> <p>8 MR. ROWE: This is Patrick Rowe here.</p> <p>9 That -- that -- that's correct --</p> <p>10 MS. BEIER: Okay. Good.</p> <p>11 MR. ROWE: And then --</p> <p>12 MS. BEIER: It's just -- it's just putting</p> <p>13 those words together. This is like this doesn't</p> <p>14 make sense. So if the intent is to clarify things</p> <p>15 for the public, that's --</p> <p>16 MR. ROWE: If you like, you could state if</p> <p>17 it is determined that the corona noise is not</p> <p>18 typical burn in period noise referenced in sub e.i.</p> <p>19 to clarify that.</p> <p>20 MR. HOWE: Yeah.</p> <p>21 MS. BEIER: That might help for -- I --</p> <p>22 because it's a technical term I really wasn't</p> <p>23 familiar with.</p> <p>24 (Simultaneous speaking.)</p> <p>25 MS. TARDAEWETHER: Or you can put (audio</p>
<p style="text-align: right;">67</p> <p>1 right?</p> <p>2 So this was not requiring that each of</p> <p>3 these aspects be included, but basically the</p> <p>4 examples of the items that a landowner could include</p> <p>5 in its complaint.</p> <p>6 FEMALE SPEAKER: Such as.</p> <p>7 MS. TARDAEWETHER: Such as.</p> <p>8 MR. HOWE: Yeah. Okay.</p> <p>9 (Simultaneous speaking.)</p> <p>10 MS. TARDAEWETHER: Okay. So now -- so</p> <p>11 Councilmember Beier, you were on E. What -- what E?</p> <p>12 MS. BEIER: ii.</p> <p>13 MS. TARDAEWETHER: ii?</p> <p>14 MS. BEIER: And it may refer to the "burn</p> <p>15 in period" mentioned in sub i. I just -- it feels</p> <p>16 like there's something missing in that sentence.</p> <p>17 MS. TARDAEWETHER: In ii, right?</p> <p>18 MS. BEIER: Yeah --</p> <p>19 MR. HOWE: Yeah.</p> <p>20 MS. BEIER: -- the first --</p> <p>21 MR. JENKINS: First sentence.</p> <p>22 MS. BEIER: First sentence just feels like</p> <p>23 there's something missing, like a whole ...</p> <p>24 MS. TARDAEWETHER: I -- I would say it's</p> <p>25 not typical for burn in --</p>	<p style="text-align: right;">69</p> <p>1 disruption.)</p> <p>2 MS. BEIER: Yeah.</p> <p>3 MR. JENKINS: Surely.</p> <p>4 MS. BEIER: Yeah. Just the hyphenation.</p> <p>5 Yeah. It's just the --</p> <p>6 MR. JENKINS: So Mr. Chair, this is</p> <p>7 Hanley.</p> <p>8 I have a question about -- so it talks</p> <p>9 about an Attachment X-5 in the final order in the --</p> <p>10 and then it goes on. It says the modeling sound</p> <p>11 level increases as presented in Attachment X-4. Is</p> <p>12 that -- is that the correct cite? Or is it X-5?</p> <p>13 MR. ROWE: Can we just hit pause for one</p> <p>14 moment?</p> <p>15 MR. JENKINS: Yeah.</p> <p>16 MR. ROWE: Let me first address</p> <p>17 Councilmember --</p> <p>18 MS. BEIER: Yeah --</p> <p>19 (Simultaneous speaking.)</p> <p>20 MR. ROWE: I think it's fair, Kent, to do</p> <p>21 what you referenced, if -- if Councilmember Beier</p> <p>22 agrees --</p> <p>23 MS. BEIER: Yeah.</p> <p>24 MR. ROWE: -- and just put "burn in</p> <p>25 period" in quotes.</p>

<p style="text-align: right;">70</p> <p>1 MS. BEIER: Yes.</p> <p>2 MR. ROWE: And that will recognize the</p> <p>3 subsection --</p> <p>4 MS. BEIER: Right.</p> <p>5 MR. ROWE: -- immediately preceding.</p> <p>6 MS. BEIER: Yeah. Thank you.</p> <p>7 MR. HOWE: And I think we got head nods on</p> <p>8 that change. So okay.</p> <p>9 (Simultaneous speaking.)</p> <p>10 MR. ROWE: (Audio disruption.)</p> <p>11 FEMALE SPEAKER: (Audio disruption.)</p> <p>12 MALE SPEAKER: (Audio disruption.)</p> <p>13 MS. TARDAEWETHER: (Audio disruption.)</p> <p>14 MR. ROWE: The second --</p> <p>15 MS. TARDAEWETHER: Yeah. Should we see if</p> <p>16 there's reference to "burn in period" in -- anywhere</p> <p>17 else?</p> <p>18 MR. ROWE: There is a significant --</p> <p>19 THE REPORTER: Speak up.</p> <p>20 MS. TARDAEWETHER: Right. Like in other</p> <p>21 parts of the condition.</p> <p>22 MR. ROWE: Councilmember Beier, are you</p> <p>23 comfortable with the -- the change that's been --</p> <p>24 MS. BEIER: Yes. Thank you so much. This</p> <p>25 is just --</p>	<p style="text-align: right;">72</p> <p>1 increases as presented in Attachment X-4. So X-4</p> <p>2 must include sound level thresholds where the list</p> <p>3 is in X-5. Yes.</p> <p>4 MS. TARDAEWETHER: I'm going to go back to</p> <p>5 the condition, Councilmember Jenkins. What I have</p> <p>6 pulled up here is the Table of Contents. So X-4 is</p> <p>7 the Noise Analysis Results, and X-5 are the maps.</p> <p>8 And just quickly -- and, again, I'll go back to that</p> <p>9 condition. So these are the links to them, so these</p> <p>10 are the maps with the map set. And then, you know,</p> <p>11 I can't pull up my other tab. I can't see it.</p> <p>12 There it is.</p> <p>13 MR. JENKINS: Okay. Thank you.</p> <p>14 MS. TARDAEWETHER: Yep. And so this is</p> <p>15 the -- the results, okay? So then --</p> <p>16 MR. JENKINS: Yeah.</p> <p>17 MS. TARDAEWETHER: -- now let's go back to</p> <p>18 that, the condition itself.</p> <p>19 And I believe -- isn't X-7 the property</p> <p>20 owners? X-7 is the property owner list, correct?</p> <p>21 Yeah. Okay. Yeah.</p> <p>22 So yeah, got -- got a lot of X here. So</p> <p>23 X-7 is the -- the list of the property owners.</p> <p>24 Let's find it here. Okay. X-4 is the results, and</p> <p>25 X-5 is the map sets that one would look at with X-4</p>
<p style="text-align: right;">71</p> <p>1 MR. CORNETT: If -- if I may, just a</p> <p>2 reminder for everybody, we are having a verbatim</p> <p>3 transcript. So the dialogue, it's helpful. So</p> <p>4 provide correction for the record.</p> <p>5 Providing corection is helpful to make</p> <p>6 sure that we, you know, are very clear. If you can</p> <p>7 sort of limit the talking over one another and make</p> <p>8 sure that we indicate what our names are. And we</p> <p>9 don't have microphones in front of us, but I know</p> <p>10 people online can hear us very well. But in the</p> <p>11 room, please project your voices.</p> <p>12 MR. HOWE: Thank you to Secretary Cornett.</p> <p>13 So I think we're good. Councilor Beier's</p> <p>14 adjustments to the language --</p> <p>15 MS. BEIER: Yes.</p> <p>16 MR. HOWE: -- there with (indiscernible)</p> <p>17 input.</p> <p>18 MS. BEIER: Yes.</p> <p>19 MR. HOWE: And so we'll move now to</p> <p>20 Councilor Jenkins -- X-4 or X-5, a question on the</p> <p>21 lower part of ii.</p> <p>22 MR. JENKINS: Yeah. I think I answered my</p> <p>23 own question. Is it -- it's the list -- this is</p> <p>24 Hanley -- the list is the Attachment X-5, but the</p> <p>25 model sound level is -- out of order. Model sound</p>	<p style="text-align: right;">73</p> <p>1 to see the location of the NSRs.</p> <p>2 MR. HOWE: So Councilor Jenkins --</p> <p>3 MR. JENKINS: I'm good.</p> <p>4 MR. HOWE: You're good. Okay. So okay.</p> <p>5 Thank you.</p> <p>6 Back to you, Ms. Tardaewether.</p> <p>7 MS. TARDAEWETHER: Well, that -- that was</p> <p>8 -- that was what we talked about in -- in August.</p> <p>9 MR. HOWE: So that does all of the</p> <p>10 conditions that we discussed back in August --</p> <p>11 MS. TARDAEWETHER: Mm-hmm.</p> <p>12 MR. HOWE: -- and walked through those.</p> <p>13 Are we to the point now it's a good time</p> <p>14 to take a break?</p> <p>15 MS. TARDAEWETHER: I -- I think so. Yeah.</p> <p>16 Just I'm -- let me just close out noise again, so</p> <p>17 noise control. The -- in -- in the step that there</p> <p>18 is other noise conditions that are -- that there are</p> <p>19 material changes to that came from the contested</p> <p>20 case order. I'm not talking -- but these are what</p> <p>21 we talked about in August. Council didn't have any</p> <p>22 direction with the other conditions. However, in</p> <p>23 the material change hearing, parties are -- limited</p> <p>24 parties may -- may raise those.</p> <p>25 But yes, that concludes my portion.</p>

