

**May 15, 2026 EFSC Meeting**

**Agenda Item B Wheatridge Renewable Energy Facility III, Review of the Draft  
Final Order and Possible Decision**

**Staff Report Attachment 2: Staff Evaluation of Public Comments**

**Table 1: List of Issues and Commenters**

Issue ID	Issue Summary	Commenter	Changes Incorporated into Draft Final Order
<b>General Standard of Review (OAR 345-022-0000)</b>			
Issue GS-01	Requests that the record reflect contested easement for UEC's Highway 730-Olson Road transmission line on his property because it is part of EFSC's baseline approval for the facility.	Jonathan Tallman	No
<b>Organizational Expertise (OAR 345-022-0010)</b>			
Issue OE-01	Requests to amend Condition GEN-OE-02(a) to Clarify Reporting of Incidental Wildlife Observations	Certificate Holder	Yes, minor changes to findings or conditions.
<b>Soil Protection (OAR 345-022-0022)</b>			
Issue SP-01	Requests to amend the draft Vegetation and Soil Management Plan (Conditions PRE-SP-05, CON-SP-04, PRO-SP-02 and OPR-SP-02)	Certificate Holder	Yes, changes to Section III.D. and draft Vegetation and Soil Management Plan.
<b>Fish and Wildlife Habitat (OAR 345-022-0060)</b>			
Issue FW-01	Requested that the draft Habitat Mitigation Plan (HMP) include additional information about the facility site, legal instrument, monitoring and that it include additional enhancement actions to address permanent impacts to Category 3 and 4 habitat.	Oregon Department of Fish and Wildlife (ODFW), Lindsey Somers	Yes, changes to Section III.H. and draft Habitat Mitigation Plan.
<b>Removal Fill Law (OAR 141-085-0050 – 0785)</b>			
Issue RF-01	No jurisdictional Waters of the State are within the project footprint.	Oregon Department of State Lands (DSL), Daniel Evans	Yes, changes to Section IV.B.1 and removal of recommended Removal Fill Condition 1.

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## **I. Introduction**

Wheatridge Solar Energy Center, LLC (certificate holder) filed Request for Amendment 1 of the Site Certificate for the Wheatridge Renewable Energy Facility III (RFA1) to the Energy Facility Siting Council (EFSC or Council) seeking authorization to extend the construction deadline for the unbuilt components; split the approved facility into two facilities, each with their own site certificate and certificate holders; and, amend several conditions consistent with the site certificate split.

On February 27, 2026, the Oregon Department of Energy (Department or ODOE) issued its Proposed Order on RFA1. On the same date, in accordance with OAR 345-027-0367(4), the Department issued a Public Notice, initiating a 35-day comment period, to conclude on April 3, 2026. The Notice also established deadlines for the subsequent comment evaluation process, including:

- April 10, 2026, for the Department and certificate holder responses to comments;
- April 17, 2026, for commenters to reply to Department/certificate holder responses; and,
- April 24, 2026, for the Department/certificate to file sur-replies.

Participants in the public comment process may request more time to submit their response, reply, and sur-reply to the Council or Council Chair, who shall grant the extension on a showing of good cause.

## **II. Public Comment Process Overview**

The Council adopted changes to the Site Certificate Amendment comment process (OAR 345-027-0367) in September 2025, effective October 2025. This is the first amendment request under the new rules.

The purpose of the rule changes was to make the site certificate amendment review process more efficient and effective, improve the public comment process and increase the public's understanding of how to participate in the process. As presented above, the new process includes a step for the certificate holder and the Department to respond to comments; allows for those commenters to then reply; and then concludes with an opportunity for the Department and certificate holder to offer sur-reply.

The rules require that the certificate holder respond to all comments received during the comment period; the Department does not have the same obligation but may choose to respond. As presented in the document below, the Department has provided responses to commenters in a manner that provides organization for the public, the Department and the Council.

The intent of this new comment process is for each commenter to receive feedback from the Department and the certificate holder on the nature of their comments – specifically, whether they were raised with sufficient specificity so that the commenters can then reply with additional information or clarification. Where comments were raised with sufficient specificity, the process is intended to provide each commenter with feedback on whether those issues warrant remedy or change to a recommended finding of fact or recommended new or amended condition, and provide an opportunity for commenters to further explain and provide factual reasoning to support the Department and Council’s evaluation of whether the certificate holder has met their burden of proof that they either can or have satisfied the requirements of applicable Council standards and other laws.

