



Oregon

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To: Energy Facility Siting Council

From: Tom Jackman, Rules Coordinator

Date: April 3, 2026

Subject: Agenda Item E: Tribal Communication Rulemaking Consideration of Final Rules (Action Item) for the April 17, 2026 EFSC Meeting

Attachments: Attachment 1: Draft Proposed Rules
Attachment 2: Public Comments

STAFF RECOMMENDATION

Staff requests the Energy Facility Siting Council's (EFSC or Council) authorization for staff to file permanent amended rules based on proposed amendments shown in Attachment 1.

BACKGROUND

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

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

At the February 13, 2026 Council meeting, the Council authorized staff to prepare a notice of proposed rulemaking and hold a public hearing during the public comment period, which ended on March 31, 2026. A public hearing was held on March 20, 2026, and no public comments were submitted at that time.

What follows is a discussion of the proposed rules and the comments submitted during the public comment period.

PROPOSED DRAFT RULES

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

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

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

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

COMMENTS SUBMITTED

The Oregon Solar + Storage Industries Association (OSSIA) and Renewable Northwest jointly submitted a comment in support of the proposed Tribal communication rules, stating that requiring documented early engagement between applicants and Tribes will improve project design, reduce delays, and increase regulatory certainty. They assert that early communication helps identify Tribal concerns before application submittal, thereby reducing the likelihood of contested cases and project redesign. They also state that the rules promote meaningful, two-way communication with Tribes, support thoughtful use of Tribal staff time, and encourage relationship-building between developers and Tribes. In addition, they suggest that EFSC develop a standardized reporting template to reduce administrative burden and improve consistency, and that ODOE provide guidance, training, and resources to applicants to support effective Tribal communication and engagement.

Staff Response:

Staff appreciates the commenters' support for the proposed Tribal communication rules and agrees that early and well-documented engagement with Tribes can improve project outcomes, reduce conflict, and increase regulatory certainty. Staff also acknowledges the suggestions regarding standardized reporting and additional guidance for applicants. Staff will consider whether developing optional templates or guidance materials would be helpful for improving

consistency and reducing administrative burden; however, Staff does not recommend incorporating prescriptive templates or training requirements into rule language at this time in order to maintain flexibility for applicants and Tribes.