

Oregon Department of **ENERGY**

Energy Facility Siting Council Meeting

Oregon Dept of Energy
550 Capitol St. NE
Salem, Oregon

April 17, 2026



Opening Items:

- Call to Order
- Roll Call
- Announcements

Announcements

- Reminder to Council and anyone addressing the Council:
 - State your full name clearly at the start of your comment or question
 - Do not use the speakerphone feature, as it will create feedback
- You may sign up for email notices by clicking the link on the agenda or the Council webpage
- You can access the online mapping tool and any documents by visiting our website



Announcements Continued

- Please silence your cell phones
- Please use the “Raise Your Hand” feature in Webex to speak during the public comment period, or press *3 to raise your hand if you are participating by telephone.
- Energy Facility Council meetings shall be conducted in a respectful and courteous manner where everyone is allowed to state their positions at the appropriate times consistent with Council rules and procedures. Willful accusatory, offensive, insulting, threatening, insolent, or slanderous comments which disrupt the Council meeting are not acceptable. Pursuant to Oregon Administrative Rule 345-011-0080, any person who engages in unacceptable conduct which disrupts the meeting may be expelled.

Agenda Item A

Action Item & Information Item

Consent Calendar

- March 2026 Council Meeting Minutes
- Council Secretary Report

April 17, 2026

Agenda Item B

Action Item

Modernization Rulemaking Final Consideration

Tom Jackman, Rules Coordinator

April 17, 2026

Modernization Rulemaking Timeline

| Event | Date |
|--|-------------------|
| Informal rulemaking initiated by Council | March, 21 2025 |
| Notice of Proposed Rulemaking filed with Secretary of State | October 1, 2025 |
| Public hearing | November 21, 2025 |
| Public comment ends | November 30, 2025 |
| Second Notice of Proposed Rulemaking filed | December 30, 2025 |
| Second public comment period ends | February 28, 2026 |
| Presentation of proposed rule language to Council for final consideration | Today |

Modernization Rulemaking – Rule Overview

Minor Updates

- Correcting outlining and reference errors
- A reversion of an inadvertent rule change
- Updating rule version references, e.g., “Applicant must follow other agency rules dated Jan 1, 2012.”
- The removal of applicability provisions, given the passage of time

Modernization Rulemaking – Rule Overview

Modest Updates

- Formalizing the process for providing the Department of Defense (DoD) notice of new energy facility applications
- The removal of the requirement that applicants and site certificate holders must print copies of all their various submissions by default, but still allowing for direction by the Department to do so

Modernization Rulemaking

More Significant Updates

- Directing parties to submit any data used to produce maps or other geospatial data in an acceptable format as approved by the department
- The removal of preconstruction requirement of having all construction rights before any construction could occur for all types of facilities
 - **After first Notice of Proposed Rulemaking, proposed rules made this provision retroactive.**

Modernization Rulemaking Public Comments

Obsidian Solar Center, LLC

- Supports removing preconstruction limitation and applying rule retroactively
- Argues subsections (a) and (b) are leftover provisions from prior rule structure
 - Claims they create unclear, speculative compliance standards tied to future project changes
 - Warns they could increase regulatory uncertainty and complicate financing/tax credit timelines

Modernization Rulemaking

Public Comments

Obsidian Solar Center, LLC

- OAR 345-025-0006(5)(a) (limiting access to phased construction)
 - *The certificate holder would construct and operate part of the facility on that part of the site even if a change in the planned route of a transmission line or pipeline occurs during the certificate holder's negotiations to acquire construction rights on another part of the site.*
- OAR 345-025-0006(5)(b) (limiting access to phased construction)
 - *The certificate holder would construct and operate part of an energy facility on that part of the site even if other parts of the facility were modified by amendment of the site certificate or were not built.*

Modernization Rulemaking

Public Comments

Staff Response

- Disagree that subsections (a) and (b) are unnecessary or residual
 - They ensure phased construction remains consistent with approved facility design
 - They provide safeguard that constructed portions are independently viable and not abandoned
- Recommend retaining provisions to prevent stranded infrastructure and maintain clarity

Modernization Rulemaking Public Comments

Constance Lee

- Asserts changes would reduce meaningful public participation, especially in rural areas
- Opposes allowing construction before full site control — creates irreversible project momentum
- Says procedural requirements (e.g., citing statutes) and record limits on applicants create barriers for public input
- Raises concerns about developer accuracy and limited access to digital-only materials