### **III. Evaluation of Issues by Standard**

#### **III.A. General Standard of Review (OAR 345-022-0000)**

**Issue GS-01 (Tallman): Requests that the record reflect contested easement for UEC’s Highway 730-Olson Road transmission line on his property because it is part of EFSC’s baseline approval for the facility.**

Comment ID: WREFIIIAMD1Doc13 Proposed Order Comments (Tallman) [Written] 2026-03-19;  
WREFIIIAMD1Doc13-1 Proposed Order Comments (Tallman) [with Attachments] 2026-03-19  
Response ID: WREFIIIAMD1Doc16 ODOE Public Comment Evaluation Cover Letter and Response 2026-04-10; WREFIIIAMD1Doc17 Cert Holder Responses 2026-04-10  
Reply ID: WREFIIIAMD1Doc18 Public Comments Responses (Tallman) 2026-04-17  
Sur-Reply ID: WREFIIIAMD1Doc19 Proposed Order Public Comment CH Sur-Reply 2026-04-24

#### **Comment Summary**

Mr. Tallman requests that EFSC update the record to disclose that a portion of UEC’s 230 kilovolt (kV) Highway 730-Olson Road transmission line route depended on contested condemnation rights and advance occupancy for this property rather than a clean, voluntary, and undisputed easement. He suggests that updating the record is necessary because it is part of the baseline for EFSC approval of this facility and the amendment

#### **Department Evaluation**

Wheatridge Renewable Energy Facility III (WREFIII) does not include any 230 kV transmission lines. The EFSC process does not require that an applicant explain its interconnection location or include, as part of its facility, the interconnection location. Moreover, EFSC does not have authority over UEC’s 230 kV Highway 730-Olson Road transmission line; this line is not part of the review or approval process for this proceeding.

In response to Mr. Tallman’s comments, the Department did not recommend any changes be made, explaining that his comments are reflected on the record, and therefore the intent of his comments had been addressed.

In the certificate holders response to Mr. Tallman’s comments, they believed that the comments did not relate to the facility, the requested amendment to the facility, or any standards that apply to the requested amendment. Therefore, the comments wouldn’t trigger revisions to the Proposed Order.

In Mr. Tallman’s reply, he requested that the record “clearly state whether no broader offsite transmission, interconnection, or load-serving assumptions are being relied upon in support of RFA1’s requested deadline extension and certificate split.”

In its sur-reply, the certificate holder maintained its response that issues raised in Mr. Tallman’s comments are related to offsite transmission, interconnection, and load service, which are not relevant to the Request for Amendment.

Because Mr. Tallman’s comments did not provide sufficient specificity, nor object to any recommended findings of fact, conclusions of law or conditions of approval identified in the Proposed Order, the Department maintains its recommendation that no changes are needed in the draft Final Order. Mr. Tallman’s initial comments, and replies to the Department’s response are included in Attachment 2 of the draft Final Order.

### **III.B. Organizational Expertise (OAR 345-022-0010)**

#### **Issue OE-01 (Certificate Holder): Requests to amend Condition GEN-OE-02(a) to Clarify Reporting of Incidental Wildlife Observations**

Comment ID: WREFIIIAMD1Doc15 Proposed Order Comments (Certificate Holder) 2026-04-03  
Response ID: WREFIIIAMD1Doc16 ODOE Public Comment Evaluation Cover Letter and Response 2026-04-10; WREFIIIAMD1Doc17 Cert Holder Responses 2026-04-10

#### **Comment Summary**

Certificate holder requests to modify Condition GEN-OE-02 sub(a) of the draft WTSII Site Certificate to more accurately reflect the intent of the wildlife response and reporting system section of the removed Wildlife Monitoring and Mitigation Plan (WMMP).