<p style="text-align: right;">74</p> <p>1 MR. HOWE: Okay. Does a 10-minute break 2 sound about right for Council? 3 (No audible response). 4 MR. HOWE: Okay. We'll come back in -- at 5 10:20. 6 (WHEREUPON, a recess was taken.) 7 MR. HOWE: And -- and I'd like to call the 8 meeting back from recess and continue on. 9 Mr. -- or Counsel Ratcliffe, are you with 10 us here? 11 (No audible response). 12 MR. HOWE: We'll wait to make sure he is 13 with us. 14 Counselor Ratcliffe, did you hear me? 15 Yeah, there you are. Okay. 16 MR. RATCLIFFE: Yes. I can hear fine. 17 MR. HOWE: So there has been motions by 18 STOP B2H and Ms. Gilbert to continue the material 19 change hearing date due to inadequate time to review 20 the material changes and the draft of the final 21 order. There is also a response by Idaho Power to 22 retain today's date and a response by Ms. Gilbert to 23 Idaho Power's response. 24 There have been -- there have all been -- 25 or these have all been provided to Council last</p>	<p style="text-align: right;">76</p> <p>1 what that would be, would be a granting of -- of the 2 motion in part, denying it in part. 3 And then once those decisions are made, 4 then we can get into the material change hearing 5 itself. And -- and because these are formal 6 motions, my suggestion would be that there is a 7 formal vote on each of the motions, and then we can 8 proceed. 9 MR. HOWE: Okay. Thank you, Counsel 10 Ratcliffe. 11 Do we have a motion? 12 MR. CORNETT: Mr. Vice Chair -- just for 13 the record, Todd Cornett -- just -- just for 14 clarity, so were you saying that -- that Council 15 should vote on each of the four motions that were 16 submitted individually? Or would a consolidated 17 vote, which it kind of dealt with everything we 18 talked about be sufficient? 19 MR. RATCLIFFE: A consolidate -- yes. 20 Thank you for the clarification. A consolidated 21 motion would be acceptable. And you know -- and, 22 again, if there is any proposed changes from the 23 five-minute period that had been initially proposed, 24 then Council should reflect that in the consolidated 25 motion.</p>
<p style="text-align: right;">75</p> <p>1 Tuesday. 2 Mr. Ratcliffe, can you provide us our 3 options on those? 4 MR. RATCLIFFE: Sure. So the Council can 5 decide to grant or deny the motions that were filed. 6 You know, there were both requests for a 7 continuation of the material change hearing. There 8 were also requests for additional time to present. 9 And Councilmembers, Vice Chair Howe and I 10 had a conversation about the time limits 11 specifically for presentation. Vice Chair Howe's 12 proposal was that the parties each have 10 minutes 13 to present rather than 5 in order to, you know -- 14 because we have a lot of stuff to take care of here 15 in a relatively short period of time. 16 But I went ahead and -- and emailed the 17 parties yesterday to give them a heads up that that 18 was a potential outcome today of having a 10-minute 19 comment period instead of 5. So that is on the 20 table as well. 21 But more broadly speaking, just what the 22 Council needs to do here is decide whether or not to 23 grant the motions or not. And if what ends up 24 happening is a decision to go with a longer time 25 period for comment for each party, then technically</p>	<p style="text-align: right;">77</p> <p>1 MR. CORNETT: Mr. Vice Chair -- 2 MR. HOWE: Yeah -- 3 MR. CORNETT: Again, for the record, Todd 4 Cornett. 5 So we provided Council two options, one to 6 approve the motions and one to deny the motions. 7 But according to Jesse, it didn't include that sort 8 of 5-minute to 10-minute change. So these would 9 potentially not work. But we can tailor them as 10 necessary based on whatever deliberation and 11 ultimately where you're going with that. So ... 12 MR. HOWE: And so this is Kent. But 13 because of the nature of the, I believe, 18 changes 14 that people could comment on, it didn't make sense 15 -- or it doesn't seem that we could in a timely 16 fashion get through about how many people want to 17 comment. One person, if they had the three-minute 18 time period, or so, on each change, that could 19 almost be an hour. 20 And so I'm thinking of this being a 10- 21 minute comment time for these motions. So -- and 22 that will be their time to comment on all the 23 changes if they want to. 24 So if somebody is ready to make a motion, 25 I guess.</p>

<p style="text-align: right;">78</p> <p>1 MR. JENKINS: I'll try. So Mr. Chair, I 2 move that we deny the request for continuation, 3 continue with the material change hearing, and 4 provide those people wishing to testify 10 minutes 5 each to address those changes. 6 MR. HOWE: Is there a second? 7 MS. BEIER: This is Councilor Beier. I 8 second. 9 MR. HOWE: Okay. We had a motion and a 10 second. 11 Secretary Cornett, call a roll. 12 MR. CORNETT: Ann Beier? 13 MS. BEIER: Yes. 14 MR. CORNETT: Perry Chocktoot? 15 MR. CHOCKTOOT: Yes. 16 MR. CORNETT: Cindy Condon? 17 MS. CONDON: Yes. 18 MR. CORNETT: Hanley Jenkins? 19 MR. JENKINS: Yes. 20 MR. CORNETT: Kent Howe? 21 MR. HOWE: Yes. 22 MR. CORNETT: Jordan Truitt? 23 MR. TRUITT: Yes. 24 MR. CORNETT: Motion carried, Mr. Vice 25 Chair.</p>	<p style="text-align: right;">80</p> <p>1 -- as long as we're kind of staying within the 2 scope, I think we're good. But you know, if folks 3 are veering outside of that, then my recommendation 4 is that we, you know, ask them to kind of bring that 5 back in to discussing the specific material changes 6 before us today. 7 MR. HOWE: Okay. Thank you. 8 So we will now hold the material change 9 hearing. For those in person, please fill out a 10 registration card available on the table near the 11 entrance and submit to Sarah Esterson. For those 12 using the WebEx, you'll need to use the Raise Your 13 Hand feature. And for those on the phone only, 14 you'll need to press Star 3, which will alert us 15 that you want to speak. 16 So Mr. Secretary, is there anyone in the 17 room who would like to provide comment? 18 MR. CORNETT: Yes, Mr. Chair. We have two 19 in the room who would like to provide comment. 20 MR. ANUTA: Karl Anuta appearing for STOP 21 B2H. 22 MR. HOWE: Getting the timer going. 23 MR. CORNETT: Yes. For the record, Todd 24 Cornett. 25 For anybody who wishes to provide a</p>
<p style="text-align: right;">79</p> <p>1 MR. HOWE: So we can now hold the material 2 change hearing. 3 Counsel Ratcliffe, do I need to continue 4 on with direction on the registration card sign up 5 and that kind of stuff? Or do you have some things 6 you want to say first? 7 MR. RATCLIFFE: So I guess the only thing 8 that I will say before we get started with the 9 registration cards and -- and getting people in line 10 to talk is that this part of the process is, again, 11 limited to the material changes that Ms. 12 Tardaewether presented earlier today because we have 13 reached this point in the process where we are, you 14 know, kind of narrowing down over time before 15 getting to the Council's decision on the final 16 order, you know. For example, in the exceptions 17 hearing, we were -- had narrowed down to discussing 18 the exceptions that limited parties had filed. We 19 weren't talking about the fuller suite of issues 20 that were in the contested case. Well, now, here 21 we're -- we're narrowed down just to those changes 22 to the conditions that constitute material changes. 23 So my advice to the Council is that 24 commenters here really do need to be kept to 25 comments that are on the material changes. And as</p>	<p style="text-align: right;">81</p> <p>1 comment, please ultimately submit a (indiscernible). 2 MR. HOWE: Okay. Mr. Anuta, okay. Go 3 ahead. 4 MR. ANUTA: Okay. Do you want me to -- 5 thank you. 6 Let me start by noting that I am going to 7 only be addressing the -- some specific material 8 changes. STOP is not waiving its exceptions or the 9 prior closing arguments or -- or that we made. 10 Preliminarily, we -- STOP disagrees that 11 the changes made to the rationale for rejecting the 12 conditions that the hearings officer rejected as 13 untimely, we think those should have been a material 14 change rather than an immaterial change that you did 15 not go over in detail. 16 We also disagree with the inclusion of the 17 2019 IRP that it's not material. We think that was 18 material. We argued about that in our exceptions 19 and our closing argument. 20 On the issue of Soil Protection Condition 21 4, which you were looking at earlier, there is 22 language in that blasting plan notification issue 23 that STOP -- changes there that are very problematic 24 for STOP specifically. That last sentence says, 25 "The certificate holder shall compensate the</p>

<p style="text-align: right;">82</p> <p>1 landowner for adequate repair or replacement if 2 damages to the flow or the quality of the natural 3 spring or well occur solely as a result of the 4 blasting." 5 We strongly recommend you remove the word 6 "solely" because it puts the landowner under 7 incredible burden. All Idaho Power has to do is 8 suggest that there might be some other reason, no 9 matter how small, that the landowner can then not 10 prove that the -- and get their repair or 11 replacement damages because the word "solely" 12 appears there. You are adding to the burden of 13 proof in a way you shouldn't there. 14 On scenic resources, the -- at page 316 of 15 the final order, which in my version is PDF page 323 16 if you're trying to follow along online, you made a 17 finding that impacts on a National Historic Oregon 18 Trail Interpretive Center, which everybody calls 19 NHOTIC, were only medium intensity. For the reasons 20 articulated in STOP's and others' closing arguments 21 and for the -- and so aptly demonstrated by Mr. 22 Williams' window view mockup that you were given at 23 your August hearing, STOP strongly disagrees that 24 the intensity finding there should only be medium. 25 We think it should be significant.</p>	<p style="text-align: right;">84</p> <p>1 are, in your final order, granting a variance. 2 We believe that you are committing a legal 3 error by doing that. You should not be granting 4 variance or exceptions. You should be holding Idaho 5 Power to the same standards as every other person, 6 which is to meet those regulations and not have 7 noise fall along the line that exceeds the criteria. 8 Idaho Power has told you before in their 9 materials that if an exception or variance is not 10 granted, they cannot build the line. That's okay. 11 That is what happens if somebody doesn't comply with 12 the law. If I want to build a house and I want to 13 put it too close to the neighbor's property and it's 14 inside the setback that the county requires, I don't 15 get to do that. 16 And so that should be the position that 17 you take with Idaho Power. You should say either 18 meet the rules or don't build the project. We 19 suggest that your findings be amended and revised to 20 state that, that they have to comply. And if they 21 can't, then they'll have to make their own financial 22 choices. 23 Finally, for the reasons that are outlined 24 in our exceptions and closing arguments, we disagree 25 with the finding on page 674 of the final order</p>
<p style="text-align: right;">83</p> <p>1 On noise control, that's going to be my 2 primary focus in your final order at -- the draft at 3 Footnote 725 on page 665, which in my version was 4 PDF 672. You reference a July 2003 DEQ internal 5 management directive. And the draft order then goes 6 on to essentially include an argument that that 7 internal management directive provides a basis for 8 this Council to make and issue exceptions and 9 variances. 10 STOP strongly disagrees. If you actually 11 go look at that internal management directive, it 12 says, "EFSC staff review applications to ensure that 13 proposed facilities meet the state noise 14 regulations." It does not say that they can -- EFSC 15 can create exceptions or grant variances. It says 16 you ensure to meet. 17 You should not be granting variances. 18 Your planning order does so in various places. That 19 authority, as we outline for you in our exceptions, 20 is reserved to the Environmental Quality Commission, 21 and it is reserved by statute. You have no 22 authority to usurp that. 23 The -- even if you have authority to 24 review for compliance with the regulations, only 25 DEQC has authority to grant a variance. And yet you</p>	<p style="text-align: right;">85</p> <p>1 where it concludes that the noise methodology used 2 for excessive noise with reasonable and appropriate 3 and valid. For the reasons we outlined, we don't 4 think it was. 5 Page 684, in note 750, you reference the 6 supplemental monitoring that was conducted. And you 7 state that it didn't invalidate mile post -- excuse 8 me -- Monitoring Point 11. We disagree. For the 9 reasons we outline in our testimony and our closing 10 arguments and our exceptions, we think Monitoring 11 Point 11 was not representative. 12 And on page 694, you reference a finding 13 that foul weather events would be infrequent. As we 14 outlined during our testimony and our closing 15 arguments and our exceptions, that is not true, in 16 our view, for Union County. The -- there will be a 17 13 percent increase that is not, in our view, 18 infrequent. 19 That's all I have in terms of my 20 presentation. As far as questions from the Council, 21 I'm happy to answer them. 22 MR. HOWE: Thank you, Mr. Anuta. 23 Are there questions from Council? 24 (No audible response). 25 MR. HOWE: It doesn't appear so.</p>

