

**BEFORE THE STATE OF OREGON OFFICE OF ADMINISTRATIVE HEARINGS ON
BEHALF OF THE STATE OF OREGON ENERGY FACILITY SITING COUNCIL**

IN THE MATTER OF:	)	CONSOLIDATED RULING ON
	)	MOTIONS FOR SUMMARY
the Application for:	)	DETERMINATION AND
	)	PROPOSED CONTESTED CASE
SITE CERTIFICATE FOR THE	)	ORDER
YELLOW ROSEBUSH ENERGY	)	
CENTER	)	OAH Case No. 2024-ABC-06692

HISTORY OF THE CASE

This matter involves the Application for a Site Certificate (ASC) for the Yellow Rosebush Energy Center (Project or Proposed Facility) submitted by Yellow Rosebush Energy Center, LLC (Applicant) to the Energy Facility Siting Council (Council or EFSC) on August 30, 2024. On October 1, 2025, the Oregon Department of Energy (ODOE or Department) issued a draft proposed order (DPO) and public notice of a 32-day comment period on the DPO. On October 23, 2025, the Council conducted a public hearing on the DPO, at the Maupin Civil Center in Maupin, Oregon. Members of the public had the opportunity to provide oral and written testimony at the public hearing. The Department accepted public comments on the DPO from October 1, 2025, until 5:00 p.m. on November 3, 2025.¹

On December 5, 2025, the Department issued a Proposed Order on Application for Site Certificate and a Public Notice of Proposed Order and Opportunity to Request to Participate in a Contested Case. The Public Notice set the deadline to request party or limited party status at 5:00 p.m. PST on January 5, 2026. Pursuant to an *Amended Notice of Petitions for Party Status and Order Scheduling Prehearing Conference*, issued January 8, 2026, Senior Administrative Law Judge (ALJ)² Kate Triana notified the Department and Applicant of the petitions for party status or limited party status received in this matter. Specifically, ALJ Triana notified the Department and Applicant that Alvin Alexanderson and Warnock Ranches filed petitions for limited party status and gave the Department and Applicant the opportunity to file a response to the petitions. On January 15, 2026, ALJ Triana issued an Agenda for the Prehearing Conference.

ALJ Triana held a Prehearing Conference on January 23, 2026, at 10:00 a.m. PST, by Webex videoconference. Applicant and the Department are automatic parties to the contested

¹ The Council extended the deadline for the Applicant to respond to DPO public comments from November 3 to November 7, 2025, based on Applicant's request.

² Administrative Law Judge and Hearing Officer are used interchangeably in this Notice.

case and appeared at the conference.³ Petitioners Alvin Alexanderson and Warnock Ranches did not appear. At the Prehearing Conference, the ALJ provided Applicant and the Department the opportunity to respond to the petitions for limited party status and the draft proposed issue statements.⁴ The ALJ also discussed the procedure to develop the record in a contested case.

During the Prehearing Conference, each petitioner for party or limited party status in the contested case proceeding for the above-referenced matter would have had an opportunity to explain whether the draft list of issues included as an attachment to the agenda provided for the Prehearing Conference accurately reflected the issues raised in their petition.⁵

On January 28, 2026, Mr. Alexanderson emailed the ALJ, the Department, Applicant, and Warnock Ranches, indicating that he failed to attend the January 23, 2026 prehearing conference due to a calendaring error. In that email, Mr. Alexanderson stated that he had reviewed a recording of the prehearing conference and provided feedback on the draft issue statement regarding his petition. The ALJ gave the Department and Applicant until 5:00 p.m. PST on February 6, 2026, to respond to Mr. Alexanderson's email. On February 5, 2026, the Department and Applicant submitted timely responses to Mr. Alexanderson's email.

On February 9, 2026, ALJ Triana issued an *Order on Petitions for Party Status and Issues for Contested Case*, denying Warnock Ranches' request to participate as a limited party because it failed to submit a timely written comment on the record of the Draft Proposed Order, and granting Mr. Alexanderson's request to participate as a limited party to the contested case. The ALJ denied Mr. Alexanderson's request to modify the proposed issue statement and identified the single issue to be addressed in the contested case hearing. No appeals to Council were filed on the *Order on Petitions for Party Status and Issues for Contested Case*.

Also on February 9, 2026, the OAH issued a Notice of Prehearing Conference and Agenda, scheduling a prehearing conference for February 17, 2026.

On February 10, 2026, ALJ Triana issued an Update to Council pursuant to OAR 345-015-0405(3).

³ The following individuals appeared at the prehearing conference: Senior Assistant Attorney General (AAG) Jessie Ratcliffe (appearing on behalf of Senior AAG Patrick Rowe) and Sarah Esterson for the Department; Sarah Curtiss, Matteo Crow, Linnea Fossum, Jeff Watson, Chris Powers, and Mitchell Taylor for the Applicant.

⁴ The ALJ had scheduled sufficient time for the prehearing conference and would have allowed both petitioners the opportunity to address whether they had satisfied the eligibility requirements for party or limited party status as well as an opportunity to clarify their interests in the outcome of the proceeding and the issues identified in their respective petitions.

⁵ Prior to the prehearing conference, the ALJ drafted two issue statements based on the two petitions for party status received. The ALJ gave the Department and Applicant an opportunity to raise any concerns about the draft issue statements. Neither the Department nor Applicant provided any comments or suggested edits for the draft issue statement. However, once Warnock Ranches' petition for party status was denied, the issue statement pertaining to only Warnock Ranches was discarded.

On February 17, 2026, ALJ Triana held a prehearing conference to discuss the contested case process and set the contested case schedule. AAG Rowe participated for the Department, with Ms. Esterson. Ms. Curtiss and Mr. Crow participated for Applicant, with Linsey McLane-Godwin (on behalf of Ms. Fossum), Mr. Powers, and Mr. Watson. Mr. Alexanderson also participated. During the conference, in consideration of the parties' input, ALJ Triana set a schedule for discovery, motions for summary determination, and the contested case hearing, if needed.

On February 19, 2026, ALJ Triana issued a *Case Management Order and Contested Case Schedule*, confirming the schedule for discovery, motions for summary determination, and the contested case hearing.

On April 6, 2026, in accordance with the Case Management Order, the Department and the Applicant each filed a motion for summary determination seeking a favorable ruling on the sole issue for the contested case hearing.

On April 7, 2026, ALJ Triana notified Mr. Alexanderson of the requirements for filing a response to the motions for summary determination, as required by OAR 137-003-0580(10). On April 20, 2026, Mr. Alexanderson filed his response to the motions for summary determination. On April 27, 2026, the Department and the Applicant filed replies to Mr. Alexanderson's response.

On May 11, 2026, ALJ Triana issued an Update to Council.

BURDEN OF PROOF

ORS 183.450(2) discusses evidence in contested case hearings and provides, in relevant part, that "[t]he burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position." OAR 345-015-0440 provides that, "In a contested case regarding an application for a site certificate or amendment to a site certificate, each party or limited party bears the burden of presenting evidence in support of facts that party or limited party alleges and/or positions they take on any issue they submitted a petition for party or limited party status and on which the hearing officer determines they may participate." Together, ORS 183.450(2) and OAR 345-015-0440, identify the appropriate allocation of the burdens applicable to EFSC contested case proceedings on an ASC.

Applicant bears the burden of proving that the Proposed Facility complies with all applicable statutes, administrative rules, and local government ordinances. OAR 345-015-0440. The party/limited party raising an issue in this contested case by challenging the Department's Proposed Order bears the burden of producing evidence in support of the facts alleged and/or positions taken on any properly raised issue. ORS 183.450(2). That party/limited party also bears the burden of persuading the trier of fact that the alleged facts are true or the proffered position on the issue is correct. Neither Applicant nor the Department is required to disprove an opposing party/limited party's allegations and argument that Applicant has not met a particular statutory/regulatory requirement or Council siting standard. Rather, the party/limited party

asserting a deficiency in the findings and/or conclusions in the Department's Proposed Order on the ASC bears the burden of establishing the claim or alleged facts.

Accordingly, Applicant maintains the burden to show by a preponderance of the evidence in the decision record that the Proposed Facility complies with Council's siting standards and other applicable statutes and rules. The Department's Proposed Order, as conditioned, determined that the decision record on the ASC shows Applicant satisfied the requirements for issuance of the requested site certificate. That determination creates a rebuttable presumption that Applicant has satisfied its burden to show that the Proposed Facility will, more likely than not, comply with all applicable statutes, administrative rules, and local government ordinances. Thus, with regard to provisions of the Department's Proposed Order not challenged in this contested case, the presumption stands and Applicant is not required to make additional showings at the contested case hearing to meet its initial burden.

With regard to those provisions of the Department's Proposed Order challenged through the petitions for party status/requests for contested case hearing, the party/limited party bears the burden of producing evidence sufficient to establish the claim with regard to that issue (*i.e.*, the alleged deficiency in the Department's Proposed Order) to rebut the presumption created by the Department's Proposed Order. Applicant has no obligation to disprove unsubstantiated claims and/or allegations raised by the limited parties.

This burden remains applicable even when ruling on a motion for summary determination. While all evidence must be considered in a manner most favorable to the non-moving party, each party "has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing." OAR 137-003-0580(7), (8).

ISSUES

1. Whether there are any genuine issues as to any material facts and, if not, whether the Department and/or Applicant is entitled to a favorable ruling as a matter of law. OAR 137-003-0580.

2. Whether, pursuant to OAR 345-022-0060(1) (March 8, 2017⁶) the design, construction, and operation of the Proposed Facility, taking into account mitigation, are consistent with the general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1) through (6) in effect as of February 24, 2017, for "Habitat Category 2" fish or wildlife species, population, or unique assemblage of species, in that it results in a no net loss of either habitat quantity or quality and provides a net benefit of habitat quantity or quality.

⁶ The version of the rule cited herein was in effect on the date the ASC was filed. The rule was amended with an effective date of April 2, 2025, and April 23, 2026. All subsequent citations to the rule in this Proposed Order are to the 2017 version of the rule.

DOCUMENTS CONSIDERED

The ALJ admitted the entire Decision-Making and Administrative Project Record for the Project into the contested case hearing record.⁷

The following documents were considered in ruling on the parties' motions: Oregon Department of Energy's Motion for Summary Determination (Department MSD); Yellow Rosebush Energy Center LLC's Motion for Summary Determination and Argument in Support (Applicant MSD), along with Exhibits 1 through 11; Intervenor's Response to Motions for Summary Determination (Alexanderson Response), the Declaration of Alvin Alexanderson, and Exhibits R1 and R2; Oregon Department of Energy's Reply to Petitioner's Response to Motion for Summary Determination (Department Reply); and Yellow Rosebush Energy Center LLC's Reply to Petitioner's Response to Motions for Summary Determination (Applicant Reply).

EVIDENTIARY RULINGS

In his Response, Mr. Alexanderson requests that ALJ take official notice⁸ of 16 statements. OAR 345-015-0450(1), titled "Official Notice of Evidence," provides:

In a contested case proceeding, the hearing officer may take official notice of the following:

- (a) All facts of which the courts of the State of Oregon may take judicial notice;
- (b) Administrative rulings and reports of the Energy Facility Siting Council and other governmental agencies;
- (c) Facts contained in permits and licenses issued by the Council or any other government agency;
- (d) The factual results of the hearing officer's or the Council's personal inspection of physical conditions involved in the contested case; and
- (e) General, technical, or scientific facts within the specialized knowledge of

⁷ In the Project Record, all documents are named using a prefix that includes references to the Proposed Facility, the EFSC process phase, document identification number ("Doc ID"), description of the document, name of commenter (if applicable), and the date. The Department added "ODOE" in front of the Doc ID footer to indicate that the Department provided the document for the contested case proceeding. The Department also provided page numbers in the Doc ID footer to serve as "Bates Stamping" for consistent reference to record documents and pages.

⁸ In his Response, Mr. Alexanderson cited "OAR 345-015-0063" as the rule that allows the ALJ to take official notice of facts. That rule does not exist. Mr. Alexanderson appears to be referencing OAR 345-015-0450.

the Council or the Department of Energy.