Modernization Rulemaking Public Comments

Staff Response

- Disagree that rules reduce participation
- Changes aim to improve clarity and efficiency – stricter requirements on applicants for citing materials should help the public
- Phased construction still requires site control and compliance with certificate conditions
- Digital tools improve access
 - Accommodations exist for those needing alternatives

Council Options

Option 1 Recommended

Approve the
proposed
rules as
recommended

Option 2

Approve the
proposed
rules with
changes

Option 3

Deny the
proposed
rules



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Council Deliberation

Agenda Item C

Action Item

Exemption Rulemaking Final Consideration

Tom Jackman, Rules Coordinator

April 17, 2026

Exemption Rulemaking Timeline

| Event | Date |
|--|-------------------|
| Informal rulemaking initiated by Council | March 21, 2025 |
| Notice of Proposed Rulemaking filed with Secretary of State | December 19, 2025 |
| Public hearing | February 13, 2026 |
| Public comment ends | February 28, 2026 |
| Presentation of proposed rule language to Council for final consideration | Today |

Exemption Rulemaking - Overview

Proposed Rules

- Clarify that the Council may impose conditions on an exemption
- Implement monitoring and reporting requirements for exempt facilities
- Formalize the process for loss of an exemption
- Increase efficiency values as appropriate to qualify for high-efficiency cogeneration plant exemption

Exemption Rulemaking – Public Comments

Constance Lee

- Exemption process eliminates key procedural tools available in site certificate review
- Weakens local accountability, especially in rural communities
- Concern that conditional exemptions could be granted without public input
- Annual compliance relies too heavily on self-reporting by applicants
- Loss-of-exemption process seen as difficult for communities to use
- Review timelines may be too compressed for meaningful public engagement

Exemption Rulemaking – Public Comments

Staff Response

- Exemption process is not an alternative to site certificate review.
 - Created by statute and is limited to determining whether a facility qualifies for exemption from having to apply for a site certificate
- Proposed rules focus on:
 - Clarifying review process
 - Applying conditions to maintain exemption eligibility
 - Establishing compliance and loss-of-exemption procedures
- Adding full procedural elements would:
 - Be inconsistent with statutory intent
 - Expand the process beyond its intended scope

Exemption Rulemaking – Public Comments

Irene Gilbert

- Generally supports rule changes, including new efficiency threshold
- Concern that exempt facilities may still impact land use, traffic, etc.
- Implement monitoring and reporting requirements for exempt facilities
- Recommends:
 - Compliance with state/local land use laws
 - Traffic management plans
 - Notice to nearby landowners + opportunity to comment
 - Developer response to comments
 - Agency evaluation for mitigation measures

Exemption Rulemaking – Public Comments

Staff Response

- Exemption process is not an alternative to site certificate review.
 - Determine eligibility for exemption from having to apply for a site certificate — not a comprehensive review process by ODOE/EFSC
- Projects must still meet other state and local laws. These concerns are addressed through:
 - Local permitting processes
 - Other state (DEQ) and federal regulatory frameworks
- Adding requirements would:
 - Expand scope beyond statutory intent
 - Risk duplication or conflict with other processes

Council Options

Option 1 Recommended

Approve the
proposed
rules as
recommended

Option 2

Approve the
proposed
rules with
changes

Option 3

Deny the
proposed
rules



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Council Deliberation

BREAK

Agenda Item D

Public Comment

Items Closed for Public Comment

- Klamath Falls Energy Center Notice of Intent
- Wheatridge Renewable Energy Facility III Amendment 1 Proposed Order