<p style="text-align: right;">86</p> <p>1 MR. ANUTA: Can I -- perhaps I could 2 reserve the rest of this time to -- for rebuttal to 3 Idaho Power because I suspect they'll have something 4 to say. 5 MR. HOWE: Okay. I think -- thank you 6 very much. 7 MR. ANUTA: Thank you. 8 MR. CORNETT: Ms. Irene Gilbert? 9 MS. GILBERT: I think you guys can read 10 faster than I can speak. So I'm providing you in 11 writing information that I'm also going to cover. 12 MALE SPEAKER: Thank you. 13 MR. CORNETT: So -- so for the record, 14 Todd Cornett. 15 I wasn't sure what was being handed out. 16 So we're not sure how appropriate it is in terms of 17 this phase of the process so (audio disruption). 18 FEMALE SPEAKER: (Audio disruption.) 19 MR. CORNETT: So I would request that 20 Council not read that yet until legal counsel has a 21 chance to take a look at it. 22 MALE SPEAKER: Okay. 23 MR. ROWE: Ms. Gilbert, do you have this 24 in a format that we could send it to Counsel 25 Ratcliffe as well?</p>	<p style="text-align: right;">88</p> <p>1 MR. RATCLIFFE: So since I don't have the 2 written document in front of me, and my recollection 3 was -- and sorry, this is Jesse Ratcliffe for the 4 purposes of the transcript. So since I don't have 5 those documents in front of me, and my recollection 6 was that the notice was -- said we were -- folks 7 were supposed to provide oral comment either, you 8 know, by filling out -- 9 MR. CORNETT: So excuse me, Jesse. 10 MR. RATCLIFFE: -- everybody showing up -- 11 MR. CORNETT: Can -- can you -- can you 12 lean a little bit in? Once you lean back, we 13 weren't -- we weren't able to hear you. 14 MR. RATCLIFFE: Sure. How's that? And 15 now I look huge, I'm sure. 16 So since my recollection is that the 17 direction to folks was to provide oral testimony, 18 whether that was through a recording or to show up 19 at the hearing or to attend the webinar and do it 20 that way, you know, and because we have limited 21 folks to 10 minutes' worth of material here, my 22 recommendation would be that we, you know, keep this 23 to an oral hearing. 24 I don't know how long Ms. Gilbert's 25 document is. I don't know if that can simply just</p>
<p style="text-align: right;">87</p> <p>1 MS. GILBERT: I can do that on my -- 2 MR. ROWE: That would be -- that would be 3 helpful. He's really the one that should be 4 advising Council on this issue since he's serving as 5 their counsel for this -- this purpose. 6 MR. CORNETT: (Audio disruption.) here. 7 We could move to the webinar in case the next person 8 that's listed on the webinar. 9 So Idaho Power (inaudible) in the room 10 will ultimately want to comment, but they're going 11 to wait until the end. 12 MR. HOWE: Okay. So Mr. Adams, is there 13 people on the webinar or on the phone that would 14 like to comment? 15 MS. GILBERT: (Audio disruption) it's a 16 big process. And they don't even -- aren't even 17 willing to participate. 18 MR. ADAMS: No, no hands raised at this 19 time. 20 MR. HOWE: Okay. And also, no phone, Star 21 3s? 22 MR. ADAMS: No. 23 MR. HOWE: Okay. 24 MALE SPEAKER: Wait for Irene. 25 MR. HOWE: Counsel Ratcliffe?</p>	<p style="text-align: right;">89</p> <p>1 be read into the record so that everyone has an 2 opportunity to hear it. You know, Idaho Power does 3 have an opportunity to comment on the other parties' 4 comments on the material changes as well. And so, 5 you know, having that in written form may make that 6 difficult for folks. 7 So that's my suggestion about how we move 8 forward. Again, I -- I haven't seen that yet. 9 MR. HOWE: It's over 20- -- this is Kent. 10 MR. JENKINS: It's 20- -- 21 or 22 pages. 11 MR. HOWE: Yeah, 21 or 22 pages. It's a 12 lot of testimony in writing. 13 MR. RATCLIFFE: Okay. Yeah. So -- so my 14 suggestion would be that we keep this to oral 15 testimony only. 16 MR. HOWE: Okay. Ms. Gilbert? 17 MS. GILBERT: Okay. 18 MR. HOWE: You've heard that we're 19 accepting oral testimony. 20 MS. GILBERT: Okay. And for the record, 21 I'm unable in ten minutes to respond to most of the 22 material changes, which I object. There is not even 23 a listing with site certificate conditions related 24 to the statutes other than those containing 25 contested case requests.</p>

<p style="text-align: right;">90</p> <p>1 Anyway, multiple site certificate</p> <p>2 conditions are being denied. They were not reviewed</p> <p>3 by Council. And neither of the contested cases is</p> <p>4 not in and of itself, especially given the limited</p> <p>5 scope of the contested cases, address the site</p> <p>6 certificate conditions necessary to approve a site</p> <p>7 certificate.</p> <p>8 And any comments regarding my lack of</p> <p>9 specificity in these comments are referenced by my</p> <p>10 written material that's been previously submitted.</p> <p>11 I have not been provided an opportunity to go to</p> <p>12 review the bulk of the material in the proposed</p> <p>13 order. I do not believe that the limitation on the</p> <p>14 number of "significant changes" that were listed by</p> <p>15 Oregon Department of Energy is inclusive of all the</p> <p>16 significant changes which would -- should be</p> <p>17 reviewed at this point.</p> <p>18 I've heard -- received -- you -- you</p> <p>19 received hundreds of comments from the -- regarding</p> <p>20 Oregon Department of Energy and the Idaho Power</p> <p>21 regarding this application in (indiscernible) that</p> <p>22 ODOE is owned by Idaho Power due to the fact that</p> <p>23 they're paid directly by them. And simply adding</p> <p>24 additional justification to support decisions that</p> <p>25 ODOE has made is not appropriate in this instance</p>	<p style="text-align: right;">92</p> <p>1 certificate absent a preponderance of evidence that</p> <p>2 the (indiscernible) does meet the standard. And</p> <p>3 that standard is required to be determined by the</p> <p>4 Council.</p> <p>5 I know that ODOE keeps referencing the</p> <p>6 fact that Council referred there's no requirements</p> <p>7 to ODOE. It's -- the legislature intended to allow</p> <p>8 ODOE to make the eligibility decisions, which is</p> <p>9 what is occurring if the final plans are not in</p> <p>10 final form. When the site certificate is issued,</p> <p>11 then the Council is advocating the decision-making</p> <p>12 regarding the meaning of the standard, which is</p> <p>13 contrary to state law.</p> <p>14 The -- some of the specific arguments</p> <p>15 regarding -- and, actually, a court case relating to</p> <p>16 this plan issue is Goldberg (phonetic) versus</p> <p>17 Deschutes County, which say -- stated that the plans</p> <p>18 must be in final form, and there must be a right to</p> <p>19 full public participation in those plans.</p> <p>20 If you will notice, the things like with</p> <p>21 historic properties where the plan is not finalized,</p> <p>22 it does not include site-specific impacts or site-</p> <p>23 specific mitigation. That is inconsistent with the</p> <p>24 requirements of the -- the rules and the statutes.</p> <p>25 And when it comes to -- anyway, the buyer</p>
<p style="text-align: right;">91</p> <p>1 and especially since Council did not review those</p> <p>2 issues to determine if they are, in fact, accurate.</p> <p>3 I actually question the -- how the Council</p> <p>4 is reaching the (indiscernible) skills and abilities</p> <p>5 to review some of these technical issues that would</p> <p>6 be required to review. And that's not -- that isn't</p> <p>7 any kind of divisive statement. It's just a</p> <p>8 statement of fact.</p> <p>9 I spent the last 12 years reviewing</p> <p>10 statutes and rules. And I can tell you that I am</p> <p>11 confident saying that I have a better grasp of the</p> <p>12 statutes, rules, and court decisions than any of the</p> <p>13 Councilmembers. Unfortunately, the only member here</p> <p>14 who probably will be present when the results of</p> <p>15 these decisions come to (indiscernible) will be</p> <p>16 Hanley Jenkins. But the rest of you will, no doubt,</p> <p>17 be gone from the Council because this is going to</p> <p>18 impact many, many years of litigation.</p> <p>19 In all of the instances where site</p> <p>20 certificates were approved with only a draft plan,</p> <p>21 that is inconsistent with the statute that requires</p> <p>22 the final draft plan be included with the site</p> <p>23 certificate. And any time the draft plan does not</p> <p>24 fully implement the requirements of the rule, the</p> <p>25 site certificate is actually authorizing the site</p>	<p style="text-align: right;">93</p> <p>1 for Public Services Condition 2 for multiple</p> <p>2 instances, any instance where the final plan does</p> <p>3 not show a preponderance of evidence, it shows that</p> <p>4 the standard is being that the Council is delegating</p> <p>5 authority illegally based on the statutes.</p> <p>6 And they would have -- they would removed</p> <p>7 or changed the rules that say that Council is the</p> <p>8 party who must make the determination if they</p> <p>9 intended Council to be able to send that to the</p> <p>10 Department.</p> <p>11 So with the bond, the arguments have all</p> <p>12 been related to only a part of the statute or rule.</p> <p>13 Idaho Power and ODOE keep talking about the fact</p> <p>14 that the Council was fine that the applicant has a</p> <p>15 reasonable likelihood of obtaining a bond or the</p> <p>16 credit that are satisfactory to the Council. But</p> <p>17 they omit the rest of the sentence, which is "to</p> <p>18 restore the site to a useful, nonhazardous</p> <p>19 condition."</p> <p>20 So my question is: Is the Council willing</p> <p>21 to swear that \$1 bond amount is an amount that you</p> <p>22 believe is adequate to restore the site to a useful,</p> <p>23 nonhazardous condition? Because certainly that's</p> <p>24 going to be a question that you'll be -- you have to</p> <p>25 answer, I guess, by court if you -- if you don't</p>