#### **Department Evaluation**

In the Proposed Order, the Department recommended Condition GEN-OE-02 be amended to include reporting of incidental wildlife observations, which was incorporated from the Wildlife Monitoring and Mitigation Plan (WMMP). The certificate holder’s proposed changes to recommended Amended Organizational Expertise Condition 6 (GEN-OE-02) are presented in red-font, underline strikethrough below:

#### **Certificate Holder’s Proposed Changes to Recommended Amended Organizational Expertise Condition 6 (GEN-OE-02) (in underline, strikethrough):**

The certificate holder shall, as soon as reasonably possible:

- a. Report incidents of livestock or ~~incidental wildlife observations~~ injury or fatality discovered within the Facility boundaries.

...

The Department agrees with the certificate holder’s proposed change from reporting of “incidental wildlife observation” to reporting of “wildlife injury or fatality” provides useful clarity.

The Department questions the changes related to reporting of livestock injury or fatality and recommends that any reporting related to injury or fatality from use of livestock at the site for vegetation management be established in the Vegetation and Soil Management Plan under Conditions PRE-SP-05, CON-SP-04, PRO-SP-02 and OPR-SP-02.

The Department questions the certificate holder’s proposed area reference, “within the Facility boundaries,” as the facility site boundary may be much larger than the final design footprint and perimeter fenceline of the facility. The Department recommends using the phrase “within the perimeter fenceline” to establish the area for which observations apply. The Department recommends the following changes in response to the comments:

**Department’s Recommended Amended Organizational Expertise Condition 6 (GEN-OE-02) (in underline, ~~strikethrough~~):**

The certificate holder shall, as soon as reasonably possible:

- b. Report incidents of ~~incidental wildlife observations~~ injury or fatality discovered within the facility perimeter fenceline.

...

For the reasons provided above and because the certificate holder did not provide a reply to the Department’s recommended changes to Organizational Expertise Condition 6 (GEN-OE-06), the Department maintains its recommended changes to the Condition, as provided above. The Department’s recommended change in condition language is included in Attachment A of the draft Final Order.

### III.C. Soil Protection (OAR 345-022-0022)

**Issue SP-01 (Certificate Holder): Requests to amend the draft Vegetation and Soil Management Plan (Conditions PRE-SP-05, CON-SP-04, PRO-SP-02 and OPR-SP-02)**

Comment ID: WREFIIIAMD1Doc15 Proposed Order Comments (Certificate Holder) 2026-04-03  
Response ID: WREFIIIAMD1Doc16 ODOE Public Comment Evaluation Cover Letter and Response 2026-04-10; WREFIIIAMD1Doc17 Cert Holder Responses 2026-04-10

**Comment Summary**

The certificate holder requests changes to the draft Vegetation and Soil Management Plan (VSMP) including removal of Appendix C (NPDES 1200-C and ESCP), to shorten the document and reduce duplicative submittals; and to revise various other elements of the plan including

clarifying the baseline preconstruction and monitoring and reporting methods. The substantive changes are evaluated below.

### **Department Evaluation**

The Department agrees that the 1200-C and ESCP do not need to be attached to the VSMP as they are required through other conditions (PRE-SP-04 and GEN-SP-01) and therefore would be a duplicate submittal and, as the certificate holder notes, is a living document and would require frequent updating of the VSMP to ensure that the attachments are current. The final VSMP updated prior to construction will, however, include a summary of the BPMs outlined in the 1200-C and ESCP.

In the draft VSMP Table 5, certificate holder requests to remove specificity in the timing of initial post-revegetation monitoring for soil compaction, noxious weed and revegetation from “within 60-days of completion of revegetation” to a more general “once per season.” The certificate holder did not explain this change. The Department requested that the certificate holder explain why this change is requested. However, the certificate holder did not provide response to the request. The Department recommends Council find that the following changes to the draft VSMP Table 5 resolve and clarify when the initial (first) monitoring will occur, “Initiate within 90 days from reseeding “and then maintain “and conduct once per season in the first two years following construction” This changes the timing trigger to the action of reseeding and allows enough time for vegetation to grow to begin monitoring. Attachment C to the draft Final Order includes the redline version of the VSMP that captures changes from the Proposed Order, comment evaluation, and recommendations for the draft Final Order. The changes for the Draft final order are in track changes and highlighted yellow.