Time Limit

- 7 Minutes per commentor

How to Raise Your Hand in Webex

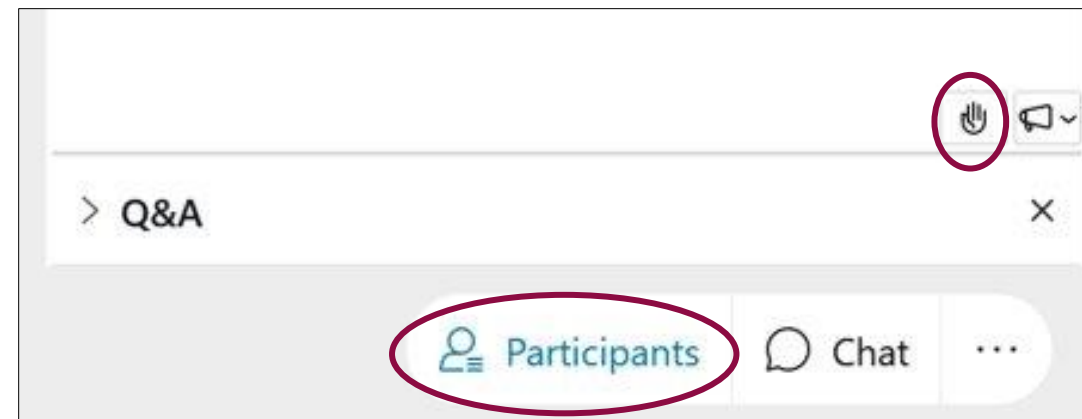
Phone Participants

- Press *3 on your telephone keypad to raise your hand
- Press *3 again on your telephone keypad to lower your hand

Webinar Participants

The bottom right of the main window is a set of icons:

- Click on “Participants”
- Click on the hand
- Click on it again to lower your hand



Agenda Item E

Action Item

Tribal Communication Final Consideration

Tom Jackman, Rules Coordinator

April 17, 2026

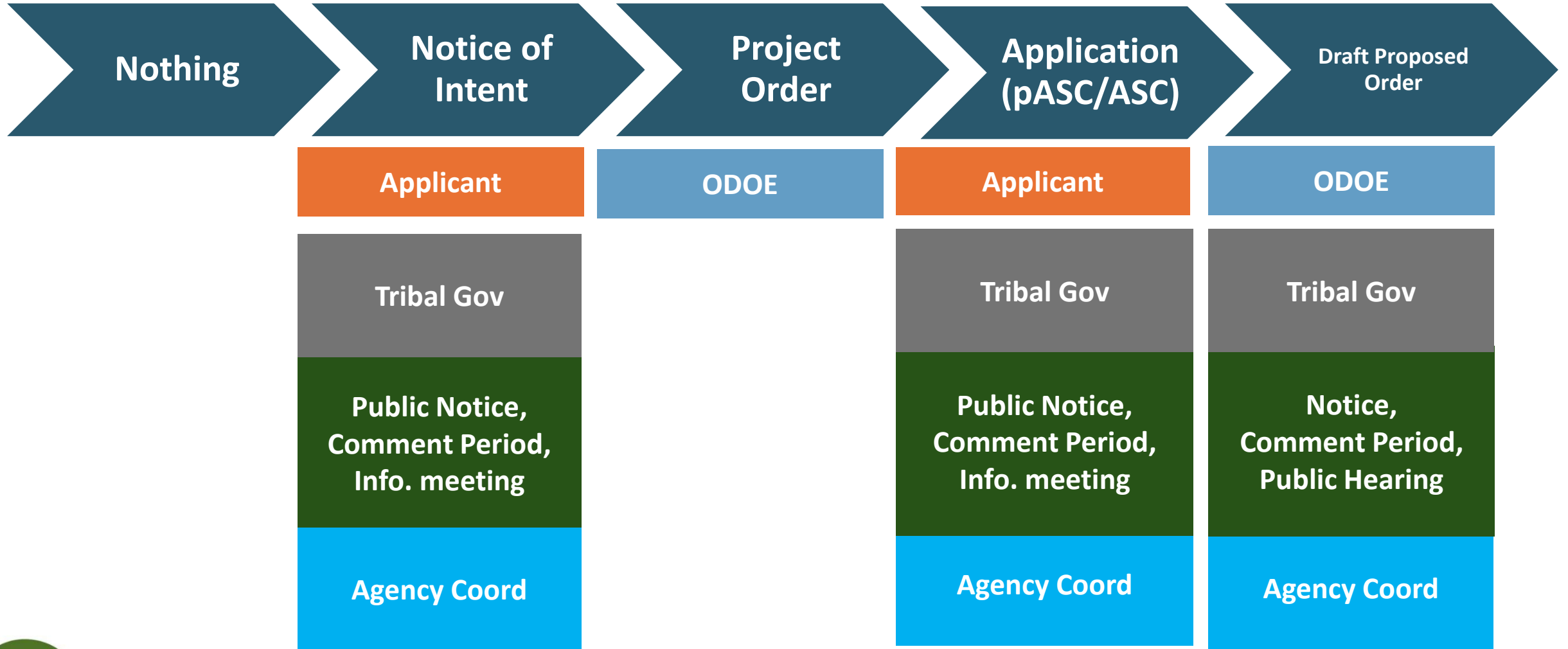
Tribal Rulemaking Timeline

| Event | Date |
|--|----------------|
| Informal rulemaking initiated by Council | Sept 20, 2024 |
| Notice of Proposed Rulemaking filed with Secretary of State | Feb. 18, 2026 |
| Public hearing | March 20, 2026 |
| Public comment ends | March 31, 2026 |
| Presentation of proposed rule language to Council for final consideration | Today |