ORS 40.060 through 40.090 describes when Oregon Courts may take judicial notice. ORS 40.065 describes the kinds of facts that an Oregon Court may take judicial notice of, as follows:

A judicially noticed fact must be one not subject to reasonable dispute in that it is either:

(1) Generally known within the territorial jurisdiction of the trial court; or

(2) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

OAR 137-003-0615 describes judicial and official notice in contested case hearings generally and provides, in relevant part:

(1) The administrative law judge may take notice of judicially cognizable facts on the record before issuance of the proposed order or in the proposed order * * *. The agency or party(ies) may present rebuttal evidence.

(2) The administrative law judge may take official notice of general, technical or scientific facts within the specialized knowledge of the administrative law judge.

Based on the above rules and law, a hearings officer (or ALJ) in a contested case hearing for the Council may take official notice of the following types of facts: (1) Administrative rulings and reports of the Council and other governmental agencies [OAR 345-015-0450(1)]; (2) Facts contained in permits and licenses issued by the Council or any other government agency [OAR 345-015-0450(1)]; (3) Factual results of the hearing officer's or the Council's personal inspection of physical conditions involved in the contested case [OAR 345-015-0450(1)]; (4) General, technical, or scientific facts within the specialized knowledge of the Council or the Department of Energy [OAR 345-015-0450(1)]; (5) Facts that are generally known within the territorial jurisdiction of the trial court and not subject to reasonable dispute [ORS 40.065]; (6) Facts that are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned and not subject to reasonable dispute [ORS 40.065]; or (7) General, technical or scientific facts within the specialized knowledge of the administrative law judge [OAR 137-003-0615]. Additionally, each of the above cited laws and rules makes it clear through the use of the term "may," that it is at the discretion of the ALJ whether or not to take official notice of a fact.

The 16 fact statements that Mr. Alexanderson requests the ALJ take official notice of are each discussed below:

1. *The Buckley Solar Facility Project Order shows a plan to add 12 square miles to the big game exclusion area in combined BGWR/PWCA^{9]} lying just north of the proposed site, the other side of Buck Hollow Creek.*

As to proposed fact 1, Mr. Alexanderson provided no citation or basis for determining the veracity of this fact. While this fact may be found in administrative ruling or reports of the Council or other governmental agencies, or permits or licenses issued by the Council, it would be an unwise use of judicial resources to pour through an unfathomable number of public records to possibly ascertain the veracity of the fact. Mr. Alexanderson had the opportunity to respond to the Department and Applicant's motions for summary determination and provide evidence and, if desired, affidavits. Had he so chosen, he could have provided the documentation evidencing this fact as an exhibit or provided such information in an affidavit.¹⁰ The ALJ has not personally inspected the physical conditions involved in this contested case. This is not a fact that the ALJ knows to be within the specialized knowledge of the Council or the Department of Energy. This is not a fact that is generally known within the territorial jurisdiction of this contested case proceeding. This is not a fact that is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Finally, this is not a general, technical or scientific fact within the specialized knowledge of the ALJ. For the foregoing reasons, the ALJ declines to take official notice of this proposed fact.

2. *The Speedway Energy Facility Project Order in contrast shows a plan to avoid BGWR and to employ strip clusters of arrays allowing big game passage in large areas of Sherman County and not dependent on the Buckley Substation for BPA connection.*

For the same reasons outlined in the proposed fact 1, above, the ALJ declines to take official notice of this proposed fact.

3. *Central and eastern mule deer population has collapsed from 306,000 in the 1980's to 162,600 in 2022.*

Mr. Alexanderson provided a citation to the "2024 ODFW Mule Deer Management Plan Ch. 2 Fig 2 (MDMP)" for this proposed fact. He did not, however, provide a copy of the management plan for the ALJ's review as an exhibit. Additionally, as discussed in more detail in section 3.2.3 of the Opinion, below, this proposed fact – be it true or not – is not pertinent to the outcome of this decision. For the foregoing reasons, the ALJ declines to take official notice of this proposed fact.

⁹ "BGWR" stands for the Big Game Winter Range. It is also referred to as the "winter range" or "mule deer winter range" in this order. "PWCA" stands for Protected Wildlife Connectivity Areas.

¹⁰ The ALJ does take official notice of the fact that Alvin Alexanderson is listed as a resigned member of the Oregon State Bar with an admission date of September 22, 1972. Thus, it's reasonable to assume that his understanding of the legal requirements of an administrative hearing is more sophisticated than that of a typical *pro se* litigant.

4. *Mule deer in Category 2^[11] Winter Range exist in a “negative energy balance” during winter months of December through April. Any habitat modification that increases energy use or decreases nutrition is harmful to the herd. Pregnant does must minimize movement in winter to preserve fat reserves for unborn fawns. Large detours lead to fawn absorption, undernourishment and predation.*

While Mr. Alexanderson provided a citation to “USDA Forest Service Nov 21, 2025” and “MDMP” for this proposed fact, for the same reasons outlined in the proposed fact 3, above, the ALJ declines to take official notice of this proposed fact.

5. *Many mule deer ranges will no longer support historic deer population levels due to reduction of habitat caused by human development and changes in land use. This is why winter range is “essential and limited” by rule.*

While Mr. Alexanderson provided a citation to “MDMP” for this proposed fact, for the same reasons outlined in the proposed fact 3, above, the ALJ declines to take official notice of this proposed fact.

6. *Fawn recruitment is the critical metric for population survival in Eastern Oregon.*

While Mr. Alexanderson provided a citation to “MDMP, ODFW Oregon Mule Deer Initiative, Draft 11/17/09” for this proposed fact, for the same reasons outlined in the proposed fact 3, above, the ALJ declines to take official notice of this proposed fact.

7. *The local herd is non migratory. Deer use the site during fawning.*

While Mr. Alexanderson provided a citation to “Exhibit P.p. 22” for this proposed fact, for the same reasons outlined in the proposed fact 3, above, the ALJ declines to take official notice of this proposed fact.

8. *The proposed site fence would directly block Critical Wildlife Connectivity Areas that provide movement corridors for big game and other species.*

Mr. Alexanderson provided a citation to the “Oregon Wildlife Corridor Action Plan 2024” with this proposed fact. However, a brief review of that action plan¹² provides no details regarding the specifics of the Project at issue in this matter and whether or not a fence surrounding the Proposed Facility would block any critical wildlife connectivity areas. The ALJ declines to take official notice of this proposed fact.

¹¹ OAR 635-415-0025 defines six separate categories of habitat. The rule refers to it both as “Habitat Category 2” and “Category 2 habitat.” Those terms are used interchangeably throughout this order.

¹² The action plan reviewed by the ALJ was found at the following link on June 9, 2026:
https://www.dfw.state.or.us/wildlife/management_plans/docs/WCAP%20Final%20January%202024.pdf

9. *Big Game Winter Range provides distance from vehicles, space, range, forage, solitude, cover, escape, quiet, i.e. spatial aspects that must be replaced in-kind if destroyed by a developer.*

Whether or not habitat must be replaced “in-kind” is a legal conclusion which Mr. Alexanderson presents as a “fact.” This is not something the ALJ may properly take official notice of. As to the remainder of the statement, Mr. Alexanderson presents a citation to the 2013 ODFW Oregon Big Game Winter Habitat Map Rationale, MDMP Ch 10. However, for the same reasons discussed in proposed fact 3, above, the ALJ declines to take official notice of this proposed fact.

10. *If habitat destroyed is not replaced, deer numbers will either go down or density will be increased by crowding on other land. There is nothing in the record to show that habitat carrying capacity exists anywhere for the displaced animals.*

While Mr. Alexanderson provided a citation to “MDMP Ch 6” for this proposed fact, for the same reasons outlined in the proposed fact 3, above, the ALJ declines to take official notice of this proposed fact.

11. *Vehicle collisions with big game increase when the animals are induced to travel along or across highways. East west travel (up-down slope) by the local herd will increase use of Bakeoven Road.*

Mr. Alexanderson provided no citation or source for this information. The ALJ has not personally inspected the physical conditions involved in this contested case. This is not a fact that the ALJ knows to be within the specialized knowledge of the Council or the Department of Energy. This is not a fact that is generally known within the territorial jurisdiction of this contested case proceeding. This is not a fact that is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Finally, this is not a general, technical or scientific facts within the specialized knowledge of the ALJ. For the foregoing reasons, the ALJ declines to take official notice of this proposed fact.

12. *Predators make effective use of fences in hunting big game.*

While Mr. Alexanderson provided a citation to “MDMP” for this proposed fact, for the same reasons outlined in the proposed fact 3, above, the ALJ declines to take official notice of this proposed fact.

13. *Up to 75 % of mule deer fawns do not survive their first year and about 50% of the mortality is due to coyotes. Does use space spatial attributes to spread out and avoid fawn crowding that benefits predators. The local herd fawns in the area. Fawns and fawning are not considered in the PO or Exhibit P.*

Mr. Alexanderson provided a citation to the “MDMP, 2013 ODFW Oregon Big Game Winter Habitat Map Rationale” for this fact. He did not, however, provide a copy of the map rationale for the ALJ’s review as an exhibit. Additionally, as discussed in more detail in section

3.2.3 of the Opinion, below, this proposed fact – be it true or not – is not pertinent to the outcome of this decision. For the foregoing reasons, the ALJ declines to take official notice of this proposed fact.

14. The Tygh Ridge Ranch is approximately 15 miles north of the proposed site, well beyond the typical travel distance found for the Biggs herd living around the site.

The first portion of this fact, that Tygh Ridge Ranch is approximately 15 miles from the proposed site has been found in other documentation and included in undisputed finding # 27, below. For the same reasons outlined in the proposed fact 3, above, the ALJ declines to take official notice of the remainder of this proposed fact.

15. The maximum herd range seen in radio collar study for the Biggs herd is 8 square kilometers with a diameter of 1.6 km. The record does not contain any study or other reliable evidence that displaced herds are more likely to move than stay or that movement even 5 miles is likely.

While Mr. Alexanderson provided a citation to “ODFW Delineating Mule Deer Herd Ranges in Oregon 2023” for this proposed fact, for the same reasons outlined in the proposed fact 3, above, the ALJ declines to take official notice of this proposed fact.

16. There is no evidence for excluding from habitat damage assessment, approximately 2000 acres inside the fence. The acreage is not shown as impacted but is not claimed to be cultivated.

This is one of Mr. Alexanderson arguments and is addressed in detail in section 3.2.5 of the Opinion, below. The ALJ declines to take official notice of this proposed fact.

STATEMENT OF UNDISPUTED FACTS

Notice of Intent, Project Order, Preliminary Application for Site Certificate, and Reviewing Agency Comments

1. On September 28, 2023, the Department received a Notice of Intent (NOI) from Yellow Rosebush Energy Center, LLC (Applicant), a subsidiary of Savion, LLC, to file an ASC for a proposed energy facility. (YRBNOIDoc4 Complete NOI 2023-09-28 7, 9, 12.) The proposal included an 800-megawatt solar photovoltaic power generation facility and related or supporting facilities, within a proposed 8,075-acre contiguous site boundary located approximately nine miles east of Maupin, Oregon and approximately six miles west of Kent, Oregon, in Wasco and Sherman counties. (*Id.* at 12; YRBAPPD2 Proposed Order w Attachments 2025-12-05.pdf at 9.)

2. All land within the site boundary is located on land designated as BGWR by the Oregon Department of Fish and Wildlife (ODFW). (YRBAPPD2 Proposed Order w Attachments 2025-12-05.pdf. at 196.) Land identified as BGWR provides essential and limited function and value for certain big game species from December through April, including thermal

cover, security from predation and harassment, forage quantity, adequate nutritional quality, and escape from disturbance. (Applicant Exhibit 2 at 1.) Abundance, distribution, and connectivity of big game habitat is crucial to species survival. (*Id.*)

3. On January 26, 2024, the Department issued a Project Order specifying the state statutes and administrative rules, and local, state, and tribal laws, regulations, ordinances and other requirements applicable to the siting of the Proposed Facility. (YRBNOIDoc42 SIGNED Project Order w Attachments 2024-01-26 at 1, 6.)