In the draft VSMP Table 5, certificate holder requests to modify the requirement for annual vegetation/weed monitoring to allow for re-evaluation of the management and monitoring after year 5. The certificate holder explained that this change was requested to ensure the level of monitoring and reporting was adaptive to site conditions at the time, which should be reduced overtime. The Department concurs with the requests to allow for modified monitoring, albeit still annual, but modified approach.

In the draft VSMP Table A-1, certificate holder request to remove reference to the County Weed Department as a potential weed control contractor for the site. In response, the Department affirms that many certificate holders contract with County Weed Departments to conduct weed treatment at their site and is viewed as a practical and qualified entity to conduct weed treatment. While the Department does not have issues with removing reference to the County Weed Department as a potential contractor, it is noted that this seems like an unnecessary limitation identified by the certificate holder.

In the draft VSMP Appendix D, Environmental Monitoring Methods, the certificate holder requests to establish the components of revegetation records (date, acreage impacted per disturbance level, description/photos of impacted areas; reclamation methods; revegetation

dates; revegetation conditions). The Department agrees that these changes are sufficient for monitoring and reporting on revegetation.

In the draft VSMP Appendix D, Environmental Monitoring Methods, the certificate holder requests to revise preconstruction and construction requirements for noxious weed surveys, monitoring and reporting. The certificate holder did not explain this change. The Department requested that the certificate holder explain why this change is requested. The certificate holder did not provide response. However, the Department reviewed the changes and emphasizes that they are made to support the overall re-organization of the VSMP, and that monitoring methods were moved from other sections of the VSMP into Appendix D. The certificate holder had expressed concerns to the field monitoring methods/transects and methodologies described in the VSMP attached to the Proposed Order. The Department agrees that the revisions to the soil, revegetation, and weed monitoring protocols and record management add clarification for monitoring locations on site and what must be tracked for reporting. The Department recommends Council accept these changes.

In the draft VSMP Appendix E, Revegetation and Soil Stabilization Methods, the certificate holder provides specifics for its plan to maintain vegetative free areas, as presented below:

- Vegetation within the Solar Components fence will be limited to a height of 10-12 inches, with a minimum clearance of 12 inches from electrical equipment.
- Vegetation height will be maintained by mowing, chemical spray, grazing, or other vegetation management techniques.
- A minimum 10-foot non-combustible, vegetation-free defensible space will be maintained along the fenced perimeter of the Solar Components.
- Vegetation along service roads will be managed by mowing or other vegetation removal.
- The certificate holder may keep or use domestic sheep, goats, or other livestock at the Facility for vegetation control or other purposes as the Facility is not in a risk area for disease transmission to Bighorn sheep.

The Department recommends Council adopt the above described revisions to the draft VSMP for the reasons provided in the draft Final order and provided above.

### **III.D. Fish and Wildlife Habitat (OAR 345-022-0060)**

#### **Issue FW-01 (ODFW): Draft Habitat Mitigation Plan Revisions**

Comment ID: WREFIIIAMD1Doc14 Proposed Order Comments (ODFW) 2026-03-25

Response ID: WREFIIIAMD1Doc16 ODOE Public Comment Evaluation Cover Letter and Response 2026-04-10; WREFIIIAMD1Doc17 Cert Holder Responses 2026-04-10

#### **Comment Summary**

ODFW requested that the draft Habitat Mitigation Plan (HMP) for Wagon Trail Solar II include the following:

- detailed location and operational characteristics of the development action;
- a map with specific coordinates and sections;
- require submittal of a legal instrument (easement or similar);
- schedule for reporting progress and efficacy of mitigation measures;
- A data sharing protocol for monitoring and survey results;
- Clarification that temporary impacts are outside the fenceline for solar facilities; and
- additional habitat enhancement actions to address Category 3 and 4 permanent impacts.

### **Department Evaluation**

The Department agrees that the HMP should include a description of the location, physical and operational characteristics, and duration of the proposed development action. Because this information is already part of the administrative record for the proceeding for this facility, the Department proposes the following updates to the draft HMP Section 1.0:

This draft Habitat Mitigation Plan (HMP) was prepared by Wagon Trail Energy Center, LLC (Certificate Holder), a wholly owned, indirect subsidiary of NextEra Energy Resources, LLC (NEER or Certificate Holder Owner) to provide concepts for meeting the habitat mitigation needs of Wagon Trail Solar II Facility (WTSII or Facility). WTSII is a 100 megawatt (MW) solar photovoltaic power generating facility. The facility is located entirely within Morrow County, bisected by Oregon Highway 207, approximately 5 miles northeast of Lexington and approximately 7 miles northwest of Heppner.