<p style="text-align: right;">94</p> <p>1 change the -- the bond requirement.</p> <p>2 The -- in terms of the noise rules, the</p> <p>3 noise rules are broken down to the extent that none</p> <p>4 of the issues can be fully covered. The courts have</p> <p>5 said that, in contested cases, the -- the scope of</p> <p>6 the contested case issue cannot be so narrow that it</p> <p>7 excludes arguments related to the issue, which is</p> <p>8 what has occurred multiple times in this -- in these</p> <p>9 contested case decisions.</p> <p>10 Also, for the noise rules, this -- the</p> <p>11 statute says the environmental -- Department of</p> <p>12 Environmental Quality is required by statute to</p> <p>13 determine the equipment, the location of monitoring,</p> <p>14 methodologies, or interpretation of results. There</p> <p>15 is no documentation that the methods, location,</p> <p>16 interpretation of results that were used by Idaho</p> <p>17 Power and approved by ODOE actually are consistent</p> <p>18 with that statute.</p> <p>19 And in review of the court -- court</p> <p>20 decisions, there are multiple locations that say</p> <p>21 that no agency has the authority to interpret the</p> <p>22 rules of another agency. They are -- they are given</p> <p>23 deference when it comes to interpretation of the</p> <p>24 rules and standards, statutes (indiscernible) by</p> <p>25 that agency. And even that has some limitations on</p>	<p style="text-align: right;">96</p> <p>1 our filing with the Oregon -- the Land Use -- LCDC,</p> <p>2 a public complaint, and requirement that LCDC deal</p> <p>3 with Union County's failure to apply the state laws</p> <p>4 regarding definition of "forest land." You'll see</p> <p>5 that as an appeal here.</p> <p>6 You -- I also am questioning because there</p> <p>7 are owners of forested land who is -- where it's</p> <p>8 being called agricultural land where mitigation is</p> <p>9 not going to be consistent with what it should be.</p> <p>10 Who will be the recipient of litigation when</p> <p>11 property owners say that, because of decisions that</p> <p>12 ODOE and EFSC made to allow the developer to call</p> <p>13 forested land agricultural land not deal with --</p> <p>14 with the rules regarding forest land --</p> <p>15 MR. HOWE: Ms. Gilbert?</p> <p>16 MS. GILBERT: Yes.</p> <p>17 MR. HOWE: Time's up.</p> <p>18 MS. GILBERT: Who's going to be sued?</p> <p>19 Someone's going to be sued.</p> <p>20 Anyway, I -- I encourage you to read my</p> <p>21 (inaudible) determination request. It's clear that</p> <p>22 most of you have relied on (inaudible) Department of</p> <p>23 Energy, have not read the actual --</p> <p>24 MR. HOWE: Thank you for your testimony.</p> <p>25 Is there --</p>
<p style="text-align: right;">95</p> <p>1 it because, for instance, the statute or rule has to</p> <p>2 be -- it has to not be clear what the statute or</p> <p>3 rule is saying. And so there are more than one</p> <p>4 reason the Oregon Department of Energy should not be</p> <p>5 recommending changes to other agency rules.</p> <p>6 Let's see. Oh, on noise, another thing is</p> <p>7 Patrick Rowe provided a document that -- from the</p> <p>8 legislature which specifically says that the noise</p> <p>9 rules do not preclude the opportunity for the public</p> <p>10 to file a civil action against people who are</p> <p>11 exposing them to -- or to excess noise.</p> <p>12 So my question is: There are going to be</p> <p>13 people among that 41 who will be, from what I can</p> <p>14 tell, who have the intent to file for damages based</p> <p>15 on noise. And the question that, hopefully, your</p> <p>16 legal counsel will answer is the: Does your</p> <p>17 authorization of an exception and to these rules</p> <p>18 mean that Idaho Power is no longer liable for the</p> <p>19 damages? Does that mean that the State of Oregon is</p> <p>20 personally -- is, as an agency, responsible for</p> <p>21 these impacts when the citizens actually do file for</p> <p>22 civil damages? So I -- I would think you would want</p> <p>23 to determine that before you allow an exception.</p> <p>24 Let's see. The other thing is, on the</p> <p>25 forest definition, I provided that we haven't seen</p>	<p style="text-align: right;">97</p> <p>1 MS. GILBERT: Thank you.</p> <p>2 MR. HOWE: -- comments or questions --</p> <p>3 MS. GILBERT: Oh, yes.</p> <p>4 MR. HOWE: -- Ms. Gilbert from the</p> <p>5 Council?</p> <p>6 MS. GILBERT: I'm happy to. Yes.</p> <p>7 MR. HOWE: Councilor --</p> <p>8 MS. CONDON: Cindy Condon, for the record.</p> <p>9 A question for you with respect to your</p> <p>10 comment regarding material that Mr. Rowe provided</p> <p>11 that doesn't include --</p> <p>12 MS. GILBERT: Right.</p> <p>13 MS. CONDON: -- the 41 from -- from</p> <p>14 challenging and --</p> <p>15 MS. GILBERT: Right.</p> <p>16 MS. CONDON: It's not clear to me why you</p> <p>17 relate the State of Oregon would be the responsible</p> <p>18 party as opposed to Idaho Power.</p> <p>19 MS. GILBERT: Okay. Because the Oregon</p> <p>20 Department of Energy in the State of Oregon have --</p> <p>21 are proposing that they allow an exemption from</p> <p>22 Idaho Power meeting the requirements of the Oregon</p> <p>23 statutes and rules regarding noise generation.</p> <p>24 So if the state has allowed the -- this</p> <p>25 exception, then who would be the target of -- of</p>

<p style="text-align: right;">98</p> <p>1 litigation, given that the legislature has said that</p> <p>2 the noise rules have no impact on the fact that</p> <p>3 citizens can't file a civil action when they are</p> <p>4 exposed to noise above the standard?</p> <p>5 So I'm -- I'm guessing that Idaho Power is</p> <p>6 going to argue that ODOE is responsible for this</p> <p>7 because you allowed them to do it. So why should</p> <p>8 they be held accountable for the outcome? That's</p> <p>9 the thinking.</p> <p>10 And I would think you would want legal</p> <p>11 (inaudible).</p> <p>12 MS. CONDON: Thank you.</p> <p>13 MS. GILBERT: Anything else?</p> <p>14 MR. HOWE: Any other questions?</p> <p>15 (No audible response).</p> <p>16 MR. HOWE: Okay. Thank you, Ms. Gilbert.</p> <p>17 So Mr. Secretary is there anyone else in</p> <p>18 the room that would like to comment?</p> <p>19 MR. CORNETT: Mr. Vice Chair, nobody on</p> <p>20 the line or on the phone. So that leaves it to</p> <p>21 Idaho Power.</p> <p>22 MR. HOWE: Okay. Ms. Pease?</p> <p>23 MS. PEASE: Thank you. Good morning, Vice</p> <p>24 Chair Howe and Councilmembers, Secretary Cornett.</p> <p>25 For the record, my name is Jocelyn Pease.</p>	<p style="text-align: right;">100</p> <p>1 And ODOE, along with the state and local reviewing</p> <p>2 agencies, has spent countless hours reviewing the</p> <p>3 exhibits to the allocation for site certificate and</p> <p>4 participating in meetings to review (indiscernible)</p> <p>5 the analysis in those exhibits and the related</p> <p>6 construction and mitigation plans.</p> <p>7 Ms. Gilbert had commented that some of</p> <p>8 those mitigation plans are in draft form and will be</p> <p>9 finalized. And that approach is consistent with the</p> <p>10 Council's rules. That -- and -- and in -- in most</p> <p>11 cases, the draft plan includes a process at the</p> <p>12 front end for finalizing and vetting those plans</p> <p>13 with the -- the -- the agencies.</p> <p>14 And that's all to say that, through this</p> <p>15 -- through this effort, through this years-long</p> <p>16 process, ODOE and reviewing the agencies provided</p> <p>17 important feedback that substantively contribute to</p> <p>18 the plans that are included as the attachments to</p> <p>19 the draft final order.</p> <p>20 I'd also like to recognize the involvement</p> <p>21 of the participants in the contested case</p> <p>22 proceeding. Although the parties have objected to</p> <p>23 certain elements of the proposed order, they had the</p> <p>24 opportunity to voice their concerns in the contested</p> <p>25 case process.</p>
<p style="text-align: right;">99</p> <p>1 I'm here today on behalf of Idaho Power Company.</p> <p>2 I'd like to begin by first noting that</p> <p>3 Idaho Power does not have any opposition to the</p> <p>4 material changes that were included in the draft</p> <p>5 final order. And we'd like to also recognize the</p> <p>6 hard work that the Council, ODOE, and all of the</p> <p>7 reviewing agencies have put into this project for</p> <p>8 the past 10 years.</p> <p>9 There's been a lot of recent focus in this</p> <p>10 contested case proceeding -- sorry -- there's been a</p> <p>11 lot of recent focus on the contested case proceeding</p> <p>12 and the outcome of that proceeding. But I'd like to</p> <p>13 also emphasize the B2H project has a long history</p> <p>14 even before the contested case began.</p> <p>15 Ms. Gilbert shared some comments about</p> <p>16 ODOE not necessarily having technical expertise in</p> <p>17 connection with all of the subject matter that the</p> <p>18 application might address. But I would like to also</p> <p>19 note there had been many rounds of review -- review</p> <p>20 requests for additional information and</p> <p>21 collaborative work with ODOE and the reviewing</p> <p>22 agencies that contributed to the development</p> <p>23 application for site certificate.</p> <p>24 It has taken a considerable amount of time</p> <p>25 and resources and hard work to get to this point.</p>	<p style="text-align: right;">101</p> <p>1 During the course of the two-year-long</p> <p>2 contested case, Idaho Power voted to further analyze</p> <p>3 the contested case issues raised by limited parties</p> <p>4 and were warranted provided additional analysis and</p> <p>5 revised condition plan language. That's just one</p> <p>6 example on many.</p> <p>7 For the recreational analysis, the limited</p> <p>8 parties have raised concerns about potential impacts</p> <p>9 --</p> <p>10 (Simultaneous speaking.)</p> <p>11 MS. PEASE: -- and Morgan Lake Park. In</p> <p>12 response to those concerns, Idaho Power provided a</p> <p>13 supplemental analysis and, in fact, expanded its</p> <p>14 proposed mitigation and -- to use the shorter H-</p> <p>15 frames in that area. And the -- this change is</p> <p>16 reflected in material change to Recreation Condition</p> <p>17 1, and Idaho Power supports that change.</p> <p>18 As shown in the staff report, there were</p> <p>19 also numerous other such changes, which Idaho Power</p> <p>20 also supports. As a result of this process, the</p> <p>21 Council has a robust record before it on which it</p> <p>22 can approve the final order and the site certificate</p> <p>23 for B2H.</p> <p>24 B2H project was first proposed over 10</p> <p>25 years ago but is needed now more than ever. Once</p>