4. On August 30, 2024, Applicant filed its preliminary Application for Site Certificate (pASC) with the Department. (YRBAPPDoc1 pASC CoverLetter 08-30-2024 at 1.) Included with the pASC was Exhibit P: Fish and Wildlife Habitats and Species, which the Applicant prepared as required by OAR 345-021-0010(1)(p), regarding fish and wildlife habitats and species that could be affected by the Project. (YRBAPPDoc1-16 pASC Exhibit P. Fish and Wildlife Habitats and Species 2024-08-30 at 7.) Also included was a Draft Habitat Mitigation Plan (HMP). (*Id.* at 98-118.) Permanent impacts to habitat are mitigated through the use of an approved HMP within an approved Habitat Mitigation Area (HMA). (YRBAPPDoc1 Draft Proposed Order and Attach signed 2025-10-01 at 181.)

5. On September 11, 2024, the Department issued a Memorandum to reviewing agencies, including ODFW, requesting comments on the pASC for the Project by October 15, 2024. The Department also provided reviewing agencies with a copy of the pASC. (YRBAPPDoc8-1 pASC Reviewing Agency Email Sent 2024-09-11; YRBAPPDoc8 pASC Reviewing Agency Memo 2024-09-11 at 1, 2, 12.)

6. On October 15, 2024, ODFW provided the Department comments on the pASC. (YRBAPPDoc22 pASC Reviewing Agency Comment ODFW 2024-10-15.) ODFW made the following comments, in part:

ODFW continues to advocate for avoidance of Priority Wildlife Connectivity Areas (PWCAs) located on the edge of the facility. To avoid losing the function of this habitat, utilization of setbacks sufficient to facilitate wildlife movement along the edges of major drainages adjacent to the facility will be key.

* * * * *

ODFW considers all habitats within winter range, with the exception of areas designated as Category 6 in the Columbia Plateau Ecoregion (CPE), to be Category 2 as per the Oregon Habitat Mitigation Policy. For Category 2 habitats, ODFW's policy is to have "no net loss of habitat quantity or quality," and asks for "in-kind, in-proximity mitigation" (OAR Chapter 635, Division 415). The CPE contains several habitats that are rare and declining including wetlands, sagebrush steppe, and native grasslands. ODFW encourages the applicant avoid these rare intact habitats when it comes to micro siting and favor siting in previously disturbed areas.

ODFW appreciates the applicant's efforts to locate a mitigation area to move towards a "no net loss" approach. We recommend a 2:1 mitigation ask for functioning, intact Category 2 habitats (i.e., sagebrush steppe, grasslands, wetlands) that would be impacted by this project, as well as intact Category 3 and 4 habitats that are within the Eastern Oregon Mule Deer Winter range overlay. The Department has concerns that the proposed mitigation plan does not achieve this goal.

Regarding the Tygh Ridge habitat mitigation area, ODFW has conferred with the applicant and continues to affirm that this is an acceptable and high priority area for habitat conservation. It has adequate opportunities for uplift to benefit impacted species from the proposed facility location. However, ODFW seeks clarification and further detail on some proposed actions within the mitigation plan (Attachment P-2: Draft Habitat Mitigation Plan):

- The Tygh Ridge Ranch mitigation area will be insufficient to cover all mitigation acres required to achieve the requested mitigation ratio stated above (p. 4-5).
- The 2024 Larch Creek fire has impacted Tygh Ridge to varying degrees throughout the planned mitigation area (p. 6). ODFW encourages seeking further opportunities for uplift actions depending on the condition of the site to improve habitat in addition to the weed control, shrub planting, and planting Oregon white oak included in the plan (p. 7-10).
- The application mentions spring restoration and wildlife guzzler installation (p. 7-10). We request more information about the intended use of water developments and justification for the need of water on the landscape.
- ODFW agrees with the plan to remove unused boundary and internal fencing. We encourage the use of 'wildlife friendly' fencing when building any new fence.
- More detail explaining what the existing research and testing contracts are and their potential impacts to natural resources is needed (p. 9-10).
- More information about the current landowner recreational use (i.e., family hiking, horseback riding, driving, seasonal hunting, etc.) is requested (p. 9). We recommend no increase in current levels of recreational activities by the landowner and encourage reductions in disturbance on the site where possible.
- Monitoring should be conducted by establishing defined, repeatable protocols to ensure consistency within and among projects within the region

(p. 10).

(*Id.* at 3, 4-5.)

7. On October 29, 2024, the Department determined the pASC incomplete and issued a Request for Additional Information (RAI) to Applicant. (YRBAPPD0c23 pASC ODOE Completeness Review and RAI 1 2024-10-29 at 1.) The Department requested, among other things, that the Applicant “address ODFW comments and Department RAIs in attached review version of HMP.” (*Id.* at 15.) In Attachment 2 of the RAI, the Department provided several comments on Applicant’s Draft Habitat Mitigation Plan. (*Id.* at 23-42.)

8. On May 12, 2025, Applicant submitted a revised HMP to the Department. (YRBAPPD0c28-1 pASC ODOE Email and RAI2 2025-07-10 at 24.)

9. On July 10, 2025, the Department issued an Amended RAI to Applicant. The Department requested, in addition to the information requested in the initial RAI, that Applicant update the estimates of permanent/temporary impact acres to habitat. The Department also indicated that the May 12, 2025, revised HMP was under review by the Department and ODFW. (YRBAPPD0c28-1 pASC ODOE Email and RAI2 2025-07-10 at 24.)

10. On July 18, 2025, ODFW provided comments on Applicant’s revised HMP. Those comments included:

Mitigation ratios:

ODFW appreciates the recognition of the importance of big game winter range within the project area and the 2:1 ratio is consistent with the ODFW Winter Range White Paper. We concur with lower than 2:1 ratios for other habitat categories due to existing conditions based on previous disturbance and reduced habitat quality. ODFW would like clarification in Table 3 what “none” means (e.g., Category 2 Perennial Streams temporary impacts are listed as “none”).

Tygh Ridge HMA:

ODFW supports the selection of the Tygh Ridge Ranch as an HMA for Yellow Rosebush. ODFW recommended this site to the applicant during initial consultation regarding the Yellow Rosebush project. This HMA is located approximately within 20 miles from the proposed project location and is in similar (in-kind) habitat. Tygh ridge is recognized as a connectivity corridor between forested habitats to the west (Cascade crest) and the Deschutes River canyon to the east. Tygh ridge contains relatively intact grassland/shrubland on the edge of the Columbia Plateau Ecoregion (CPE). Locally most of the CPE habitat has been converted from intact rangeland to dryland farm ground, so any intact rangeland is of high conservation value. In addition to acting as a connectivity corridor, Tygh ridge is also a high-density winter range location for mule deer. The Tygh Ridge Ranch represents a key piece of property that would help ensure that a connection between the Mt

Hood National Forest/White River Wildlife area and the Lower Deschutes Wildlife area would be preserved.

Like many locations in the CPE, past land use at this site have created departures from historic conditions. ODFW has consulted with the applicant regarding uplift actions that could occur at this site. Based on our reading of the updated HMA, it seems that these suggestions were included as possible uplift actions and ODFW still considers them appropriate. ODFW would encourage that a draft copy of conservation easement be produced for the record as part of the application process.

Weed management:

The use of domestic sheep as a means to control invasive weeds and reduce fuels is a common request in the CPE at solar and wind facilities. Due to our strong concerns for the bighorn sheep population and the potential spread of zoonotic diseases, ODFW is still evaluating whether domestic sheep would be appropriate at this location based on the best available science.

Monitoring protocols:

ODFW recommends having clear, consistent, repeatable methods for evaluating uplift actions from baseline conditions. ODFW is available for consultation to develop protocols if needed.

Onsite mitigation:

ODFW concurs with the use of areas outside of the fence within the easement boundary to be used for mitigation. The result of this reduces impacts to Priority Wildlife Connectivity Areas (PWCA) along the canyon edges. To further improve habitat connectivity in these areas, when micro-siting ODFW recommends avoiding creating “peninsulas” of fencing, or chunks of fenced areas that stick out into the greater PWCA region.

We would like clarification that the uplift actions will occur outside the fence, and not inside the fence. In addition to the uplift actions described in the HMP (i.e., planting shrubs, fire control and weed management), ODFW recommends reseeding under weed control where natural revegetation [is] not likely to occur.

(YRBAPPDoc29 pASC Reviewing Agency Comment ODFW 2025-07-18 at 1-2.)

11. On August 28, 2026, following review of the responses, the revised pASC Exhibits, and supplemental information submitted by Applicant in response to the RAIs and agency comments, the Department determined the ASC for the Yellow Rosebush Energy Center to be complete. (YRBAPPDoc0 Determination of Complete Application 2025-08-28 at 2.)

Final ASC, Exhibit P, and Draft HMP

12. On September 5, 2025, Applicant submitted a final ASC to the Department. (YRBAPPD0c1-1 ASC Submittal with Div 21 and 22 Exhibit Crosswalk 2025-09-05.) The final ASC included an updated Exhibit P: Fish and Wildlife Habitats and Species exhibit. (*Id.* at 3.) The updated Exhibit P included a draft HMP. (YRBAPPD0c1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 5, 98-134.)

13. In Exhibit P, the Applicant analyzed the potential impact to fish and wildlife habitat within the proposed site boundary plus a 0.5-mile buffer (analysis area), totaling approximately 18,382.2 acres. (YRBAPPD0c1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 7, 16.) The Applicant designated a portion of the proposed site boundary as the proposed microsite corridor, where solar arrays and other related/supporting facilities would be located, totaling approximately 7,025.8 acres. (*Id.*)

14. In preparing the ASC, including Exhibit P and the draft HMP, Applicant met with consulting agencies, including ODFW and the U.S. Fish and Wildlife Services. (YRBAPPD0c1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 7.) Applicant also performed biological and botanical surveys. The surveys included a desktop review to identify “special status fish and wildlife species that had the potential to occur in the analysis area, including federal and state endangered, threatened, proposed, and candidate species; species of concern; birds of conservation concern; sensitive and sensitive-critical species; and Oregon Conservation Strategy species” and a review of “habitat and range information for special status fish and wildlife species known to occur in Wasco County and Sherman County and the Columbia Plateau/Columbia Basin to develop the list of species that had the potential to occur within the analysis area.” (*Id.* at 8.) Applicant also performed field surveys of a majority of the proposed microsite corridor in June of 2023. (*Id.* at 9.) Applicant assigned a Category (1 through 6, as defined by OAR 635-415-0025) to all land within the analysis area. (*Id.* at 11-12.) All land in the analysis area (with the exception of cultivated land) was redesignated as Category 2 habitat because it was within the ODFW BGWR. (*Id.* at 12.)

15. Applicant addressed some site-specific issues identified by ODFW, including:

During ongoing coordination, ODFW has identified big game as a site-specific issue at the Facility, as ODFW-mapped Mule Deer Winter Range encompasses the entire analysis area. The Applicant has worked with ODFW to avoid, minimize, and mitigate impacts to big game, as described in Section 9.0. For example, in response to ODFW’s comments on the Facility Notice of Intent, the Applicant will limit construction and operation activities outside the Facility’s fenced area during the winter to reduce disturbance to big game. The Applicant is also working with ODFW to provide mitigation for impacts to big game winter range habitat, which has been mapped as Category 2 habitat per ODFW’s recommendation.

Mule deer within the analysis area (and within the Columbia Plateau/Columbia Basin Ecoregion) are non-migratory, and ODFW expects Buck

Hollow Canyon and Hauser Canyon to the north and east of the Facility to provide movement corridors for big game. The canyons are mapped Priority Wildlife Connectivity Areas, which provide important corridors for wildlife movement across the landscape (ODFW 2023). In response to ODFW's concerns about wildlife habitat connectivity, the Applicant has modified the Facility layout to set back from the canyons to the north and south where feasible. These setbacks also reduce impacts to sagebrush (shrub-steppe) habitat, an ODFW Strategy Habitat (ODFW 2016). The Facility is located in an elk de-emphasis area; therefore, there are no agency management objectives for elk at the Facility. As a result of these considerations, the Applicant anticipates impacts to big game will be minimized by siting facilities set back from the canyons to maintain habitat connectivity, and unavoidable impacts will be mitigated consistent with the ODFW Fish and Wildlife Habitat Mitigation Policy goals and standards (OAR 635-415- 0025), and as described below.

(YRBAPPD0c1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 28.)

16. Applicant indicated that the solar array areas would be fenced and all areas inside the fence would be considered permanently disturbed habitat. (YRBAPPD0c1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 32.)