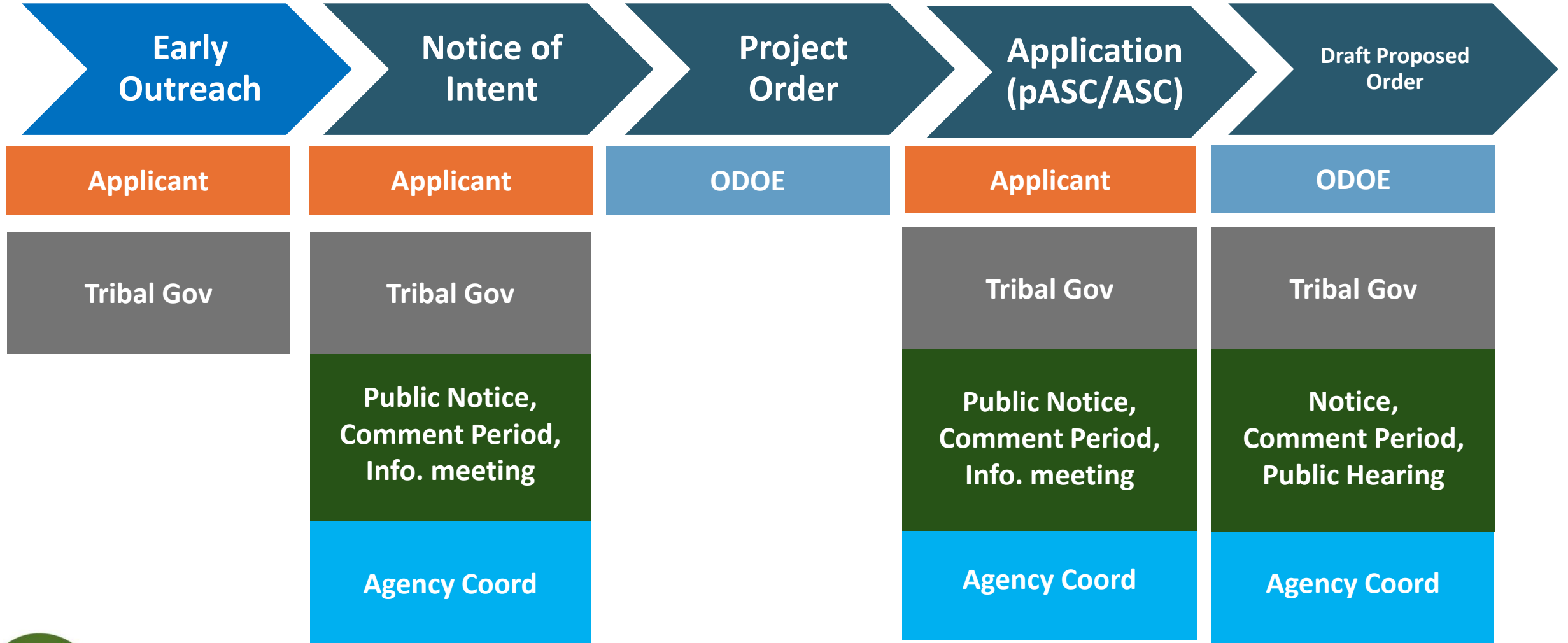
Background Rulemaking Tribal Outreach

| Outreach Effort to each of the Nine Federally Recognized Tribes in Oregon | Date |
|--|-------------------|
| Attend Tribal Cultural Cluster meeting | July 23, 2024 |
| Submit request for feedback on rulemaking | November 7, 2024 |
| Attend Tribal Cultural Cluster meeting to discuss draft language | January 28, 2025 |
| Request feedback on proposed draft language | December 19, 2025 |

Existing Early Process



Proposed Early Process



Proposed Language - OAR 345-020-0011(1)(q)

- (q) Exhibit Q. ~~The following E~~evidence of ~~consultation with the Legislative Commission on Indian Services to identify each appropriate tribe to consult with~~ regarding the proposed facility's possible effects on Indian historic and cultural resources.
 - (A) Consultation with the Legislative Commission on Indian Services to identify each appropriate tribe with which to confer.
 - (B) The dates and summary of any meetings or communications with the tribes identified in (A) above; or documentation of all efforts to communicate with the tribes identified in (A) above.