<p style="text-align: right;">102</p> <p>1 operational, the project will help make the Pacific 2 Northwest and (indiscernible) west cities needs for 3 reliable, low-cost market energy purchases year- 4 round. It is expected to provide a total of 2,050 5 megawatts of bidirectional capacity. 6 It will provide many benefits, including 7 greater access to the Pacific Northwest electric 8 market, improve system reliability resiliency, 9 reduce capacity limitations on the regional 10 transmission system, (indiscernible) flexibility to 11 integrate renewable resources and more efficiently 12 implement its market tools, such as the energy and 13 balance movement. 14 Importantly, the development of the B2H 15 project will meet critical need for transmission 16 capacity in the Oregon Northwest region and will 17 help enable the State of Oregon to meet its clean 18 energy and climate goals. Among the benefits B2H 19 project will provide is the ability to integrate 20 renewable resources more efficiently. 21 Now, in -- in connection with some of the 22 comments that folks have shared today, I wanted to 23 specifically address the comments from STOP B2H 24 regarding the Soil Protection Condition 4. They're 25 asserting they had expressed concern of our use of</p>	<p style="text-align: right;">104</p> <p>1 I -- in connection with Ms. Gilbert's comments, as I 2 mentioned earlier, she expressed concerns about 3 whether there's technical expertise. And as I 4 mentioned, ODOE has also been supported by reviewing 5 agencies and consultants throughout this process. 6 And the Council should feel comfortable that there's 7 been a substantial and thorough vetting of the 8 allocation for site certificate in this case. 9 Ms. Gilbert had also expressed concern 10 about the time available to review the material 11 changes. As -- as was explained by staff and 12 Counsel Ratcliffe today, the material changes were, 13 in fact, quite discreet. And we believe that there 14 was ample time to review those -- those changes. 15 In -- in connection with Ms. Gilbert's 16 comments regarding the retirement and financial 17 assurances condition, the Council has -- has 18 revisited that condition and has -- has included 19 revised language that will provide the -- the 20 Council the opportunity that determines the risks -- 21 that there is some amount of risk. But it may 22 require the bond amount sooner than is contemplated 23 otherwise in that condition, which we believe 24 adequately addresses the concerns raised by Ms. 25 Gilbert.</p>
<p style="text-align: right;">103</p> <p>1 the word "solely" in that condition. 2 And -- and Idaho Power would be open to 3 different language, such as "caused by" so that the 4 -- the condition language is clear that the -- the 5 impacts that are claimed and for which damages may 6 be sought are in connection with the project. 7 I -- I'd say we're fine with the language 8 as it stands right now. That's our understanding of 9 how the condition would operate. But if the Council 10 are inclined to make a change, we would be 11 comfortable with changing "solely" to something like 12 "caused by" so there's still a clear (audio 13 disruption) with the project. 14 Mr. Anuta also raised a number of concerns 15 regarding the noise-related issues and regarding the 16 findings in connection with the (indiscernible). 17 And in response to those concerns, I would 18 just say these -- these issues have been addressed 19 in testimony and extensively briefed on the record 20 in this contested case. And we believe that the -- 21 the evidence in the record supports the findings 22 that are in the draft -- I'm sorry -- in the draft 23 final order. And the -- the Council can be 24 comfortable in -- in supporting the final order. 25 In connection with Ms. Gilbert's comments,</p>	<p style="text-align: right;">105</p> <p>1 With that, I would conclude my remarks. 2 And thank the Council for their engagement and 3 attention in this matter and, again, thank ODOE and 4 the reviewing agencies and stakeholders who 5 participated in this case and ask that the Council 6 approve the final order and site certificate 7 beginning today. 8 Thank you. 9 MR. HOWE: Questions from Council? 10 MR. JENKINS: Jocelyn, before you -- 11 MR. HOWE: Councilor Jenkins? 12 MR. JENKINS: Yeah. Ms. Pease, so you 13 agree that there's an opportunity to replace the 14 word "solely" in the Soil Protection Condition 15 number 4 with the words "caused by." So the 16 certificate holder shall compensate the landowner 17 for adequate repair or replacement if damages to the 18 flow or quality of the natural spring or well is 19 caused by blasting? 20 MS. PEASE: It -- 21 MR. JENKINS: Is that -- 22 MS. PEASE: Yeah -- 23 MR. JENKINS: Is that what -- 24 MS. PEASE: -- by -- by blasting in 25 connection with the project. And I think that's</p>

<p style="text-align: right;">106</p> <p>1 right. I apologize. It's not a precise --</p> <p>2 MR. JENKINS: Right.</p> <p>3 MS. PEASE: -- precise --</p> <p>4 MR. JENKINS: Replacement.</p> <p>5 MS. PEASE: -- (inaudible).</p> <p>6 MR. JENKINS: Thank you.</p> <p>7 MR. HOWE: Any other questions?</p> <p>8 Councilor Condon?</p> <p>9 MS. CONDON: Question just to follow up</p> <p>10 there. So do you believe there's a significant</p> <p>11 difference between "solely" and "caused by"?</p> <p>12 MS. PEASE: I -- I understood Mr. Anuta's</p> <p>13 point to be a concern that we were shifting a burden</p> <p>14 onto the landowner, that they -- they would somehow</p> <p>15 have to prove that the only contributing factor to</p> <p>16 -- to the damages would be the blasting to the</p> <p>17 exclusion of any other factors.</p> <p>18 And I think we understand and would agree</p> <p>19 that, if there is damage that is caused by the</p> <p>20 project, and that can be shown to be caused by the</p> <p>21 project, that that would be sufficient. So I -- I</p> <p>22 do think that there is a distinction there.</p> <p>23 MS. CONDON: Okay. Thank you.</p> <p>24 I have a question just --</p> <p>25 MR. HOWE: Okay.</p>	<p style="text-align: right;">108</p> <p>1 (No audible response).</p> <p>2 MR. HOWE: Okay. Thank you, Ms. Pease.</p> <p>3 MS. PEASE: Thank you.</p> <p>4 MR. HOWE: So that closes the hearing, the</p> <p>5 material change hearing. And so now we're at the</p> <p>6 last portion of the agenda item. And I think we're</p> <p>7 ready for Mr. -- or Counsel Ratcliffe to walk us</p> <p>8 through the hearing to adopt the final order.</p> <p>9 MR. HOWE: We can't --</p> <p>10 MR. RATCLIFFE: Sorry.</p> <p>11 MR. HOWE: Oh, there we go.</p> <p>12 MR. RATCLIFFE: I think I know better by</p> <p>13 now.</p> <p>14 So one clarification -- this is Jesse</p> <p>15 Ratcliffe, for the record -- one clarification -- so</p> <p>16 we have that -- that language changed to "is caused</p> <p>17 by." And perhaps I just wasn't hearing very well,</p> <p>18 but I just wanted to make sure that that was</p> <p>19 something that we had a head nod on that we were</p> <p>20 including in the final draft here.</p> <p>21 MR. HOWE: I don't think we formally did</p> <p>22 that. So let's see if there is head not agreement</p> <p>23 that word change from "solely" to "caused by" on</p> <p>24 Condition 4 of the Soil Protection standard.</p> <p>25 MS. GILBERT: This is a significant change</p>
<p style="text-align: right;">107</p> <p>1 MS. CONDON: -- related to Ms. Gilbert's</p> <p>2 -- Cindy Condon, for the record -- so related to my</p> <p>3 question to Ms. Gilbert with respect to the</p> <p>4 exception in the draft --</p> <p>5 MALE SPEAKER: Right.</p> <p>6 MS. CONDON: -- right of -- of some --</p> <p>7 more than 41 to -- to sue. I'm curious what your</p> <p>8 thoughts would be with respect to any exception, and</p> <p>9 whether that really shifts the burden to the state</p> <p>10 as opposed to Idaho Power.</p> <p>11 MS. PEASE: I -- I would need to check</p> <p>12 with my team on that. And I could get back to you</p> <p>13 on a verdict there. I'm not sure that we have an</p> <p>14 official comment on that issue. I'm just, actually,</p> <p>15 going to beckon her and and get back to you.</p> <p>16 MR. HOWE: So while they're conferring,</p> <p>17 nobody's on the line. And (audio disruption) --</p> <p>18 MR. CORNETT: I think at this point --</p> <p>19 just in case.</p> <p>20 MR. HOWE: Yeah. Okay.</p> <p>21 MS. PEASE: Thank you for that break.</p> <p>22 I understand we do not have a position on</p> <p>23 that yet.</p> <p>24 MS. CONDON: Okay. Thank you.</p> <p>25 MR. HOWE: Any other questions?</p>	<p style="text-align: right;">109</p> <p>1 we should be allowed to respond to.</p> <p>2 MR. HOWE: Any --</p> <p>3 MR. JENKINS: So this is Hanley. And I</p> <p>4 think -- is the word "is" still part of that?</p> <p>5 Natural spring --</p> <p>6 MR. RATCLIFFE: It looks like it might</p> <p>7 need to be an "are" there.</p> <p>8 MR. JENKINS: Flow or quality of the</p> <p>9 natural spring or well -- I think it should be just</p> <p>10 -- just "caused by blasting." There you go.</p> <p>11 MR. RATCLIFFE: Councilmember Jenkins, I</p> <p>12 think -- so it's -- if -- if damages to the flow or</p> <p>13 quality of the natural spring or well, and then I</p> <p>14 think that should probably be "are caused by</p> <p>15 blasting" --</p> <p>16 (Simultaneous speaking.)</p> <p>17 MR. HOWE: Councilor Beier?</p> <p>18 MS. BEIER: Thank you. This is Ann Beier,</p> <p>19 for the record.</p> <p>20 I think "caused by" is a much better term</p> <p>21 than "solely," and I think it does address the</p> <p>22 issue. It -- it does still suggest a burden on the</p> <p>23 property owner on establishing that causal</p> <p>24 relationship.</p> <p>25 That having been said, I don't have better</p>

<p style="text-align: right;">110</p> <p>1 language. I think it is better than "solely." I 2 thought about "related to," but that's kind of 3 squishy. I think we get into squishiness. But I 4 think "caused by" is less of a burden than "solely," 5 so just for the record. 6 MR. HOWE: Okay. Do we -- Councilor 7 Condon? 8 MS. CONDON: Thank you. Cindy Condon, for 9 the record. 10 I agree with what Councilmember Beier 11 said. It -- is it (audio disruption) that "caused" 12 does -- 13 MS. BEIER: Yeah. 14 MS. CONDON: It's not much different than 15 "solely" to me. I was wondering if "impacted by" -- 16 MR. TRUITT: As a result of? 17 MS. CONDON: I guess we -- and I -- I'm 18 not there with blasting. But it seems to me that 19 action by the property owner might have some cause. 20 But if the blasting made wells collapse or -- or 21 springs collapse, the -- the -- I mean, it seems 22 like the applicant could say, well, it wasn't caused 23 -- it -- it wasn't caused by us. 24 MS. BEIER: Yeah. 25 MS. CONDON: So ...</p>	<p style="text-align: right;">112</p> <p>1 process. So ... 2 MR. JENKINS: Yeah. Does that -- 3 (Simultaneous speaking.) 4 MS. CONDON: Yes. 5 MR. HOWE: -- that terminology "caused 6 by"? 7 MS. CONDON: Yes. Thank you. 8 MR. HOWE: Okay -- 9 MR. CORNETT: Mr. Vice Chair, just one 10 more, so procedural -- so Jesse, this is for you. 11 So this change was made during the material change 12 hearing. Does this change itself constitute the 13 material change necessitates some ability to 14 respond? And I'll look at Jesse to answer that 15 question. 16 MR. RATCLIFFE: Yes. Thank you, Secretary 17 Cornett. 18 So I -- I admit I can't remember the 19 terminology that was suggested by Mr. Anuta. I 20 think if we -- if there was some difference between 21 that and what Ms. Pease suggested, it would be fine 22 to have Mr. Anuta just weigh in with his thoughts 23 here. And -- and, again, if -- if this is pretty 24 much the same language, well, then we're all fine. 25 But if there's a difference, I think it's fine to</p>
<p style="text-align: right;">111</p> <p>1 MR. JENKINS: So this is Hanley. What 2 we've done is we set up a process on where, if 3 there's risk, there is a front-end evaluation done. 4 That's the first part -- 5 MS. BEIER: Before and after. 6 MR. JENKINS: You do a before assessment. 7 MS. CONDON: Yeah. 8 MR. JENKINS: And so the presumption here 9 is that there has to be an after assessment after 10 the blasting, presumably close to after the 11 blasting. And so that's the "caused by" effect. 12 And I don't know how, without prescribing 13 a very elaborate process, to do that. I think a 14 negotiation between the applicant and the landowner 15 will evaluate whether the cause was from blasting. 16 MR. CORNETT: Mr. Vice Chair -- for the 17 record, Todd Cornett -- and since this is a 18 condition of approval, is there -- if there is 19 disagreement, that could ultimately come to the 20 Council for your evaluation. And so evidence and 21 facts would be presented by both the landowner and 22 Idaho Power to ultimately. And maybe it would go to 23 staff. Maybe we would bring it up to counsel. But 24 ultimately, it could go to Council for your 25 evaluation on that without describing the specific</p>	<p style="text-align: right;">113</p> <p>1 have him give his thoughts. 2 MR. HOWE: Mr. Anuta? 3 MR. ANUTA: I'm happy to address that. 4 MR. HOWE: Council, shall we limit the 5 comments to three minutes or -- 6 MR. JENKINS: Yeah. I would suggest we 7 limit to three minutes. I think we're being very 8 generous here because the -- the issue is whether or 9 not this is a material change. And the definition 10 of "material change" is a substantive change. I'm 11 not sure that the difference between "caused by" and 12 "solely" is -- really is that material. But I would 13 be happy to let Mr. Anuta -- 14 MR. HOWE: Yeah. 15 MR. JENKINS: -- get his three minutes. 16 MR. HOWE: Is the Council comfortable with 17 three-minute time limit? 18 (No audible response). 19 MR. HOWE: Okay. Just a minute. 20 MR. JENKINS: Perry's got his -- nodding 21 his -- his head, too. So ... 22 MR. HOWE: Okay. Thank you, Councilor 23 Chocktoot. 24 MR. ANUTA: Councilmembers, Karl Anuta 25 representing STOP B2H.</p>