17. In Exhibit P, Applicant provided the following information regarding mule deer:

Mule deer are not a state sensitive species; however, potential direct, adverse impacts to mule deer within ODFW-identified Mule Deer Winter Range have been identified in response to consultation with ODFW. A study investigating habitat use and mule deer survival in eastern Oregon identified that mortality risks varied between male and female populations (Mulligan 2015). For mule deer males, the cumulative risk was highest for legal harvest, with predation the next highest cause of mortality for this sex. For females, the cumulative risk was highest for predation, with anthropogenic causes (vehicles, fences) and illegal harvest also important sources of mortality. Winter survival does not appear to be the primary limiting factor for adult mule deer; however, low coverage and quality of forage in wintering habitat can result in poor deer condition, and thus, survival (ODFW 2003). Agency recommendations have been considered during the design and selection of fence components and layout, as discussed in Section 9.0. The potential for vehicle collisions during all phases of construction and operation of the Facility are also addressed in Section 9.0. Additional potential impacts include displacement from foraging in temporary impact areas due to vegetation removal, and disturbance by construction activities in the winter, when deer are nutritionally stressed (ODFW 2014).

(YRBAPPD0c1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 35-36.)

18. In Section 9 of Exhibit P, Applicant set out measures it would take to avoid, reduce, or mitigate impacts of the Proposed Facility on fish and wildlife habitat. (YRBAPPD0c1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 36.) During the Proposed Facility design and micro-siting decision phase, Applicant took the following relevant measures to avoid, reduce, or mitigate impact to wildlife habitat: (1) fencing Proposed Facility components to exclude big game; and (2) micro-siting the Proposed Facility layout to set back from canyon areas to reduce impacts on big game and higher-quality habitats. (YRBAPPD0c1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 42-43.)

19. During the construction phase of the Proposed Facility, Applicant proposed the following relevant measure to avoid, reduce, or mitigate impact to wildlife habitat: (1) flagging sensitive habitat features that are not proposed to be impacted by construction and instructing construction personnel to work outside the flagged areas; (2) limiting construction activities outside the fenced area between December 1 and April 1 to minimize disturbances to wildlife, including wintering deer; and (3) limiting construction vehicles to driving no more than 20 mile per hour on all Proposed Facility access roads. (YRBAPPD0c1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 43-44.)

20. Once construction is complete and the Proposed Facility is in operation, Applicant proposed the following relevant measure to avoid, reduce, or mitigate impact to wildlife habitat: (1) any temporary disturbances to habitat outside the fenced area would be restored to their original conditions and monitored as necessary; (2) in the event wildlife were injured, Applicant would contact a licensed wildlife rehabilitator capable of responding to the Proposed Facility; and (3) limiting vehicles on all Proposed Facility roads to driving no more than 20 mile per hour. (YRBAPPD0c1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 44-45.)

21. Because some impacts to wildlife habitat from the Proposed Facility will be permanent, Applicant also developed a Habitat Mitigation Plan, using ODFW Habitat Mitigation Policy goals and standards. (YRBAPPD0c1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 45.) The HMP includes “measures for conserving and enhancing sufficient acreages of wildlife habitat to compensate for those acreages temporarily and permanently impacted by the Facility” and will last for at least the duration of the Proposed Facility’s existence. (*Id.*)

22. Applicant further discussed its micro-siting decision for the Proposed Facility as follows:

The Applicant will minimize Category 2 habitat impacts by siting facilities on agricultural lands within the proposed micro-siting corridor to the maximum extent possible. Because there is minimal agricultural land within the proposed micro-siting corridor and all other land is considered Category 2, there is limited opportunity to avoid impacts through alternatives to the proposed development action. However, the Applicant will micro-site the Facility layout where feasible to reduce impacts to Priority Wildlife Connectivity Areas and high-quality (field-mapped Category 2) habitats. The Applicant will provide mitigation to offset unavoidable impacts, as described in its Habitat Mitigation Plan (Attachment P-2). This mitigation is intended to

meet the goals of OAR 635-415-0025, as determined by the Oregon Energy Facility Siting Council (EFSC).

(YRBAPPDoc1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 46.)

23. In the draft HMP, Applicant indicated that it was “not possible to site the Facility outside of the designated winter range because the Facility is location-dependent on its interconnection point at [the] Bakeoven or Buckley substations, which are also in the winter range.” (YRBAPPDoc1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 102.)

24. The micrositing corridor for the Proposed Facility is primarily composed of eastside grassland, shrub-steppe, and planted grassland. Applicant explained that “[e]ssential habitat values for quality big game winter range - such as thermal cover, security from predation and harassment, quality forage, and limited disturbance - are present throughout shrub-steppe and eastside grassland habitat within the Facility micrositing corridor but generally lacking in planted grasslands.” (YRBAPPDoc1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 103.) Planted grasslands account for 1,247 acres (18 percent) of the Proposed Facility micrositing corridor. Non-native plant species account for approximately 2,460 acres (35 percent) of the micrositing corridor. (*Id.*)

25. Applicant proposed no mitigation for impacts to Category 6 habitat (cultivated land). (YRBAPPDoc1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 103.)

26. When determining the methods for calculating the size of the mitigation areas, Applicant explained:

Mitigation ratios vary depending on the preliminary habitat category and habitat subtype (Table 3). With the exception of preliminary Category 4 planted grasslands and preliminary Category 4 eastside grasslands, a mitigation ratio of 2 acres for every 1 acre of preliminary Category 2, 3, and 4 habitat affected will be used to ensure that the HMA will be large enough to achieve “no net loss” of final Category 2 habitat quantity or quality and a “net benefit.” A “net benefit” in habitat quantity or quality for impacts to habitat in Category 2 may also be achieved through habitat enhancement actions or by other means approved by ODFW. Preliminary Category 4 eastside grasslands will be mitigated at a 1.5:1 ratio, preliminary Category 4 planted grasslands will be mitigated at a 1.2:1 ratio, and preliminary Category 5 habitats will be mitigated at a ratio of 0.5:1 (Table 3). No mitigation will be implemented for impacts to Category 6 habitat. For temporary impacts that require mitigation (i.e., temporal impacts), the HMA will include up to 0.5 acres for every 1 acre of eastside grassland and shrub-steppe habitat affected. The size of this portion of the HMA assumes that restoration of disturbed eastside grasslands and shrub-steppe habitat is successful, as determined under the Revegetation Plan (Attachment P-3 to Exhibit P).

(YRBAPPDoc1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 106.) Based on this, Applicant proposed the following compensatory mitigation totals:

Final Habitat Category	Preliminary Habitat Category	Habitat Subtype	Impact (acres)	Mitigation Ratio	Mitigation Need (acres)
Permanent Impacts					
2	2	Perennial Streams, Scrub-shrub wetlands	-	2:01	-
		Shrub-steppe	52.8	2:01	106
	3	Cliffs, Caves, Talus, Emergent Wetlands, Intermittent or Ephemeral Streams	0.3	2:01	0.6
		Eastside Grasslands	228	2:01	456
		Shrub-steppe	1,210	2:01	2,420
		Eastside Grasslands	1,123	1.5:1	2,420
	4	Intermittent or Ephemeral Streams	0.1	2:01	0.2
		Planted Grasslands	1,144	1.2:1	1,373
		Shrub-steppe	63.7	2:01	127
		Eastside Grasslands, Emergent Wetlands, Intermittent or Ephemeral Streams, Seasonal Ponds	848	0.5:1	424
6	6	Wheat Fields and Other Row Crops, Urban and Mixed Environs	322	None	-
Temporary Impacts					
2	2	Shrub-steppe	4.2	0.5:1	2.1
		Perennial Streams, Scrubshrub wetlands	0.2	None	-
	3	Cliffs, Caves, Talus, Emergent Wetlands, Intermittent or Ephemeral Streams	3.8	None	-
		Eastside Grasslands	28.8	0.5:1	14.4
		Shrub-steppe	69.0	0.5:1	34.5
	4	Eastside Grasslands	48.2	0.5:1	24.1
		Intermittent or Ephemeral Streams	0.1	None	-
		Planted Grasslands	14.6	None	-
		Shrub-steppe	18.1	0.5:1	9.7
	5	Eastside Grasslands, Emergent Wetlands, Intermittent or Ephemeral	11.1	None	-

		Streams, Seasonal Ponds			
6	6	Wheat Fields and Other Row Crops, Urban and Mixed Environs	28.3	None	-
Total			5,218		6,675

(*Id.* at 107; internal footnotes omitted.)

27. The areas that Applicant selected to satisfy the mitigation obligation are on the Columbia Plateau. (YRBAPPD0c1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 108.) The proposed mitigation areas are largely within the ODFW BGWR. (*Id.*) Applicant proposed that, “[p]rior to operation of the Facility, the Applicant will acquire the legal right to create, maintain, and protect the HMAs for the estimated 40-year life of the Facility by means of an outright purchase, conservation easement, or similar conveyance.” (*Id.*)

28. Applicant proposed that the primary mitigation area for the Proposed Facility be 5,020 acres at the Tygh Ridge Ranch, located approximately 15 miles northwest of the Proposed Facility. The habitat is within the ODFW BGWR and is composed of a similar habitat type as the Proposed Facility site. (YRBAPPD0c1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 108.)

29. The land at Tygh Ridge Ranch is primarily Flowing Water and Riparian, Grassland, and Sagebrush ODFW Conservation Strategy Habitats, with grassland/herbaceous being the primary habitat type, followed by shrub/scrub habitat. Applicant further explained:

The presence of these habitats will allow for enhancements beneficial to wildlife in general, and big game, grassland birds, and white-tailed jackrabbits (*Lepus townsendii*) in particular. Tygh Ridge Ranch is adjacent to the White River Wildlife Management Area near Mount Hood and approximately 3.5 miles from the Lower Deschutes Wildlife Management Area. The property is known by ODFW to be used for seasonal elk migration between the Deschutes River and higher elevation forests of the Hood River National Forest. Tygh Ridge Ranch extends into one ODFW-designated Priority Wildlife Connectivity Area (PWCA) Region and two Connectors. PWCA Regions are large, contiguous areas and represent the highest-value habitat for facilitating species movement throughout the state, while Connectors represent the best available habitat for facilitating movement from region to region. Placing a conservation easement on Tygh Ridge Ranch will protect wildlife connectivity in these PWCAs for the life of the Facility. b

(YRBAPPD0c1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 109.) A fire in 2024 burned approximately one-third of the western portion of the ranch, creating an opportunity for habitat improvement through shrub planting, Oregon White Oak planting, weed control, fire control, fence maintenance and removal, habitat protection, and spring/water maintenance and improvement. (*Id.* at 108-109.) Shrubs, including sagebrush and/or bitterbrush shrubs as recommended by ODFW, will be planted in the area of the 2024 fire. (*Id.* at 110.) These shrubs

provide animals, including big game, access to nutritious woody vegetation during winter to improve over-winter survival. (*Id.* at 112.) Oregon White Oak seedlings, also as recommended by ODFW, will be planted in portions of Big Canyon that burned during the 2024 fire. (*Id.* at 110.) The white oak will provide acorns and foliage for forage by mule deer and other wildlife. (*Id.* at 112.) If any portion of the ranch HMA is damaged by wildfire during the life of the Proposed Facility, Applicant will assess the extent of the damage and restore habitat in the damaged area. (*Id.* at 110.) Weed control will reduce competition with desirable forage species which will improve or maintain mule deer forage quality and quantity. (*Id.* at 112.) Applicant will improve or repair some fencing to prevent encroachment by grazing cattle and remove any unused boundary or internal fencing to promote big game movement. Applicant will restrict uses of the ranch HMA which are inconsistent with the goals of no net loss habitat quantity or quality and a net benefit to the habitat.¹³ (*Id.* at 111.)

30. The secondary HMA identified by Applicant is 1,655 acres within the Proposed Facility boundary. The land is also BGRW land and supports wildlife movement in adjacent canyons. The habitat is predominately shrub-steppe, with some patches of eastside grassland. (YRBAPPDoc1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 112.) Applicant will implement habitat improvement through shrub planting, weed control, and fire control. (*Id.* at 112-113.)

31. Applicant will coordinate with ODFW to develop a HMA monitoring protocol for the life of the Proposed Facility, subject to Department review and approval. (YRBAPPDoc1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 113.)