The Department agrees that the HMP should include a figure of the facility site. Because this information is already part of the administrative record for the proceeding for this facility, the Department proposes to include Figure 3: Proposed Site Boundary (WTSII) from Request for Amendment 1 for the Wheatridge Renewable Energy Facility III, as an additional Figure (Figure 2) of the draft HMP.

The Department agrees that the HMP must include a requirement to finalize a legal instrument, subject to ODOE review, in coordination with ODFW. The Department recommends that “Plan Finalization Requirements” and “Pre-construction HMP Finalization” procedures be added to the draft HMP as Sections 2.0, 2.1, and 2.2 (respectively), as follows:

### **2.0 Plan Finalization Requirements**

#### **2.1 Legal Instrument**

Prior to construction and as part of plan finalization, the certificate holder shall provide a draft of the legal instrument to ODOE for review and approval, in consultation with ODFW. ODOE and ODFW review will ensure, at a minimum, that the legal instrument demonstrates or includes the following:

- References and is consistent with the HMP;

- A map and description of all existing structures, impervious surfaces, and access road networks within the HMA;
- Identification of and restrictions on conflicting uses within the HMA, including, but not limited to new roads and associated infrastructure, transmission lines and energy development, land division, and establishment of a feedlot;
- Identification of allowable uses that demonstrate consistency with the HMP wildlife habitat goals;
- Specifies that ODOE has authority to conduct inspections pursuant to OAR 345-026-0050 to ensure that habitat mitigation area(s) are being managed consistent with the HMP, with reasonable written notice to the property owner and Applicant; and
- Includes a term specifying the duration of the agreement, which shall extend for the operational lifetime of the facility and through completion of facility decommissioning.

## 2.2 Pre-construction HMP Finalization

As required by Fish and Wildlife Habitat Condition 10 (PRE-FW-04), prior to construction, this draft HMP will be finalized based on the following:

- Provide ODOE and ODFW with a map of the HMA, including the latitude and longitude, township, range, section, quartersection, and county;
- Submit a habitat assessment conducted at the HMA
- Designate the location(s) of where the physical and operational Enhancement actions are to occur; and
- Develop additional enhancement actions, success criteria, monitoring and reporting to achieve Category 3 and 4 habitat mitigation goals;

The Department requested that ODFW clarify their comments about Section 7.0 of the draft HMP stating “A clearly defined schedule for reporting on the progress toward achieving the mitigation goals and standards, the overall efficacy of mitigation measures in conjunction with associated monitoring efforts, and any modification of mitigation measures.” While ODFW refers to Section 7, monitoring, reporting and evaluative criteria are established in Sections 6.3 and 6.4. The Department requested that ODFW clarify the revisions being sought to Sections 6.3 and 6.4 related to monitoring and reporting.

ODFW did not provide a response to the Departments clarification request. However, the Department recommends the monitoring, reporting, and evaluation of success criteria provided in Sections 6.2, 6.3, and 6.4 be consolidated into a single table (Table 6) of the draft HMP (Attachment B of the draft Final Order).

In its response to ODFW comments, the certificate holder indicates that a Figure identifying the temporary and permanent disturbances by habitat category, and a monitoring report outline will be included in the draft HMP, as Figure 2 and Appendix A respectively. The Department

recommends Council include Figure 2 and Appendix A in the draft HMP, and adopt both the Department’s changes, as described above, and described in the draft Final Order.

To the extent ODFW seeks to ensure that long-term monitoring and reporting will occur under the HMP, the Department identified that the condition imposing the HMP is designated as a “preconstruction” condition. In response, the Department proposes the following condition requiring that, during operations, the certificate holder implement the treatment, monitoring and reporting requirements of the HMP:

**Department’s Recommended Fish and Wildlife Condition 12 (OPR-FW-01)** (in underline, strikethrough):

During operation of the solar facility, the certificate holder shall implement the Habitat Mitigation Plan finalized under Condition PRE-FW-04. The HMP may be amended from time to time, subject to Department approval.