Tribal Communication Rulemaking

Public Comments

OSSIA

- Supports requirement for early, documented Tribal engagement
- Early communication helps:
 - Identify concerns upfront
 - Reduce delays, redesign, and contested cases
 - Promotes meaningful, two-way communication and relationship-building
- Recommends:
 - Standardized reporting template
 - Guidance, training, and resources for applicants

Tribal Communication Rulemaking Public Comments

Staff Response

- Will consider optional tools to improve consistency and reduce burden
- Does not recommend adding prescriptive requirements to rules to maintain flexibility

Council Options

Option 1 Recommended

Approve the
proposed
rules as
recommended

Option 2

Approve the
proposed
rules with
changes

Option 3

Deny the
proposed
rules



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Council Deliberation

Agenda Item F

Information Item

Leaseback Transactions Overview

Patrick Rowe, Senior Assistant Attorney General
and Counsel to EFSC

April 17, 2026

What is a Sale-Leaseback?

- A transaction where the owner sells a real property asset (such as an energy facility) to an investor and leases it back to continue operations.

Owner → Sale → Investor → Lease Back to Owner



What are the benefits to the certificate holder / project developer?

Benefits include:

- Enhances Financial Stability: immediate cash influx / unlocks capital to cover project costs or fund other projects
- Unlike loans, sale leasebacks avoid debt, preserving balance sheets and reducing the cost of financing in a high-interest-rate environment
- Lease payments may be tax deductible

What are the benefits to the purchasing party / the investor?

Benefits include:

- Steady income from lease payments
- Access to renewable energy tax credits
- Eligible to claim associated depreciation on the asset
- Portfolio diversification

Example 1: Existing Solar Farm



Hypothetical Scenario:

Developer sells a 150MW solar farm to a tax equity investor.

Lease term: 8 years.

Developer uses proceeds to fund new projects.

All maintenance and administrative issues remain responsibility of the developer during the lease.

At lease end, developer buys the facility back from the investor at its then FMV or extends the lease.

Example 2: Pre-construction Sale-Leaseback

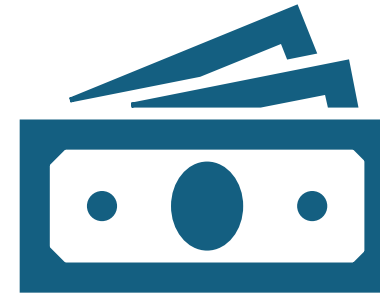


- Project: A developer is planning a 150 MW solar farm.
- Initial Step: Before construction begins, the developer signs a sale-leaseback agreement with an investor.
- The investor agrees to purchase the facility for \$\$\$ amount once the project is completed, provided it meets specific criteria (e.g., placed in service).
- Construction Phase: The developer acts as the builder, financing construction, often using a separate short-term construction loan.
- Closing: Upon completion, the facility is sold to the Investor. The developer immediately leases the facility back and retains operational control and responsibilities, using the purchase funds to pay off construction costs.

Site Certificate Compliance



Renewable energy sale-leaseback transactions do not inherently make it more difficult to enforce site certificates, but they do increase the complexity of ownership.



Long-term lease obligations can increase fixed costs for project operators, *potentially* impacting the site certificate holder's financial stability and thus ability to meet site certificate conditions.

Site Certificate Compliance

- The typical site certificate conditions apply to the certificate holder, whose obligations are not affected by whether they own the facility equipment. E.g.:
 - *Site Certificate Condition PRE-RT-01: Before beginning construction of the facility, facility component or phase, the **certificate holder** shall submit to the State of Oregon, through the Council, a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition. The **certificate holder** shall maintain a bond or letter of credit in effect at all times until the facility has been retired. The Council may specify different amounts for the bond or letter of credit during construction and during operation of the facility. (Emphasis added).*

Working Lunch Break

Agenda Item G

Action Item

Wheatridge Renewable Energy Facility East - Request to Waive In-Proximity Requirement for Public Hearing on Request for Site Certificate Amendment 2

Sarah Esterson, Senior Policy Advisor

April 17, 2026

Project Overview

- Operational 200 MW wind energy facility (71 turbines); approved for additional 100 MW, not yet constructed
- Located in Morrow and Umatilla counties
- Parent company is NextEra Energy Resources, LLC