Reviewing Agency Comments on Final ASC

32. On September 26, 2025, ODFW provided comments on the final ASC. (YRBAPPDoc19-12 ASC Review Agency Comment ODFW 2025-09-29.) The comments included, in relevant part:

ODFW appreciates the applicant's communication and efforts to address fish and wildlife concerns related to the application, including modifications to the proposed site boundary in response to comments and site visits to date.

ODFW continues to advocate for avoidance of Priority Wildlife Connectivity Areas (PWCAs) located on the edge of the facility, and rare vegetative communities within the CPE. To prevent losing the function of this habitat, utilization of setbacks sufficient to facilitate wildlife movement along the edges of major drainages adjacent to the facility (including both the project boundary, and microsites) and avoiding important habitat types will be key.

¹³ The landowner will be allowed personal recreational activities on the land, including hiking, hunting, horseback riding, and limited driving. Existing contracts for two internet antennas will remain and include access to the antennas along existing roads twice per year. (YRBAPPDoc1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 111.)

Yellow Rosebush Solar Project Comments on the Application for Site Certificate (ASC); Exhibit P From ODFW	
Pg./Para./Sentence Reference * * *	Comment or Information Request
Section 9.0 (Measures to Avoid, Reduce, or Mitigate Impacts)	• ODFW appreciates avoiding direct impacts to nesting raptors * * *. • ODFW appreciates the avoidance of disturbing wintering wildlife during December 1 – April 1 by limiting construction outside the fenced area during this time period (pg. 38).
Table P-3; (Acres of Habitat Categories and Types within the Micrositing Corridor and the Analysis Area)	• ODFW considers all habitats within winter range, with the exception of areas designated as Category 6 in the CPE, to be Category 2 as per the Oregon Habitat Mitigation Policy. For Category 2 habitats, ODFW’s policy is to have “no net loss of habitat quantity or quality,” and asks for “in-kind, in-proximity mitigation” * * *.
Attachment P-2; Draft Habitat Mitigation Plan; Section 4.1 – 4.2 (Tygh Ridge HMA and Facility HMA)	• ODFW appreciates the applicant’s efforts to locate a mitigation area to move towards a “no net loss” approach. We recommend a 2:1 mitigation ask for functioning, intact Category 2 habitats (i.e., sagebrush steppe, grasslands, wetlands) that would be impacted by this project, as well as intact Category 3 and 4 habitats that are within the Eastern Oregon Mule Deer Winter range overlay. • ODFW has conferred with the applicant and continues to affirm that the Tygh Ridge Ranch and land controlled by the Applicant but outside of the fence boundary (Facility Habitat Mitigation Area) are both acceptable areas for habitat conservation. They have adequate opportunities for uplift to benefit impacted species from the proposed facility location. • We recommend developing more clarification on what will occur if a wildfire occurs on the HMA. For example, “damaged” lands may be defined as invasive annual grasses exceeding a certain threshold, or shrub cover reduced by a specific amount as a result of the fire. • We recommend defining when weed control treatments are needed. For example, action is required when invasive plants occur in a new location, or if invasive plant cover exceeds a specific threshold. • In addition to the enhancement actions listed on pages 9-12, ODFW recommends adding seeding as a potential uplift action to provide additional ungulate

	forage and pollinator habitat.
Attachment P-2; Draft Habitat Mitigation Plan; Section 4.1 (Tygh Ridge HMA)	• We request to see a draft or example document that is being considered for the durability of the proposed parcel (i.e., draft conservation easement deed). • The 2024 Larch Creek fire has impacted Tygh Ridge to varying degrees throughout the planned mitigation area. ODFW has already been working with the landowner to implement reseeding efforts in order to effectively and efficiently protect and restore this habitat for wildlife. These prior efforts will not be permitted to be used by the applicant as habitat uplift. • Baseline habitat categorization of the property will need to be conducted prior to construction to effectively capture the condition of the property and identify uplift actions. • ODFW agrees with the plan to remove unused boundary and internal fencing, and the implementation of ‘wildlife-friendly’ fencing when building any new fence. We request a spatial inventory of all fencing so that habitat improvements can be quantitatively measured (i.e., how much fencing is being removed, and how much is being modified to wildlife-friendly fencing). • There is no mention of the use of livestock on the habitat mitigation area (HMA). ODFW would like the HMP to address any plans to include or exclude livestock from the property, with the exception of the landowner’s personal recreational horseback riding. It is ODFW’s preference to exclude livestock grazing from the HMA to ensure that the area is being managed solely for the purpose of wildlife habitat.
Attachment P-2; Draft Habitat Mitigation Plan; Section 5.0 – 6.0 (Monitoring and Success Criteria)	• Monitoring and success criteria will need to be defined and established prior to construction. ODFW is available to provide assistance when developing protocols and criteria. • ODFW recommends the Applicant record and share observations of State Sensitive species or Oregon Species of Greatest Conservation Need occurring within the project boundary. The sharing of species observation data (including date, species, location, indication of breeding activity, age/sex if known) allows ODFW the opportunity to fill in data gaps for these species.

Attachment P-3; Draft Revegetation and Reclamation Plan; Section 1.0 (Introduction)	• ODFW commends the collaborative effort to work with multiple agencies to develop and incorporate revegetation methods (ODOE, ODA, ODFW, County weed department)[.] * * * * * • ODFW commends the inclusion of having adaptive management built into the revegetation plan to allow for flexibility in case conditions or treatment methods change.
Attachment P-3; Draft Revegetation and Reclamation Plan; Section 3.0 (Description of Temporary and Permanent Impacts)	• The description of temporary impacts includes varying levels of ground disturbance. ODFW concurs with the mitigation ratios listed of 0.5:1 in most cases listed in this section. • Sage-steppe communities are rare and declining in the CPE and impacts to shrub vegetation often take a long time to recover, especially in more arid regions such as the Columbia Plateau. Impacts that take longer than 3-5 years to recover are no longer considered temporary and should be mitigated as a permanent impact due to temporal loss. • Depending on the type of activity and impact, there may be a need for a higher mitigation ratio for impacts to shrub-steppe cover included as “temporary” impacts in Attachment P-3, Table 1 (pg. 4). For example, if the temporary impacts will necessarily remove the topsoil or pull up shrubs, the mitigation ratio included for shrub-steppe habitats (0.5:1) is less than what ODFW typically requests for this habitat type. However, higher mitigation ratios are not needed if the temporary impacts only include occasionally driving over the ground and shrub cover.

(*Id.* at 3-6.)

33. On September 29 and 30, 2025, at the request of the Department, ODFW made the following clarifications regarding its comments:

Department Statement: In the attached ODFW comment letter, page 1, 3rd row in the table states, “We recommend a 2:1 mitigation ask for functioning intact Category 2 habitats (i.e., sagebrush steppe, grasslands, wetlands) that would be impacted by this project, as well as intact Category 3 and 4 habitats that are within the Eastern Oregon Mule Deer Winter range overlay.” This comment does not suggest that there are concerns with the ratio proposed to address permanent habitat impacts in the draft Habitat Mitigation Plan submitted for Yellow Rosebush Energy Center, it is a general comment on ODFW’s position regarding the mitigation obligation for mapped Cat 2 habitat.

Please confirm.

ODFW clarification: Yes this was intended as a general comment, we are in agreement with Savion on the permanent ratios proposed in Table 3 page 6 of P-2. * * * As discussed, depending on levels of disturbance and habitat type, we are not in agreement on the ratios proposed for temporary impacts. But are fine with the permanent ratios.

* * * * *

Department Statement: In the attached ODFW comment letter, page 5, 3rd row in the table states, “ODFW concurs with the mitigation ratios listed of 0.5:1 in most cases.” and clarifies that temporary impacts to shrub-steppe habitat warrant a higher ratio if construction activities include grading, where topsoil is removed and shrubs are pulled. Could you confirm if this is an accurate summary of the comment?

ODFW clarification: Yes.

Department follow up Statement: Note, if all temporary impacts to shrub-steppe are from grading like activities, this would increase the mitigation obligation by approx. 136 acres (from 45 to 183 acres).

ODFW clarification: Yes, a 2:1 ratio would result in any shrub steppe “temp” impacts in ~183 acres.

Department follow up Statement: If the above summary is accurate, we intend to build in a requirement that, prior to construction, temporary impacts be re-evaluated based on disturbance level. This would result in either maintaining the ratio or treating the impact as a permanent impact.

ODFW clarification: I think this is a good way of rephrasing our concern- there are some activities that we are concerned are currently classified as Temporary, when they should really be treated as Permanent, depending on the disturbance level and habitat type. We realize that if disturbance levels are actually low in a vegetation type that recovers quickly, then that means the ratio will not change.

(YRBAPPDoc19-16 ASC Review Agency Comment ODFW 2025-09-30 at 1, 3.)

Draft Proposed Order (DPO)

34. On October 1, 2025, the Department issued the DPO for the Project.
(YRBAPPDoc1 Draft Proposed Order and Attach signed 2025-10-01.)

35. The Department analyzed the potential impact to fish and wildlife habitat within

and extending 0.5 miles from the site boundary, a total of approximately 18,382 acres (the Analysis Area). (YRBAPPDoc1 Draft Proposed Order and Attach signed 2025-10-01 at 172.) The entire Project area was within the ODFW BGWR for Mule Deer habitat. As such, all non-cultivated land was considered Category 2 habitat. The 303.2 acres within the micrositeing corridor and the 1,605.1 acres in the Analysis Area of cultivated land was categorized as Category 6 habitat. (*Id.* at 173.)

36. The Department determined there would be 4,670 acres of permanent Category 2 habitat impact, and 198 acres of temporary Category 2 habitat impact from the Project. The Department also determined there would be 332 acres of permanent Category 6 habitat impact, and 28.3 acres of temporary Category 6 habitat impact from the Project. (YRBAPPDoc1 Draft Proposed Order and Attach signed 2025-10-01 at 177.)

37. The Department recommended the Council impose conditions related to a Revegetation and Reclamation Plan for temporary impacts to habitat. The Department further determined that the Applicant had adequately identified mitigation measure for temporary impacts to fish and wildlife habitat. (YRBAPPDoc1 Draft Proposed Order and Attach signed 2025-10-01 at 179-181.)

38. Applicant proposed, and the Department concurred with Applicant's proposed mitigation ratios in the final ASC.¹⁴ (YRBAPPDoc1 Draft Proposed Order and Attach signed 2025-10-01 at 181-182.) The Applicant proposed a total of 84.2 mitigation acres for temporary impacts. (*Id.*) The total HMA acreage needed for temporary and permanent habitat impact was 6,675 acres. (*Id.* at 182, 183.)

39. Of the two proposed HMA sites, the Department found that "approximately 6,675 acres of suitable HMA have been identified for mitigation." (YRBAPPDoc1 Draft Proposed Order and Attach signed 2025-10-01 at 183.) The Department further concluded that the HMA areas were "identified in consultation with ODFW as suitable mitigation areas for potential impacts of the facility." (*Id.*)

40. Regarding the HMA, the Department found that:

The proposed HMA areas have been selected because they are available, have intact high-value habitat desirable for conservation, and suitable habitat in need of enhancement and other management actions to restore its potential as high-quality Category 2 big game habitat. The draft HMP includes enhancement and uplift actions that may be implemented on this property to achieve the net-benefit requirements of ODFW Category 2 habitat mitigation goals including:

- Shrub Planting
- Oregon White Oak Planting

¹⁴ The only exception to the Department's concurrence was that temporary impacts should be reassessed prior to and post construction to determine if they remain temporary impacts.

- Weed Control
- Fence Removal
- Fire Control
- Monitoring of implementation measures

(YRBAPPD0c1 Draft Proposed Order and Attach signed 2025-10-01 at 183.)

41. The Department explained that the HMP was a draft because the Project was not yet approved. To be finalized, the HMP must include “determining final estimated permanent habitat disturbance based on final facility design or phase, by habitat type and category; finalization of the management plan to be implemented at the HMA; and execution of the legal instrument required to secure the HMA.” (YRBAPPD0c1 Draft Proposed Order and Attach signed 2025-10-01 at 183.) The legal mechanism was required to be for the life of the Proposed Facility, even if the current owner ceases ownership or management of the land, and an agreement that the land will not be used to satisfy any other mitigation obligations beyond the Proposed Facility. (*Id.*)

42. The Department recommended that Council find that the Applicant “demonstrated that permanent impacts to wildlife habitat will be mitigated in a manner consistent with ODFW’s fish and wildlife habitat mitigation policy.” (YRBAPPD0c1 Draft Proposed Order and Attach signed 2025-10-01 at 184.)