<p style="text-align: right;">114</p> <p>1 My suggestion had been to simply remove 2 the word "solely" so that the sentence would read 3 "will occur as a result of." This change proposed 4 by Idaho Power to "caused by," assuming that you are 5 adopting the common law definition of "caused by" to 6 mean is a significant material factor in the change, 7 then we're fine with that because it's -- it -- that 8 is a normal standard of proof in any proceeding. 9 That would be the standard you would have to apply 10 if this dispute came back before you, is the -- is 11 it a significant contributing factor. That's what 12 "cause" is usually interpreted by the courts to 13 mean. 14 So using that definition, we will be 15 acceptant of the changes that Idaho Power 16 (inaudible). 17 MR. HOWE: Thank you. 18 MS. BEIER: Thank you. Very helpful. 19 MR. HOWE: Okay. Do we need to have -- 20 MR. CORNETT: I think (audio disruption) 21 to Jesse to see if -- 22 MR. HOWE: Yeah. 23 MR. CORNETT: -- other parties are 24 accorded the same ability to respond. 25 MR. HOWE: Yeah. Counsel Ratcliffe, do we</p>	<p style="text-align: right;">116</p> <p>1 litigation issues occurring around wind farms where 2 the vibration of the wind farms is causing long-term 3 damages to wells and springs, which aren't even 4 obvious until several years down the line. 5 So I think that the -- the reference 6 regarding "caused by" needs to make it clear that 7 these impacts aren't being assessed immediately 8 after the blasting occurs, that they may occur 9 sooner or later in the process. 10 So that would be my comment regarding 11 this. Thank you. 12 MR. HOWE: Thank you. 13 Any questions? 14 MS. CONDON: Yes. 15 MR. HOWE: Question or comment? 16 MS. CONDON: So because the -- I'm Cindy 17 Condon, for the record -- because the language is 18 silent as to timing, does that not work? That -- I 19 mean, there's no time limit. 20 MS. GILBERT: Well, I think Hanley Jenkins 21 stated that the evaluation would occur shortly after 22 the blasting occurred. And if that's an 23 interpretation that can be made based on the 24 language of this, then I don't think that's an 25 appropriate interpretation. And I think it's a</p>
<p style="text-align: right;">115</p> <p>1 need Idaho Power to have an opportunity to comment 2 there? 3 MR. RATCLIFFE: So I -- I think we've, you 4 know, reached agreement on this. I don't know that 5 there's anything that we need to hear from Idaho 6 Power again. I -- you know, again, I'll leave it up 7 to the Council. It sounds like we were kind of 8 coalescing around that phrasing. I -- I think if 9 that's where we've landed, then that -- that's fine. 10 MR. HOWE: Okay. Let's do -- oh, Ms. 11 Gilbert -- 12 MS. GILBERT: This is -- 13 MR. HOWE: -- you have an opportunity -- 14 MS. GILBERT: -- a significant change I 15 would like to comment on. 16 MR. HOWE: Okay. You've got three 17 minutes. 18 Can you get the timer up? 19 Hold on for just a minute until the 20 clock's going. Okay. 21 MS. GILBERT: I agree that the change from 22 "solely" to "caused by" is an improvement. However, 23 many of the impacts that occurs as a result of 24 blasting occur many months or sometimes years down 25 the road. I know there are currently several</p>	<p style="text-align: right;">117</p> <p>1 legal standing needs to make it clear that this is 2 not an immediate impact issue. It may be a long- 3 term impact. 4 And as long as the property owner can show 5 causality, i.e., the blasting, blasting often is 6 going to disrupt the -- the -- the structure of the 7 soils. And in the long term, it may end up that 8 that -- that destruction of soil structure may 9 create a situation where wells are -- are either 10 polluted or -- or they quit working entirely. 11 I know in the Columbia Basin there are 12 lots of concerns because of the stratosphere. The 13 nature of water is you may cut through -- or there 14 may be a break between one section of water and 15 another where -- where (audio disruption) stand up 16 and dispersing, and that can occur over a long term 17 when it comes to damages to rock. 18 MS. CONDON: Thank you. 19 MR. HOWE: Any other questions of Ms. 20 Gilbert? 21 (No audible response). 22 MR. HOWE: Okay. Thank you. 23 MS. GILBERT: Mm-hmm. 24 MR. HOWE: Counsel Ratcliffe, so does that 25 change? Do we need a head nod or actual vote --</p>

<p style="text-align: right;">118</p> <p>1 polling of the Council for the changing "solely" to 2 "caused by"? 3 MR. RATCLIFFE: I -- I think at this point 4 we're (audio disruption) just in head nods. And I 5 think we're going to move on to the -- the final 6 motions here. 7 MR. HOWE: Council good? 8 MALE SPEAKER: Yes. 9 MS. CONDON: Just a -- 10 MR. HOWE: Councilor Condon? 11 MS. CONDON: Cindy Condon. 12 Just -- just a comment, I guess, different 13 from Councilmember Jenkins that I believe because 14 the language is silent that it is open-ended. So 15 ... 16 MS. BEIER: Yeah. 17 MR. JENKINS: Yep. 18 MR. HOWE: And okay. We've got head nods 19 here. 20 Councilor Chocktoot? 21 Got a head nod there, so unanimous. 22 Counsel Ratcliffe, so I guess if you could 23 walk us through the -- the next portion of adopting 24 the final order. 25 MR. RATCLIFFE: Sure. Okay. And so if we</p>	<p style="text-align: right;">120</p> <p>1 complies with the requirements of the Siting Council 2 statutes, what the standards adopted by the Council, 3 and with all other Oregon statutes and 4 administrative rules identified in the second 5 amended project order. And because -- again, with 6 the way this is written, because it has satisfied 7 these requirements, that a site certificate can be 8 issued. 9 The final component here is that the Chair 10 executes the certificate authorizing the applicant 11 to construct, operate, and retire the facility 12 subject to the conditions set forth in the site 13 certificate. 14 So that is the decision that you have 15 before you as reflected in the draft final order. 16 Again, we've made a couple of changes here based on 17 the material change hearing. Those will be 18 reflected in an updated version. And that updated 19 version will be the one that the Vice Chair in this 20 case would be executing. 21 And so that then could be the basis of a 22 motion to approve. And you also have the -- the 23 chance at this point to have, you know, any -- any 24 further deliberation in relation to a potential 25 motion here on a final decision.</p>
<p style="text-align: right;">119</p> <p>1 have the statutes pulled up here and -- that 2 provides that -- well, where I'll start with is that 3 the language kind of halfway down the Council -- 4 whoa, okay. 5 Thank you. 6 So it says the Council may amend or reject 7 the proposed order, so long as the Council provides 8 public notice of its hearing, provides an 9 opportunity for the applicant and any party to 10 comment on material changes. So that's what we've 11 just done. 12 And -- and so then that brings us now to 13 the -- the Council is to either approve or reject an 14 application for the site certificate. And now we 15 can go on to the next slide. 16 And so what's being pulled up here is a 17 part of the draft final order. And this is the part 18 of the draft final order that is -- you know, that 19 -- the operative part in the end. So these are the 20 findings that the Council would be making there 21 referred to in administrative laws the ultimate 22 findings that are necessary to support the order. 23 So the draft that you have before you 24 finds the preponderance of evidence on the record 25 supports that the proposed transmission line</p>	<p style="text-align: right;">121</p> <p>1 MR. HOWE: Thank you, Counsel Ratcliffe. 2 Questions of counsel? 3 Councilor Condon? 4 MS. CONDON: Cindy Condon, for the record. 5 And Jesse, I -- I'm not sure if this is 6 appropriate right now. But I am curious if you have 7 any comments with respect to the question about 8 exemptions that we make, that the order makes or -- 9 and the liability for becoming the state's 10 responsibility as opposed to the applicant's. 11 MR. RATCLIFFE: And -- and so this is in 12 relation to -- 13 MS. CONDON: The -- the noise -- 14 MR. RATCLIFFE: -- the varying -- 15 MS. CONDON: Oh, sorry. 16 MR. RATCLIFFE: -- to the noise variances. 17 Yeah. So you know, I am not prepared to give legal 18 advice on that topic. You know, the -- the state's 19 position is going to be that that lies with Idaho 20 Power, but I don't have any more detailed analysis 21 to be able to provide on that one at this time. 22 MS. CONDON: Thank you. 23 MR. HOWE: Okay. Any other questions of 24 Counsel Ratcliffe? 25 (No audible response).</p>