Request for Amendment 2

Proposed changes include:

- **Split the existing site certificate**

- Wheatridge Renewable Energy Facility East (200 MW wind, operating)
- Wheatridge Renewable Energy Facility Northeast (100 MW wind, not yet constructed) with new certificate holder

- **New certificate holder**

- Wheatridge Northeast Wind, LLC; wholly owned by NextEra Energy Resources, LLC

Applicable Rule Language

OAR 345-027-0367

- **Public hearing in the vicinity of the amendment location is the default**
- **Council or Council Chair may waive the in the vicinity hearing if it is determined to be unnecessary:**
 - Amendment has a limited scope
 - There is a forecasted lack of interest in the amendment
 - There is a public health and safety risk

Analysis

The Department recommends the in-proximity requirement for the future public hearing be waived because:

- The amendment is administrative > no substantive changes
- The proposed new certificate holder is an LLC with same LLC:parent company structure as current certificate holder
 - Both certificate holder are owned by NextEra Energy Resources, LLC
- No new construction, operations or design related impacts associated with proposed changes

Council Options

Option 1

Waive the in the vicinity public hearing

Option 2

Do not waive the in the vicinity public hearing



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Council Deliberation

Agenda Item H

Action Item

Biglow Canyon Wind Farm Request for Site Certificate Amendment 4 – Petition for Rehearing

Chris Clark, Senior Siting Analyst, ODOE

Patrick Rowe, Senior Assistant Attorney General, DOJ

April 17, 2026

Procedural History

- March 27, 2026 - Council issued its Final Order on Request for Amendment 4 of the Site Certificate for the Biglow Canyon Wind Farm.
- April 2, 2026 - The Final Order was served to all parties and all persons who commented during the Public Hearing on the Proposed Order.
- On April 4, 2026 - Kathy McCullough submitted a Petition for Rehearing on the Final Order (the Petition).

Applicable Statutes

- ORS 469.403(1) - “...*any party or limited party to a contested case proceeding* may apply for rehearing within 30 days from the date the approval or rejection is served (emphasis added.)”
- ORS 469.405(1) - “...*Notwithstanding ORS 183.482 and 183.484, judicial review of the council’s approval or rejection of a request for an amendment to a site certificate or decision related to or arising from a contested case on an amendment, regardless of whether a contested case was held prior to the council’s decision, is conferred solely on the Supreme Court...*”

OAR 345-001-0080

(1) *A person entitled to judicial review under ORS 183.484 of a final order in other than a contested case may file a petition for reconsideration or rehearing...*

* * *

(4) The Council may grant or deny a petition by summary order, and, if the Council does not take action, the petition is deemed denied as provided by ORS 183.484(2).” (Emphasis added).

Evaluation of Applicable Rules and Statutes

- Because the right to seek judicial review of the Council's decision on a request for amendment is established under ORS 469.403 and 469.405 rather than ORS 183.484, the Department does not believe OAR 345-001-0080 applies to the issuance of an amended site certificate.
- The rule does leave ambiguity on whether or not rehearing/reconsideration is available in this context.

Issues Raised in Petition

Petitioner asserts Council abused its discretion and failed to make findings supported by substantial evidence when it:

1. Found the wildfire mitigation plan adequate without stronger firebreaks, water capacity, or independent audits
2. Accepted the 4–8 inch vegetation limit without requiring permanent operational-plan incorporation or larger water capacity
3. Relied on PGE's representations despite maintenance failures at the existing facility

Evaluation of Issues Raised in Petition

- All issues raised in petition were addressed by Council in the Final Order. See Final Order Attachment B-3 Issues OE-01, SP-04, WF-07, WF-12.
- Because no new issues or argument were presented, and no good cause to raise new issues or argument provided, reconsideration or rehearing is not appropriate.

Staff Recommendation

Deny the petition for two reasons:

1. Under ORS 469.403 petitions for reconsideration or rehearing are only available to parties or limited parties in a contested case.
2. Even if OAR 345-001-0080 were applicable, the petition does not raise an issue that for merits reconsideration or rehearing of the Final Order.

If Council agrees with the recommendations above, the Department recommends the Council enter an order denying the petition for rehearing.

Council Options

Option 1

Deny the
petition for
rehearing

Option 2

Approve the
petition for
rehearing

Option 3

Take no action



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