43. The Department found that the Applicant “microsited the facility [on the available land] to avoid the most sensitive habitat in the site boundary and did so in consultation with ODFW.” (YRBAPPD0c1 Draft Proposed Order and Attach signed 2025-10-01 at 188.) The Department also found that the Applicant microsited the Proposed Facility layout to “reduce impacts to Priority Wildlife Connectivity Areas” and “higher quality habitats mapped in the area.” (*Id.*)

44. The Department recommended that Council impose the following condition¹⁵ on Applicant:

Recommended Fish and Wildlife Condition 14 (CON): During construction, certificate holder shall limit construction activities outside the fenced area (i.e., at the overhead collection line, transmission line, and roads) between December 1 and April 1 to minimize disturbance to wildlife, and wintering deer in particular.

(YRBAPPD0c1 Draft Proposed Order and Attach signed 2025-10-01 at 190.)

45. The Department found that, if the Applicant followed the recommendation of ODFW and the Department, impacts to state sensitive fish and wildlife by the Proposed Facility would be minimized, avoided and mitigated to meet the Council standard regarding fish and wildlife. (YRBAPPD0c1 Draft Proposed Order and Attach signed 2025-10-01 at 191.)

¹⁵ The Department proposed the imposition of several fish and wildlife conditions in the DPO. Only the conditions relevant to this proceeding have been listed in this order.

46. The Department concluded, based on a review of Applicant's final ASC and in consultation with ODFW, that:

Based on the foregoing analysis, and subject to compliance with the recommended site certificate conditions described above, the Department recommends the Council find that the design, construction and operation of the proposed facility are consistent with the mitigation goals and requirements of the Oregon Department of Fish and Wildlife's Fish and Wildlife Habitat Mitigation Policy under OAR 635-415-0025.

(YRBAPPDoc1 Draft Proposed Order and Attach signed 2025-10-01 at 191.)

47. The Department ultimately concluded that:

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

1. The proposed Yellow Rosebush Energy Center complies with the requirements of the Oregon Energy Facility Siting Statutes, ORS 469.300 to 469.520.
2. The proposed Yellow Rosebush Energy Center complies with the standards adopted by the Council pursuant to ORS 469.501.
3. The proposed Yellow Rosebush Energy Center complies with all other Oregon statutes and administrative rules identified in the Project Order as applicable to the issuance of a site certificate for the facility.

Based on the recommended findings of fact, reasoning, recommended conditions and conclusions of law in this draft proposed order, the Department recommends that Council conclude that the applicant has satisfied the requirements for issuance of a site certificate. The Department further recommends that, pursuant to ORS 469.401, the Chairperson execute the site certificate authorizing the applicant to construct, operate and retire the facility subject to the conditions set forth in the site certificate.

(YRBAPPDoc1 Draft Proposed Order and Attach signed 2025-10-01 at 261.)

Proposed Order on Application for Site Certificate

48. Following a public hearing and comment period, the Department issued a Proposed Order on Application for Site Certificate (Proposed Order), on December 5, 2025. (YRBAPPDoc2 Proposed Order w Attachments 2025-12-05.pdf at 1, 16.)

49. The Proposed Order included the Applicant's and Department's response to Mr. Alexanderson's public comment on the DPO as follows:

Comment Summary	Applicant Response	Department Response
Fish and Wildlife Habitat: Impacts within Big Game Winter Range for Mule Deer (BGWR) not accurately calculated or mitigated, suggests moving the site		
Putting a big game exclusion area in BGWR is such a bad idea one wonders why it is being considered. This intervenor says solar arrays should go outside BGWR. Suppose there are 500,000 acres of designated BGWR and you take away 6 thousand acres leaving 400,994. If you change some plants on 6000 acres of already protected BGWR the total is still 400,994. No replacement has occurred. There is a net loss of quantity. [W]e should be seeing at least an equal number of acres of suitable habitat being newly protected. This could be a conservation easement outside the current mapped range or newly designated replacement Solar arrays eliminate the habitat completely. No game animals can use it. It appears from the map that some parts of the proposed arrays could be placed closer to the Buckley substation in Sherman County outside the BGWR.	The applicant worked closely with ODFW to avoid, minimize, and appropriately mitigate identified impacts to both habitat and wildlife, resulting in a plan that has been thoroughly reviewed by ODFW as well as the Department to ensure that it is in compliance with ODFW's habitat mitigation policy.	The Fish and Wildlife Habitat standard creates requirements for mitigating impacts to fish and wildlife habitat, based on the functional quantity and quality of the habitat impacted as well as the nature, extent, and duration of the impact. Functional quality is presented using a habitat classification system based on the function and value of the habitat it would provide to a species or group of species likely to use it. ODFW policy identifies six habitat categories, with Category 1 being the most valuable, which must be avoided, and Category 6 the least valuable. ODFW's Mitigation Goal allow for in-kind and in-proximity mitigation for impacts within Category 2 habitat, such as much of the facility site boundary; mapped Category 2 Big Game Winter Range for Mule Deer habitat. See DPO Table 17: Estimated Habitat Impacts and ODFW Habitat Mitigation Ratios. Permanent impacts will occur within the perimeter fenceline, even if areas within the fenceline will be revegetated. These areas are considered permanent impacts to fish and wildlife habitat, and are quantified in the mitigation obligation for the facility and addressed in the Habitat Mitigation Plan (Attachment P-3 of the DPO), as required under [* * *]Recommended Fish and Wildlife Condition 8. Changes to the Proposed Order are not recommended in response to this comment.
The first obligation of mitigation as written in the	See response above.	Avoidance of impacts is the first tier for each category, followed by an allowance of

ODFW rule .. [<i>sic</i>] is avoidance. Avoidance of outright habitat destruction is possible here but was not practiced[.]		mitigation, if impacts are demonstrated to be unavoidable. The design features proposed by the applicant to avoid potential habitat and species related impacts are detailed in ASC Exhibit H Section 9.1, and imposed within a Wildlife Minimization and Monitoring Plan, required to be implemented under recommended Fish and Wildlife Condition 12. Additional avoidance requirements are imposed in recommended Fish and Wildlife Condition 10 (flag and avoid impacts to streams, wetlands, and other sensitive habitat features and 13 (adhere to raptor nest buffers during sensitive nesting season). Changes to the Proposed Order are not recommended in response to this comment.
[T]he mitigation area chosen cannot make up for the loss of habitat. Any such payment will not be enough and parties are entitled to have information and the opportunity to contest the issue.	See response above.	The HMA location, size and uplift actions have been reviewed by ODFW and the Department and are consistent with OAR 635-415- 0025(1) through (6), and include: • Shrub Planting • Oregon White Oak Planting • Weed Control • Fence Removal • Fire Control • Monitoring implementation measures Under Recommended Fish and Wildlife Condition 7, prior to construction, the certificate holder shall submit the draft legal agreement for review and approval by the Department, in consultation with ODFW. The legal agreement shall ensure that payment provided for long-term management and enhancement of the mitigation area is adequate to cover the permanent habitat loss from the facility. Changes to the Proposed Order are not recommended in response to this comment.
The ODFW no-net-loss Rule is not a “goal.” It is a condition that must be satisfied. The draft Habitat	See response above.	See Proposed Order Table 17: Estimated Habitat Impacts and ODFW Habitat Mitigation Ratios. As described in Section IV.H.1., ODFW concurs with the mitigation

Mitigation Plan finds 4992 total acres of Category 2 affected habitat. Unless this includes the total acreage to be fenced out, it is incorrect. For no-net-loss, the replacement acreage must at least equal the acreage inside fences.		ratios proposed by the applicant to establish the size of the HMA. Based upon the mitigation ratios shown in the table, and the acreage of impacts by habitat category and subtype, and in consultation with ODFW, the HMA must include a maximum of 6,675 acres. The proposed HMA areas have been selected because they are available, have intact high-value habitat desirable for conservation, and suitable habitat in need of enhancement and other management actions to restore its potential as high-quality Category 2 big game habitat. Changes to the Proposed Order are not recommended in response to this comment.
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(YRBAPPDoc2 Proposed Order w Attachments 2025-12-05.pdf at 35-37.)

50. The Department amended language found in the DPO when issuing the Proposed Order regarding the HMP, in part, as follows:

The applicant prepared a draft HMP (see Attachment P-3 of this order) using two primary mitigation areas, developed in consultation with ODFW, to meet the HMA requirements in terms of acreage and suitable habitat with uplift potential. Tygh Ridge Ranch is the primary potential site for the HMA which is located near the town of Tygh Valley, approximately 15 miles northwest of the facility and consists of approximately 5,020 acres. All but the southernmost portion of Tygh Ridge Ranch is within ODFW Designated Elk and Mule Deer Winter Range and therefore most of the mitigation area is Category 2 habitat. Tygh Ridge Ranch extends into one ODFW-designated Priority Wildlife Connectivity Area (PWCA) Region and two Connectors. PWCA Regions are large, contiguous areas and represent the highest-value habitat for facilitating species movement throughout the state, while Connectors represent the best available habitat for facilitating movement from region to region.

In addition to the Tygh Ridge Ranch HMA, the applicant identifies 1,655 acres within the facility boundary located to the north and east as mitigation areas; these HMAs are within the facility site boundary but outside of the perimeter fenceline. Between the two proposed HMA areas, approximately 6,675 acres of suitable HMA have been identified for mitigation. They have been identified in consultation with ODFW as suitable mitigation areas for potential impacts of the facility.

(YRBAPPD02 Proposed Order w Attachments 2025-12-05.pdf at 206; internal footnote omitted.) The Department made no other substantive changes to the Proposed Order that are applicable in this matter. (*Id.* at 196-215.)

51. The Department maintained its conclusion that the Council should find the design, construction, and operation of the Proposed Facility consistent with the mitigation goals and requirements of ODFW's Wildlife Habitat Mitigation Policy. (YRBAPPD02 Proposed Order w Attachments 2025-12-05.pdf at 215.) The Department also maintained its recommendation that Council conclude that the Applicant satisfied the requirements for issuance of a site certificate. (*Id.* at 280.)

Alexanderson's Observations

52. Mr. Alexanderson has owned and managed land inhabited by big game, including mule deer, elk, and pronghorn sheep, for many years. Over the past 25 years, Mr. Alexanderson has witnessed a collapse in the mule deer population around Madras, Oregon. He has not witnessed the same collapse in elk population. (Declaration of Alvin Alexanderson at 1.)

CONCLUSIONS OF LAW

1. There are no genuine issues as to any material facts and the Department and Applicant are entitled to a favorable ruling as a matter of law.

2. The design, construction, and operation of the Proposed Facility, taking into account mitigation, are consistent with the general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1) through (6) in effect as of February 24, 2017, for "Habitat Category 2" fish or wildlife species, population, or unique assemblage of species, in that it results in a no net loss of either habitat quantity or quality and provides a net benefit of habitat quantity or quality.

OPINION

1. Summary determination is appropriate in this matter because there are no relevant facts in dispute and the question(s) to be resolved are purely legal and require a single, particular result.

OAR 137-003-0580 sets out requirements and the standard for granting summary determination in contested case proceedings. The rule states, in relevant part:

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

* * * * *

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

In *Watts v. Board of Nursing*, 282 Or App 705 (2016), the Oregon Court of Appeals clarified the standard for granting motions for summary determination in administrative proceedings, stating:

The board can grant a motion for summary determination only if the relevant documents, including affidavits, create “no genuine issue as to any material fact that is relevant to resolution of the legal issue.” OAR 137-003-0580(6)(a) * * *. If there is evidence creating a relevant fact issue, then no matter how “overwhelming” the moving party’s evidence may be, or how implausible the nonmoving party’s version of the historical facts, the nonmoving party, upon proper request, is entitled to a hearing.

282 Or App 714; emphasis in original. See also *Wolff v. Board of Psychologist Examiners*, 284 Or App 792 (2017).

Similarly, in *King v. Department of Public Safety Standards and Training*, 289 Or App 314 (2017), the court stated:

Issues may be resolved on a motion for summary determination only where the application of law to the facts requires a single, particular result. Therefore, the issues on summary determination must be purely legal.