<p style="text-align: right;">122</p> <p>1 MR. HOWE: Are we ready to move into 2 someone making a motion? Or do you want to have a 3 little deliberation before that's done? What is the 4 Council's pleasure on this? 5 MS. BEIER: Chair Howe? 6 MR. HOWE: Councilor Beier? 7 MS. BEIER: I would just like to thank the 8 Department first, Idaho Power for being responsive 9 to so many other concerns raised by the public. The 10 public has done 10 years of work helping to shape 11 this process. This would have been a very different 12 decision with many fewer conditions without that 13 public process and without the Department and Idaho 14 Power working together to respond. 15 I know that you can never make a decision 16 like this that makes everybody happy that addresses 17 every concern that's been raised. But for as long 18 as this process has been going on, I think there's 19 been a lot of goodwill to come up with a good 20 decision -- so just recognizing the efforts of 21 everybody -- heavy, heavy lift. 22 And then Jesse, just a quick question: To 23 make it explicit that the Council does have the 24 statutory authority to delegate to the Department 25 the review of many of these plans because there's a</p>	<p style="text-align: right;">124</p> <p>1 that the motion is explicitly clear. 2 So I don't know if your motion -- I mean, 3 I -- I don't know where Council is going to go with 4 this, but we want to make sure that, you know, it's 5 explicitly clear. I'm not sure that, like, the -- 6 the proposed motions have all of that information 7 that the Council may -- so it may be worthwhile to 8 have a conversation. And if, you know, where you 9 want to go is not absolutely correct in the draft 10 motions, we can take a pause and make sure that it 11 is. 12 MR. JENKINS: Or I can -- or I can make 13 the motion and get a second. And we can amend it if 14 we need to. 15 MR. CORNETT: That works, too. 16 MR. JENKINS: Okay. 17 MR. HOWE: And the -- this is Kent. So 18 before you do that, Councilor Jenkins, I just wanted 19 to echo what Councilor Beier said as far as the 20 process up to this point of the last over a decade. 21 It had resulted in the Council listening to the -- 22 the public involvement and -- and the considerable 23 modifications and -- and to -- and conditions to the 24 proposal. That wouldn't have happened without the 25 public involvement.</p>
<p style="text-align: right;">123</p> <p>1 lot of work that still has to be done by the 2 applicant and the Department, do we need to make 3 that explicit? Or is it explicit in the findings 4 already? 5 MR. RATCLIFFE: Councilmember Beier, this 6 is Jesse Ratcliffe again. 7 And I believe that there are mentions made 8 in the draft final order with respect to that 9 delegate authority. But you know, more broadly than 10 that, this is something that is reflected in the 11 statute. And so, you know, that -- that is -- as a 12 result of that, it's -- it's kind of implicit in the 13 final order, even if it's not explicitly stated 14 that, when a delegation is occurring to the agency, 15 that's it's occurring as a result of the authority 16 granted by that statute. 17 MS. BEIER: Thank you. 18 MR. JENKINS: So Mr. Vice Chair, I'm ready 19 to make a motion. 20 MR. CORNETT: If I may? 21 MR. HOWE: Secretary Cornett? 22 MR. CORNETT: Just a suggestion -- so for 23 the record, Todd Cornett -- it might be helpful to 24 have a little bit of deliberation to see where the 25 Council is going in case -- we want to make sure</p>	<p style="text-align: right;">125</p> <p>1 So with that, Councilor Jenkins -- did 2 anybody else have anything they wanted to say before 3 Councilor Jenkins gets us going here? 4 (No audible response). 5 MR. HOWE: It's yours, Councilor Jenkins, 6 when you're ready. 7 MR. JENKINS: Let me try. 8 MR. HOWE: Okay. 9 MR. JENKINS: Okay. So Mr. Chair, I move 10 that the Council approve the draft final order on 11 the Boardman to Hemingway Transmission Line as the 12 final order as presented by staff and legal counsel 13 and issue a site certificate with the written 14 material changes as presented and changed today -- 15 I've got to have the language that was up there -- 16 with findings. 17 MR. JENKINS: What happened to it? 18 MR. HOWE: It's coming. 19 (Simultaneous speaking.) 20 MS. TARDAEWETHER: I think -- 21 MR. JENKINS: Can we get back to the 22 language? 23 MS. TARDAEWETHER: Yeah. Give me one 24 second. 25 FEMALE SPEAKER: The final words --</p>

<p style="text-align: right;">126</p> <p>1 FEMALE SPEAKER: I know. I know.</p> <p>2 MR. JENKINS: Yes. I've got it.</p> <p>3 Based on the findings of fact, reasons,</p> <p>4 conditions, and conclusions of law in this final</p> <p>5 order, the Council concludes that the applicant has</p> <p>6 satisfied the requirements for issuance of the site</p> <p>7 certificate for the proposed Boardman to Hemingway</p> <p>8 Transmission Line.</p> <p>9 For the record, the -- the Council</p> <p>10 concludes, pursuant to ORS 469.401, the Chair can</p> <p>11 execute the certificate authorizing the applicant to</p> <p>12 construct, operate, and retire facilities subject to</p> <p>13 the conditions set forth in the site certificate.</p> <p>14 MR. HOWE: Do we have a second?</p> <p>15 MS. BEIER: I'll second. This is Ann</p> <p>16 Beier.</p> <p>17 MR. HOWE: Okay. We've got a motion and a</p> <p>18 second.</p> <p>19 Secretary Cornett can call roll.</p> <p>20 (Simultaneous speaking.)</p> <p>21 MR. HOWE: Okay. We have time for</p> <p>22 deliberating --</p> <p>23 (Simultaneous speaking.)</p> <p>24 MR. CORNETT: Yeah. (Indiscernible)</p> <p>25 discussion. And -- and -- and -- and for the</p>	<p style="text-align: right;">128</p> <p>1 specifically articulated in the motion itself?</p> <p>2 Certainly, it's on the record. We --</p> <p>3 MS. BEIER: Yeah.</p> <p>4 MR. CORNETT: -- are having a verbatim</p> <p>5 transcript. I think it's very clear we had the</p> <p>6 information on the -- on the screen show what the</p> <p>7 changes were. But if the Council would be more</p> <p>8 comfortable, we could make the specific into the</p> <p>9 motion itself.</p> <p>10 MR. HOWE: I'm seeing the Council agreeing</p> <p>11 that it's okay to reference the changes made today</p> <p>12 --</p> <p>13 MS. BEIER: Yeah.</p> <p>14 MR. HOWE: -- as opposed to making a</p> <p>15 specific --</p> <p>16 MS. BEIER: Yeah. Yes.</p> <p>17 MR. HOWE: Councilor Chocktoot, do you</p> <p>18 agree?</p> <p>19 MR. CHOCKTOOT: Yes. Okay.</p> <p>20 MR. JENKINS: So --</p> <p>21 MR. HOWE: (Inaudible) deliberations.</p> <p>22 MR. JENKINS: -- my question for Jesse or</p> <p>23 Patrick is, you know, I included the findings or</p> <p>24 reasoning conclusions -- conditions and conclusions.</p> <p>25 Is that enough to fold in the basis for the final</p>
<p style="text-align: right;">127</p> <p>1 record, Todd Cornett. And I also concur. I think</p> <p>2 between probably legal counsel that they're</p> <p>3 comfortable with that, that it reflects everything</p> <p>4 as well.</p> <p>5 MR. HOWE: Yeah. Yeah. Sorry. I'm</p> <p>6 jumping the gun.</p> <p>7 Okay. So --</p> <p>8 MS. BEIER: Chair Howe?</p> <p>9 MR. HOWE: -- let's open it up to</p> <p>10 discussion or deliberation.</p> <p>11 MS. BEIER: This is -- this is probably</p> <p>12 the lawyer question to make sure that not only the</p> <p>13 material changes, but all the editorial changes and</p> <p>14 the other changes we talked about today are</p> <p>15 reflected in the final order. So just I don't know</p> <p>16 if we need to make that --</p> <p>17 MR. CORNETT: Vice Chair Howe? And so for</p> <p>18 the record, Todd Cornett.</p> <p>19 Yeah. Council -- Councilmember Beier, so</p> <p>20 the motion included the material changes -- and I</p> <p>21 don't have the exact language, which I will get --</p> <p>22 but -- and the changes that were made today.</p> <p>23 MS. BEIER: Okay.</p> <p>24 MR. CORNETT: So those are reflected. I</p> <p>25 guess the question then was: Do they need to be</p>	<p style="text-align: right;">129</p> <p>1 order?</p> <p>2 MR. ROWE: I think you should put that</p> <p>3 question to Jesse --</p> <p>4 MR. RATCLIFFE: Yeah.</p> <p>5 MR. ROWE: -- since he's here to --</p> <p>6 (Simultaneous speaking.)</p> <p>7 MR. ROWE: -- for Council in this</p> <p>8 proceeding.</p> <p>9 MR. RATCLIFFE: Yeah, yeah. So yes, I</p> <p>10 believe so. So what's on the table here is</p> <p>11 essentially everything that is reflected in the</p> <p>12 draft final order as modified specifically today.</p> <p>13 And I think we have a pretty good sense from the</p> <p>14 combination of the transcript and -- and, you know,</p> <p>15 notes as to what those changes are that the intent</p> <p>16 of the motion is to reflect that draft final order,</p> <p>17 which I walked through the ultimate findings that</p> <p>18 were made there in terms of the standard statutes</p> <p>19 and Council statutes and rules and other sources of</p> <p>20 law, that that has been satisfied by a preponderance</p> <p>21 of the evidence.</p> <p>22 So as far as I'm concerned, yes, Councilor</p> <p>23 Jenkins, you captured everything that you needed to.</p> <p>24 MR. JENKINS: Okay. Great.</p> <p>25 MR. HOWE: Any other deliberations?</p>