The Department has a data sharing protocol with ODFW, in that all habitat and species related compliance documents received from the certificate holder are shared with or made available upon request to ODFW. The Department sought ODFW clarification about what data or what other means beyond the current protocol is referred but did not receive a response.

The Department agrees that temporary and permanent impacts should be clearly defined, with permanent impacts being defined as the area within the perimeter fence line for the facility.

The Department agrees that additional habitat enhancement actions must be included in the HMP Section 6.2 to address Category 3 and 4 permanent impacts, as presented below:

- Native grass seeding, forb planting, Sagebrush Planting and annual grass treatment – The Certificate Holder shall conduct native grass seeding, annual grass treatment, and the planting of Forbs and Sagebrush, as recommended by ODFW, in the HMA to ensure the habitat quality is equivalent to that of the impacted habitat of the facility. The recommended native grass seeding, annual grass treatment, Forb and Sagebrush planting shall be maintained through the life of the facility.

The Department requested ODFW review the proposed updated language (above) and confirm whether additional clarification is needed, or if the Department’s proposed updates satisfy their comments.

ODFW did not reply to the Department’s comments, requesting clarification to HMP revisions, and review of the Department’s proposed updated HMP language. Therefore, the Department recommends Council incorporate the revisions to the HMP, as proposed above. An updated HMP is included as Attachment B of the Draft Final Order.

### **III.B. Removal Fill Law (OAR 141-085-0500 through 141-085-0785)**

**Issue RL-01 (DSL, Daniel Evans): Confirmed that no wetlands or waters of the state exist within the site boundary and no further delineation is needed.**

Comment ID: WREFIIIAMD1Doc12 Proposed Order Comments (ODSL) 2026-03-18

Response ID: WREFIIIAMD1Doc16 ODOE Public Comment Evaluation Cover Letter and Response 2026-04-10; WREFIIIAMD1Doc17 Cert Holder Responses 2026-04-10

**Comment Summary**

Oregon Department of State Lands (DSL) Daniel Evans identified that a wetland delineation for the project footprint had previously been reviewed and found to have no jurisdictional wetlands or waters of the state. He indicated that even though DSL’s prior jurisdictional determination expired on April 18, 2024, no further review is required.

**Department Evaluation**

In the Proposed Order Section IV.B.1., the Department recommended that Council impose a new condition to address the expired wetland delineation, as presented below:

**Recommended Removal Fill Condition 1 (PRE-RFL-01):** Prior to construction of the facility, facility component or phase, the certificate holder shall conduct a desktop evaluation to determine if wetlands or waters of the state (WOS) are present within the site boundary. If the desktop evaluation shows that wetlands or WOS are within proximity to ground disturbance, the certificate holder must conduct a field survey and submit a wetland delineation report to DSL for a DSL concurrence letter and demonstrate that impacts to wetland or WOS would be less than 50 cubic yards or that a removal fill permit may be necessary.

DSL’s comments appear to suggest that the recommended condition is unnecessary. The Department requested that DSL confirm whether the above condition is necessary based on DSL’s prior jurisdictional determination. The Department did not receive a reply from DSL regarding the relevance of imposing the condition above. If imposed, the certificate holder would be required to conduct a desktop survey prior to construction and would submit a wetland delineation if the desktop survey shows wetlands or WOS within proximity of ground disturbance.

Given DSL’s comments that clarified no further review would be required, despite the expiration of DSL’s prior jurisdictional determination, the Department recommends Council not impose Condition PRE-RFL-01.<sup>1</sup>

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<sup>1</sup> This recommendation is further supported by the outcome of compliance with existing Fish and Wildlife Habitat Condition 8 (PRE-FW-03). This condition requires, prior to construction, the certificate holder to “flag all environmentally sensitive areas as restricted work zones. Restricted work zones shall include but not be limited to ...wetlands and waterways that are not authorized for construction impacts”. Compliance with Condition PRE-FW-03 would inherently require the certificate holder to evaluate whether any wetlands and waterways are present within proximity to construction impacts. Furthermore, the certificate holder has to then identify and flag any that are not authorized for construction.