289 Or App 321; internal citations omitted.

These cases make clear that summary determination may only be granted when there are no relevant facts in dispute and the question(s) to be resolved are purely legal and require a single, particular result.

Mr. Alexanderson requested a contested case challenging the Department's recommendation that Council find the Proposed Facility in compliance with ODFW's Habitat Mitigation Policy, OAR 635-415-0025. The Department and the Applicant each filed a motion for summary determination, arguing that there are no material facts in dispute and the question to be resolved is a purely legal one. In his response to the motions, Mr. Alexanderson argues that the Project does not comply with ODFW's Habitat Mitigation Policy, primarily that the habitat impacts to mule deer in the area,¹⁶ and that the Department and Applicant's motions for summary determination should be denied.

After considering the facts of this case in a light most favorable to Mr. Alexanderson, the non-moving party, there are no genuine issues of material facts that are relevant to resolution of the legal issues as to which a decision is sought. For this reason, and for the reasons explained below, the Department and Applicant's motions for summary determination are granted. Because ruling on the motions resolves all issues in the contested case, this proposed order is issued, incorporating that ruling.

- 2. To issue a site certificate, EFSC must find that the design, construction, and operation of the Proposed Facility, taking into account mitigation, are consistent with ODFW general habitat mitigation goals. For essential, Category 2 habitat, this means avoidance of impacts through alternatives or, if impacts are unavoidable, a no net loss of either habitat quantity or quality and a net benefit of habitat quantity or quality.**

ORS 469.501(1)(e) requires EFSC to adopt standards for the siting, construction, operation, and retirement of proposed facilities, including the:

Effects of the facility, taking into account mitigation, on fish and wildlife, including threatened and endangered fish, wildlife or plant species.

ORS 469.503 sets further requirement the approval of energy facility site certificates, including:

In order to issue a site certificate, the Energy Facility Siting Council shall determine that the preponderance of the evidence on the record supports the following conclusions:

(1) The facility complies with the applicable standards adopted by the council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by the applicable standards the facility does not meet.

Pursuant to the requirements set by the legislature, EFSC adopted a variety of rules regarding the general standards for sitting facilities, found in Oregon Administrative Rules

¹⁶ Because Mr. Alexanderson's comments at the public hearing, his petition for party status, and his response to the motions for summary determination are limited to the impacts on big game, particularly mule deer, the analysis in this order is likewise limited.

chapter 345, division 22.

OAR 345-022-0000 sets forth the general standards of review for a site certificate:

(1) To issue a site certificate for a proposed facility or to amend a site certificate, the Council shall determine that the preponderance of evidence on the record supports the following conclusions:

(a) The facility complies with the requirements of the Oregon Energy Facility Siting statutes, ORS 469.300 to 469.570 and 469.590 to 469.619, and the standards adopted by the Council pursuant to 469.501 or the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by the applicable standards the facility does not meet as described in section (2);

(b) Except as provided in OAR 345-022-0030 for land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council, the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility. If the Council finds that applicable Oregon statutes and rules, other than those involving federally delegated programs, would impose conflicting requirements, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the Council cannot waive any applicable state statute.

* * * * *

(4) In making determinations regarding compliance with statutes, rules and ordinances normally administered by other agencies or compliance with requirements of the Council statutes if other agencies have special expertise, the Department of Energy shall consult with such other agencies during the notice of intent, site certificate application and site certificate amendment processes. Nothing in these rules is intended to interfere with the state's implementation of programs delegated to it by the federal government.

OAR 345-022-0060 (March 8, 2017) discusses the requirements regarding fish and wildlife habitat, as they relate to a site certificate:

To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are consistent with:

(1) The general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1) through (6) in effect as of February 24, 2017[.]

ODFW's Habitat Mitigation Policy is found in Chapter 635, division 415 of the Oregon Administrative Rules. The purpose of the Habitat Mitigation Policy, per OAR 635-415-0000, is:

* * * [T]o further the Wildlife Policy (ORS 496.012^[17]) and the Food Fish Management Policy (506.109) of the State of Oregon through the application of consistent goals and standards to mitigate impacts to fish and wildlife habitat caused by land and water development actions. The policy provides goals and standards for general application to individual development actions, and for the development of more detailed policies for specific classes of development actions or habitat types.

OAR 635-415-0025, titled "Implementation of Department Habitat Mitigation Recommendations," provides, in relevant part:

(1) "Habitat Category 1" is irreplaceable, essential habitat for a fish or wildlife species, population, or a unique assemblage of species and is limited on either a physiographic province or site-specific basis, depending on the individual species, population or unique assemblage.

(a) The mitigation goal for Category 1 habitat is no loss of either habitat quantity or quality.

(b) The Department shall act to protect Category 1 habitats described in this subsection by recommending or requiring:

(A) Avoidance of impacts through alternatives to the proposed development action; or

¹⁷ ORS 496.012, titled "Wildlife policy," provides:

It is the policy of the State of Oregon that wildlife shall be managed to prevent serious depletion of any indigenous species and to provide the optimum recreational and aesthetic benefits for present and future generations of the citizens of this state. In furtherance of this policy, the State Fish and Wildlife Commission shall represent the public interest of the State of Oregon and implement the following coequal goals of wildlife management:

- (1) To maintain all species of wildlife at optimum levels.
- (2) To develop and manage the lands and waters of this state in a manner that will enhance the production and public enjoyment of wildlife.
- (3) To permit an orderly and equitable utilization of available wildlife.
- (4) To develop and maintain public access to the lands and waters of the state and the wildlife resources thereon.
- (5) To regulate wildlife populations and the public enjoyment of wildlife in a manner that is compatible with primary uses of the lands and waters of the state.
- (6) To provide optimum recreational benefits.
- (7) To make decisions that affect wildlife resources of the state for the benefit of the wildlife resources and to make decisions that allow for the best social, economic and recreational utilization of wildlife resources by all user groups.

(B) No authorization of the proposed development action if impacts cannot be avoided.

(2) “Habitat Category 2” is essential habitat for a fish or wildlife species, population, or unique assemblage of species and is limited either on a physiographic province or site-specific basis depending on the individual species, population or unique assemblage.

(a) The mitigation goal if impacts are unavoidable, is no net loss of either habitat quantity or quality and to provide a net benefit of habitat quantity or quality.

(b) The Department shall act to achieve the mitigation goal for Category 2 habitat by recommending or requiring:

(A) Avoidance of impacts through alternatives to the proposed development action; or

(B) Mitigation of impacts, if unavoidable, through reliable in-kind, in-proximity habitat mitigation to achieve no net loss of either pre-development habitat quantity or quality. In addition, a net benefit of habitat quantity or quality must be provided. Progress towards achieving the mitigation goals and standards shall be reported on a schedule agreed to in the mitigation plan performance measures. The fish and wildlife mitigation measures shall be implemented and completed either prior to or concurrent with the development action.

(c) If neither 635-415-0025(2)(b)(A) or (B) can be achieved, the Department shall recommend against or shall not authorize the proposed development action.

(3) “Habitat Category 3” is essential habitat for fish and wildlife, or important habitat for fish and wildlife that is limited either on a physiographic province or site-specific basis, depending on the individual species or population.

* * * * *

(4) “Habitat Category 4” is important habitat for fish and wildlife species.

* * * * *

(5) “Habitat Category 5” is habitat for fish and wildlife having high potential to become either essential or important habitat.

* * * * *

(6) “Habitat Category 6” is habitat that has low potential to become essential or important habitat for fish and wildlife.

(a) The mitigation goal is to minimize impacts.

(b) The Department shall act to achieve the mitigation goal for Category 6 habitat by recommending or requiring actions that minimize direct habitat loss and avoid impacts to off-site habitat.

3. The Parties’ Motions

As discussed above, the Department and Applicant each filed a motion for summary determination, arguing that they are entitled to a ruling in their favor. That is, they argue that the Proposed Facility is in compliance with ODFW’s habitat mitigation policy and, as such, the site certificate should be issued as proposed by the Department. Mr. Alexanderson argues that the Proposed Facility is not in compliance with ODFW’s habitat mitigation policy and, as such, the site certificate should not be issued. ODFW’s habitat mitigation policy and each of Mr. Alexanderson’s arguments are addressed below.

3.1. ODFW’s Habitat Mitigation Policy

As set out above, one of the many factors that Council must find to issue a site certificate is that the design, construction, and operation of the Proposed Facility, taking into account mitigation, are consistent with the general fish and wildlife habitat mitigation goals and standards set out in ODFW’s habitat mitigation policy. OAR 345-022-0060 (March 8, 2017).

Implementation of ODFW’s Habitat Mitigation Policy is set out in OAR 635-415-0025. All habitat relevant to resolution of this matter is properly categorized as Category 2. The goal of ODFW’s mitigation policy for unavoidable impacts to Category 2 habitat is “no net loss of either habitat quantity or quality and to provide a net benefit of habitat quantity or quality.” OAR 635-415-0025(2)(a). To achieve this goal, mitigation of unavoidable impacts to habitat must occur through “reliable in-kind, in-proximity habitat mitigation to achieve no net loss of either pre-development habitat quantity or quality” and have a “net benefit of habitat quantity or quality[.]” OAR 635-415-0025(2)(b)(B). “In-kind habitat mitigation” means “habitat mitigation measures which recreate similar habitat structure and function to that existing prior to the development action.” OAR 635-415-0005(12).

Thus, to meet the requirements of OAR 635-415-0025(2)(b)(B), Applicant had to show in the ASC that impacts to the habitat were unavoidable and also show how it will mitigate the impacts of the Project through the reliable recreation of similar habitat structure and function within the same home range as the affected wildlife populations resides. The mitigation measures, once completed and considered as a whole, must not result in an overall loss of habitat quantity or quality and must provide an increase in the overall habitat quantity or quality. That is, comparing the total habitat loss from the Project to the total habitat mitigation (improvements or

addition to habitat) undertaken by Applicant, there must be a net benefit of habitat quality or quantity.

3.2. Mr. Alexanderson's arguments

In his response to the Department and Applicant's motions for summary determination, Mr. Alexanderson makes six arguments. First, he argues that the impact to wildlife habitat by the Proposed Facility is not unavoidable and thus, Council cannot find that the Proposed Facility is consistent with ODFW's general fish and wildlife habitat mitigation goals and standards. Second, he argues that the net loss of BGWR acres as a result of the Project cannot be restored by habitat enhancements or improvements but rather require physical replacement of the lost habitat land. Third, he argues that Applicant's mitigation plan does not account for or correct the full damage created by the fenced facility. Fourth, he argues that the mitigation plan is inadequate and does not meet ODFW mitigation standards because much of the land selected for mitigation is too far from the Project to benefit the big game that will be displaced by the Project. Fifth, he argues that the Department and Applicant undercounted the total acres of land that will be impacted and thus must be mitigated. Sixth, he argues that approving the Project will have a larger detrimental impact on wildlife habitat in the area when viewed as a whole with other projects in the area and potential future projects. Each of his arguments are addressed below.

3.2.1. When assessing whether the design, construction, and operation of a project are consistent with ODFW's general fish and wildlife habitat mitigation goals and standards, Council may consider the impacts to habitat only within the site boundary as proposed by the Applicant. In this matter, impacts to habitat by the Project are unavoidable.

Mr. Alexanderson first argues that the impact to wildlife habitat by the Proposed Facility is not unavoidable. He argues that Applicant could have avoided the impact to wildlife habitat either by alternate site selection or design changes. He contends that "the boundary of the Sherman County [BGWR] ends less than five miles east from the Buckley Substation and less than one mile from a corner of the proposed site. Proximity proves that the destruction of Wasco County's BGWR is avoidable." Alexanderson Response at 3. He argues, in the alternative, that "[s]maller clusters of [solar] arrays, well separated, could leave critical wildlife corridors at least somewhat functional." *Id.* at 4.