<p style="text-align: right;">130</p> <p>1 (No audible response).</p> <p>2 MR. HOWE: With no more question, I guess,</p> <p>3 Secretary Cornett, please call the roll.</p> <p>4 MR. CORNETT: Kent Howe?</p> <p>5 MR. HOWE: Yes.</p> <p>6 MR. CORNETT: Jordan Truitt?</p> <p>7 MR. TRUITT: Yes.</p> <p>8 MR. CORNETT: Ann Beier?</p> <p>9 MS. BEIER: Yes.</p> <p>10 MR. CORNETT: Hanley Jenkins?</p> <p>11 MR. JENKINS: Yes.</p> <p>12 MR. CORNETT: Cindy Condon?</p> <p>13 MS. CONDON: Yes.</p> <p>14 MR. CORNETT: Perry Chocktoot?</p> <p>15 MR. CHOCKTOOT: Yes.</p> <p>16 MR. CORNETT: Motion carried, Mr. Vice</p> <p>17 Chair.</p> <p>18 MR. HOWE: Okay. With that, now that</p> <p>19 we've concluded the Boardman to Hemingway agenda</p> <p>20 item, I'll hand the meeting back over to Chair</p> <p>21 Grail. It's all yours.</p> <p>22 MS. GRAIL: Thank you. Wow.</p> <p>23 I suspect the time -- so it's 11:34. I</p> <p>24 would suspect folks are ready for a break at this</p> <p>25 time.</p>	<p style="text-align: right;">132</p> <p>1 For those in person, please fill out</p> <p>2 registration cards available on the table near the</p> <p>3 entrance to submit to Sarah Esterson. For those</p> <p>4 using the WebEx, you will need to use the Raise Your</p> <p>5 Hand feature. For those on the phone only, you will</p> <p>6 need to press Star 3, which will alert us that you</p> <p>7 want to speak.</p> <p>8 Mr. Secretary, is there anyone in the room</p> <p>9 who would like to provide public comment?</p> <p>10 MR. CORNETT: Completes --</p> <p>11 MS. GRAIL: Okay. We have an individual</p> <p>12 who is completing a form, so we'll give her a</p> <p>13 moment, please. Okay.</p> <p>14 Ms. Gilbert, the floor is yours.</p> <p>15 MS. GILBERT: Irene Gilbert representing</p> <p>16 public interest.</p> <p>17 And, actually, I had a Councilmember say</p> <p>18 to me that that person studied the statutes and paid</p> <p>19 attention to what they said when making decisions on</p> <p>20 the site certificates, generally. And so I would</p> <p>21 like to just review some statutes that -- in the</p> <p>22 event that site certificates don't require they</p> <p>23 open, Council can state up to appeal.</p> <p>24 One being ORS 772.210(4) explains the</p> <p>25 process for determining the minimum payment required</p>
<p style="text-align: right;">131</p> <p>1 How long would you all like? Because we</p> <p>2 don't have lunch here yet. So...</p> <p>3 MR. HOWE: We could do public comment.</p> <p>4 Are we ready for lunch?</p> <p>5 MS. GRAIL: I think folks -- I see that --</p> <p>6 (Simultaneous speaking.)</p> <p>7 MR. HOWE: -- need a break.</p> <p>8 (Simultaneous speaking.)</p> <p>9 MS. GRAIL: We're going to take a 10-</p> <p>10 minute break. And so it is 11:35. If we can be</p> <p>11 back at 11:45, please.</p> <p>12 (WHEREUPON, a recess was taken.)</p> <p>13 MS. GRAIL: The time is now 11:45. This</p> <p>14 time is reserved for public comment period. This</p> <p>15 time is reserved for the public to address the</p> <p>16 Council regarding any items within Council</p> <p>17 jurisdiction that is not otherwise closed for</p> <p>18 comment.</p> <p>19 Items closed for comment include the</p> <p>20 Boardman to Hemingway Transmission Line Proposed</p> <p>21 Order, Proposed Contested Case Order; the Nolin</p> <p>22 Hills Proposed Order; the Protected Areas, Scenic</p> <p>23 Resources, and Recreation Resources Standards</p> <p>24 Rulemaking; and the Perennial Wind Chaser Station</p> <p>25 proposed retirement plan.</p>	<p style="text-align: right;">133</p> <p>1 when forest land is condemned. So the -- there's a</p> <p>2 state statute that says, "A proposed facility shall</p> <p>3 be found in compliance with statewide planning goals</p> <p>4 under ORS 469.503 if the Council determines that the</p> <p>5 facility complies with the substantial criteria from</p> <p>6 the affected local government's acknowledged</p> <p>7 comprehensive plan and land use regulations required</p> <p>8 by statewide planning goals and, in effect, when the</p> <p>9 applicant should be submitted."</p> <p>10 So in other words, the county plan must be</p> <p>11 in compliance with the state statutes regarding a</p> <p>12 goal such as going forward in order to apply the</p> <p>13 county rules to decisions about forest land. And</p> <p>14 statutes do specifically designate the amount of</p> <p>15 compensation that must be awarded by a judge in the</p> <p>16 event that forest land is condemned.</p> <p>17 So hence, between that and the fact that</p> <p>18 there is a different procedure for authorizing</p> <p>19 (inaudible) forested land compared to agricultural</p> <p>20 land, I'm sure you can see the need for a careful</p> <p>21 consideration of whether or not the applicant in the</p> <p>22 application have accurately reflected the actual</p> <p>23 forest land that's being impacted.</p> <p>24 The 469.503 -- and I'm using state</p> <p>25 statutes here primarily because, in the appeal, the</p>

<p style="text-align: right;">134</p> <p>1 state statute is the one to primarily going to be 2 (indiscernible) to the courts. 3 In order to issue a site certificate, the 4 Energy Facility Siting Council shall (indiscernible) 5 that the preponderance of evidence on the record 6 supports the following conclusions: The facility 7 complies with the applicable standards adopted by 8 the Council in ORS 469.501, so the statutes 9 requiring the file to the application to show that 10 they fully comply with the (indiscernible) of the 11 Council. 12 So in the -- another issue is I believe 13 there may be instances -- there may have been 14 instances -- where the Council has been asked to 15 approve the go-forward exception, the forest use 16 statute -- or rule. There is a court case, Juss 17 (phonetic) versus Linn County, 16 OR (indiscernible) 18 74, stated in 2009. It says, "Land cannot be 19 removed from go-forward protection absent data 20 required by 660-006- 005(2)." And it also provides 21 the statute language. 22 So in the event that you're ever asked to 23 allow -- or approve the exception to -- for -- for 24 an alternate practice, which is under Forest 25 Practices Act, I encourage you to make sure that</p>	<p style="text-align: right;">136</p> <p>1 goals are approved by LCDC. 2 So there is a statute that says you cannot 3 apply. And there are multiple court decisions that 4 say you cannot apply county rules within a year of 5 any state change in LCDC rules if those local rules 6 are not in compliance with the state statute. 7 There's also a statute, ORS 527. And I'm 8 -- I'm not meaning to -- I -- I just want you to be 9 really aware of what the actual language in these 10 statutes is because there are multiple court 11 decisions that say, number one, an agency does not 12 have the authority to interpret another agency's 13 rules or their statutes. 14 And they -- the courts have to typically 15 provide deference to an agency interpreting their 16 own rules and statutes that also, in order to do an 17 interpretation, it's required that the rule or 18 statute be unclear. And -- and you know, a recent 19 U.S. Supreme Court decision on Kaiser said -- goes 20 further and says that, in addition, any 21 interpretation cannot result in basically surprise 22 to the people who are impacted by it. 23 Like, for instance, if you -- if the 24 Council has been using a certain interpretation of 25 the rule, and then they -- they do not have the</p>
<p style="text-align: right;">135</p> <p>1 you're in compliance with that legal requirement. 2 The -- also, Oregon Department of Energy 3 rules say they shall contact agencies when there is 4 disagreement regarding the -- in -- in -- 5 disagreement regarding what the impact or the 6 application of the rules of another agency say. So 7 for example, if there are disagreements about land 8 use issues, what qualifies or doesn't qualify, the 9 appropriate procedure is for the Oregon Department 10 of Energy to contact LCDC and obtain their opinion 11 regarding whether or not a decision being 12 recommended actually is compliance -- in compliance 13 with the state land use rules. 14 And it does say that any waiver allowed by 15 Council cannot -- cannot waive a state statute. So 16 when I provide you with state statute, that is the 17 final authority. 18 Let's see. The -- there's also ORS 19 197.250, which says all comprehensive plans and the 20 land use regulations adopted by a local government 21 to carry out those comprehensive plans and all 22 plans, programs, rules or regulations affecting land 23 -- let's see -- land use adopted by a state agency 24 or special district shall be in compliance with the 25 goals which -- within one year after the date these</p>	<p style="text-align: right;">137</p> <p>1 ability to change that interpretation for one 2 development and then then change it back to another. 3 And I'm sure you can probably understand where that 4 kind of appeal (indiscernible) could occur. 5 The -- it also says in the statute -- I'm 6 just quoting some things here from my notes 7 regarding potential actions. ORS 527.722 restricts 8 local government adoption of any rules regulating 9 forest operation. This statute states local 10 governments cannot adopt any rules, regulations, or 11 ordinances or take any other actions that prohibit, 12 limit, regulate, subject to approval or in any way 13 affect forest practices on forestlands outside the 14 acknowledged urban growth boundary. 15 So for instance, Union County or any other 16 county cannot have local rules that are not 17 consistent with the state statutes. 18 I could go on with more, but I hope -- I 19 think that's probably enough for right now. And I 20 hope you will seriously consider whether or not 21 future recommendations coming from the Oregon 22 Department of Energy are consistent with the 23 statutes and rules rather than requiring the public 24 to appeal to the Oregon Supreme Court wherein 25 decisions that you make fail to comply with the</p>

<p style="text-align: right;">138</p> <p>1 actual language of the statutes that they are 2 required to apply. 3 Thank you. 4 MS. GRAIL: Thank you, Ms. Gilbert. 5 Are there any other persons in the room 6 wishing to speak? 7 MR. CORNETT: Let me check. Nobody else 8 in the room I see wishing to speak and no one 9 online. 10 MS. GRAIL: Okay. Well, last call for 11 anyone wishing to make comments during this open 12 public comment period. 13 (No audible response). 14 MS. GRAIL: Okay. We will consider the 15 public comment period closed at 11:56. 16 So that gets us up to -- 17 MR. CORNETT: Madam Chair -- 18 MS. GRAIL: Yes -- 19 MR. CORNETT: For the record, Todd 20 Cornett. So we are running early on the agenda. 21 Lunch is not here yet. So of you can take a break 22 now, wait for lunch to come, or you can start and 23 see if we can get through the next agenda item prior 24 to lunch. That is Council's choice. 25 MS. GRAIL: Councilmembers, what is your</p>	<p style="text-align: right;">140</p> <p>1 you want to continue that or not, that's your 2 choice. So ... 3 FEMALE SPEAKER: For the material changes 4 (inaudible). 5 MALE SPEAKER: Off the record now. 6 (WHEREUPON, the meeting was concluded at 7 11:57 a.m. 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">139</p> <p>1 preference? 2 MR. JENKINS: Well, at least the staff 3 report before the next agenda item, that would be 4 great. 5 MR. HOWE: Yeah. I say we move on. 6 MS. GRAIL: Okay. So then I will ask 7 Sarah if she's okay with at least getting started. 8 Ms. Esterson is okay with that. So we 9 will be looking at Agenda Item D, which is the 10 Perennial Wind Chaser Station. This is as request 11 to approve the decommissioning plan and terminate 12 the site certificate. This is an action item for 13 Council. We will have the Department of Energy 14 Senior Policy Advisor Sarah Esterson make a 15 presentation at this time. 16 MR. JENKINS: Mr. Chair -- Madam Chair? 17 MS. GRAIL: Yes, sir. 18 (Simultaneous speaking.) 19 MR. JENKINS: Are we just still doing a 20 transcript? Are we still doing a transcript of the 21 meeting? 22 MR. CORNETT: I mean, that's really on 23 Idaho Power. 24 So I know you were hiring the court 25 reporter for the meeting agenda item. So whether</p>	<p style="text-align: right;">141</p> <p>1 CERTIFICATE 2 3 I, Ryan Batterson, do hereby certify that I 4 reported all proceedings adduced in the foregoing 5 matter and that the foregoing transcript pages 6 constitutes a full, true and accurate record of said 7 proceedings to the best of my ability. 8 9 I further certify that I am neither related 10 to counsel or any party to the proceedings nor have any 11 interest in the outcome of the proceedings. 12 13 IN WITNESS HEREOF, I have hereunto set my hand this 14 19th day of October, 2022. 15 16 17 18 19 /S/ Ryan Batterson 20 21 22 23 24 25</p>

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