The Department, in contrast, argues that when Council assesses whether the design, construction, and operation of a project are consistent with ODFW's general fish and wildlife habitat mitigation goals and standards, Council considers the impacts to habitat only within the site boundary as proposed by the Applicant.¹⁸ Council, the Department contends, does not

¹⁸ To support this argument, the Department points to the Oregon Supreme Court's decision in *Save Our Rural Oregon v. Energy Facility Siting Council*, 339 Or 353 (2005). In that case, Petitioners sought review of EFSC's final order granting a site certificate, arguing that EFSC erred by taking an exception to Goal 3 (regarding conservation of agricultural land) because Council did not do an "alternatives analysis" and review other possible sites for the Proposed Facility that would not require a goal exception. *Id.* at 370. Upon review of the text of the statute, the Oregon Supreme Court held that "the legislature did not

require an applicant to provide alternative proposals. Applicant and the Department contend, further, that in light of this, the impacts to habitat within the proposed site boundary are unavoidable because all the land is BGWR and nearly all the land is Category 2 habitat.

ODFW's mitigation goals and standards for Category 2 habitat require, first, avoidance of impacts through alternatives to the proposed development action, and, if that is not possible, mitigation of impacts. The evidence in the record is persuasive that ODFW, like the Council, considers only the impacts to habitat within the site boundary as proposed by the Applicant. ODFW worked with Applicant throughout the process, provided numerous comments to the Department regarding the application, and, ultimately, concurred with Applicant's draft HMP (with the limited caveat regarding temporary impact ratios based upon final site selection). If ODFW believed its own rules required Applicant to provide alternatives to the proposed development action outside of the proposed site boundary under OAR 635-415-0025(2)(a)(B), it could have raised this concern early in the application process and would not have concurred with Applicant's draft HMP. It did not. Rather, ODFW has, through its comments to the Department, indicated that it agrees that the avoidance of impacts through alternatives to the proposed development action is not possible and that, as a result, Applicant must undertake mitigation efforts. An agency's interpretation of its own validly promulgated administrative rule is entitled to deference unless the interpretation is "inconsistent with the wording of the rule itself, or with the rule's context, or with any other source of law * * *." *Don't Waste Oregon Com. v. Energy Facility Siting*, 320 Or 132, 142 (1994). Thus, whether or not the impacts to habitat are unavoidable under OAR 635-415-0025(2)(a)(B) is properly assessed within the site boundary as proposed by the Applicant. Applicants are not required to provide alternative site proposals to meet the requirements of OAR 635-415-0025(2)(a)(B).

Mr. Alexanderson's argument that impacts to habitat could have been avoided by design changes to the Proposed Facility also fails. It is undisputed that nearly all habitat within the site is Category 2 habitat, because the site resides entirely in the BGWR. Thus, regardless of where or how the Proposed Facility is designed, constructed, and operated, there will be impacts to Category 2 habitat that Applicant must mitigate through the implementation of a HMP. Applicant may have been able to come up with other designs for the Proposed Facility, such as situating smaller cluster of solar arrays separate from one another as Mr. Alexanderson suggests. However, these differing designs would still impact Category 2 habitat at the site. The net loss of habitat would likely remain unchanged, and there may be an increased impact to habitat based on that differing design.¹⁹ Therefore, the evidence clearly shows that impacts to habitat by the Proposed Facility are unavoidable.

intend to require the council to perform an alternatives analysis in making a determination under ORS 469.504(2)(c)[* * *;] ORS 460.504(2)(c) does not require the council to compare an applicant's proposed site with other potential sites, and the council did not err in failing to do so." *Id.* at 372. I do not find this case persuasive because the court based its holding on the legislature's intent found in the wording of the statute. In this matter, it is an ODFW rule, not a statute, at issue.

¹⁹ For example, if the solar arrays were situated in smaller clusters over a larger area, they would likely still require connections running to one another and/or to the Proposed Facility and would also likely require roads between each cluster to allow maintenance vehicles to access them.

3.2.2. *Mitigation by the Applicant does not require physically replacing lost acres of range land. Applicant's HMP results in a no net loss of habitat quantity or quality and provides a net benefit of habitat quantity or quality.*

Mr. Alexanderson's next argument centers around the net loss of BGWR acres as a result of the Project. He argues that "[t]he lost range cannot be restored or replaced by changing plants on land already in use by other big game because the space, itself, fulfills a []critical habitat function. Range does not equal forage, alone. It provides access to all other habitat needs and escape from threats." Alexanderson Response at 3. He argues, further, that "no-net-loss" in OAR 635-415-9925(2)(b)(B) "requires the physical replacement of closed "range", not merely "enhancing" some other BGWR via plant management. It is not possible to recreate or offset loss of BGWR spatial attributes merely by altering forage on existing BGWR." *Id.* at 9.

The goal of ODFW's mitigation policy for unavoidable impacts to Category 2 habitat is "no net loss of either habitat quantity or quality and to provide a net benefit of habitat quantity or quality." OAR 635-415-0025(2)(a). It is undisputed that development of the Proposed Facility will cause a net loss of habitat quantity and/or habitat quality. As discussed in section 3.2.1 above, the impacts to habitat from the Proposed Facility are unavoidable. Additionally, as discussed in detail in section 3.2.4 below, the proposed mitigation area is "in-proximity" to the Proposed Facility.

Contrary to Mr. Alexanderson's argument, OAR 635-415-0025(2)(b)(B) does not require physical replacement of displaced habitat (habitat quantity). Rather, the rule explicitly provides that the mitigation efforts must achieve a no net loss of *either* habitat quantity *or* quality. The rule further provides that the mitigation efforts must achieve a net benefit of habitat quantity *or* quality. OAR 635-415-0005(21) defines "net benefit" as an "increase in overall in-proximity habitat quality *or* quantity after a development action and any subsequent mitigation measures have been completed and monitored." (Emphasis added.)

This is further evidenced by ODFW's review and comments on Applicant's Exhibit P: Fish and Wildlife Habitats and Species submission, including the draft HMP included in Applicant's final ASC. ODFW indicated that it had conferred with and "continues to affirm that the Tygh Ridge Ranch and land controlled by the Applicant but outside of the fence boundary * * * are both acceptable areas for habitat conservation. They have adequate opportunities for uplift to benefit impacted species from the proposed facility location." YRBAPPDoc19-12 ASC Review Agency Comment ODFW 2025-09-29 at 3-4. ODFW also concurred with the permanent ratios for mitigation measures proposed by Applicant, and most of the proposed temporary ratios for mitigation proposed by the Applicant. The only concern regarding the ratios that ODFW raised was, that, depending on the location, activity, and impact to shrub-steppe cover habitat, it may require a higher mitigation ratio for those impacts.

Thus, a review of both the text of the relevant rule and ODFW's comments on Applicant's ASC, it is clear that OAR 635-415-9925(2)(b)(B)'s "no net loss" does not require a physical replacement of land. Rather, there must be a *net* benefit in quality *or* quantity of habitat.

3.2.3. *Applicant's mitigation plan accounts for the loss of quantity and/or quality habitat and is consistent with ODFW's general fish and wildlife habitat mitigation goals and standards.*

Mr. Alexanderson next argues that the Applicant's mitigation plan does not adequately offset a "50 mile long barrier erected in a Priority Wildlife Connectivity Area." Alexanderson Response at 2. He argues the Project's fence presents a major hardship for many species, including mule deer, by creating a "shadow effect" where big game avoid not only the fenced area, but also a perimeter outside the fence. *Id.* at 3. This, he argues, results in "crowding, habitat loss and nutritional deficiencies elsewhere" and animals that remain in the area "suffer greater mortality from predators, vehicles, long detours, nutritional degradation and winter energy loss." *Id.* He also argues that forcing pregnant does into long detours can cause metabolic exhaustion and reproductive failure, impacting the population stability of mule deer.

As a preliminary matter, it is worth noting that Mr. Alexanderson provided no evidence to support his contentions above. While he did request the ALJ take official notice of several of these facts, as discussed above, doing so was not appropriate. These are facts that, had the case proceeded to a hearing, Mr. Alexanderson would have had a burden of persuasion to present evidence on. Thus, under OAR 137-003-0580(8), he has the burden of producing evidence in this motion for summary determination on any such issue. He has failed to provide such evidence.

However, even if Mr. Alexanderson's contentions are presumed to be true and viewed in the light most favorable to Mr. Alexanderson, his argument does not succeed. As discussed in section 3.2.2 above, ODFW had an opportunity to review Applicant's final ASC, including Exhibit P and the draft HMP. Based upon its review, ODFW concurred almost entirely with the mitigation proposed by Applicant.²⁰ ODFW was made aware of the fence and the impact the fence and Proposed Facility would have on the habitat in the area. The Applicant worked with ODFW to develop the draft HMP. ODFW suggested Tygh Ridge Ranch as the primary mitigation site, noting that it had "similar (in-kind) habitat" as the Project and is a recognized connectivity corridor for big game. YRBAPPDoc29 pASC Reviewing Agency Comment ODFW 2025-07-18 at 1-2.

Therefore, while the Project clearly creates a loss of habitat quantity or quality, any potential hardships for wildlife were accounted for and will be mitigated through the implementation of Applicant's HMP.

3.2.4. *The sites selected for the HMP are in-proximity to the Project and therefore consistent with ODFW's general fish and wildlife habitat mitigation goals and standards.*

Mr. Alexanderson argues that Applicant's draft HMP is inadequate and does not meet ODFW's mitigation policy because some of the proposed mitigation land, specifically the land

²⁰ As discussed in Section 3.2.2 above, the concern ODFW raised was, depending on the location, activity, and impact to shrub-steppe cover habitat, it may require a higher mitigation ratio for temporary impacts to that habitat.

located at Tygh Ridge Ranch, is “too far” from the Project to benefit the big game that will be directly affected by the construction of the Proposed Facility. *Alexanderson Response* at 1. He argues that the proposed mitigation measures offer “no offsetting benefit for the animals displaced.” *Id.*

OAR 635-415-0005(13) specifically defines “in proximity to” as “within the same home range, or watershed (depending on the species or population being considered) whichever will have the highest likelihood of benefiting fish and wildlife populations directly affected by the development.” In this matter, Tygh Ridge Ranch is situated approximately 15 miles from the Project. Like the Project, the Ranch is located in the Columbia Plateau ecoregion and also within the ODFW BGWR. It is composed of a similar habitat type as the Project site. ODFW specifically suggested Tygh Ridge Ranch because it is similar habitat and preserves the connectivity between key wildlife areas and will provide a benefit to species impacted by the Project, including mule deer. As such, Mr. Alexanderson has not shown that the location of the proposed mitigation area is not in proximity to the Project or that it is not consistent with the general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1) through (6).

3.2.5. The ASC and HMP correctly counted the total acres of habitat loss from the Proposed Facility.

Mr. Alexanderson argues that the amount of habitat loss was undercounted in Applicant’s draft HMP and in the Department’s Proposed Order. Mr. Alexanderson argues that the fenced area for the Proposed Facility will total 7,026 acres, but the “impact” area in the HMP totals only 4,992 acres. Mr. Alexanderson appears to have misunderstood the proposal in this matter.

Mr. Alexanderson is correct that the micrositing corridor totals approximately 7,026 acres. This is the area within which the Proposed Facility will be sited. Applicant will, if a site certificate is approved, be allowed to select the exact location to site the Proposed Facility within that micrositing area. Once built and fully fenced, the Proposed Facility will not occupy the entire micrositing corridor, but rather occupy a total area of approximately 4,992 acres. As such, this argument is without merit.

3.2.6. Whether approving the site certificate for the Project will result in a negative cumulative effect on the land is outside the scope of this contested case proceeding,

Finally, Mr. Alexanderson argues that, if allowed, the Proposed Facility will have a larger detrimental impact on wildlife habitat in the area. He argues that previously approved facilities on nearby BGWR land will funnel big game along roadways and that “[m]ore alarming is the message to other solar developers that rural lands long protected for big game are now open for development.” *Alexanderson Response* at 4. Mr. Alexanderson appears to be arguing that the ALJ should consider the larger cumulative impacts of multiple facilities on BGWR land. His argument fails for several reasons.

First, Mr. Alexanderson did not previously raise any concerns regarding the cumulative

impact of multiple facilities. As discussed in the *Order on Petitions for Party Status and Issues for Contested Case*, to be the basis for a contested case, an issue must be within Council's jurisdiction and have been raised with sufficient specificity on the record of the Draft Proposed Order. Here, Mr. Alexanderson did not raise this issue in his comments on the Draft Proposed Order. As such, this argument exceeds the scope of the issue for this contested case hearing – whether the design, construction, and operation of the Proposed Facility, taking into account mitigation, are consistent with ODFW mitigation goals.

Additionally, as Applicant pointed out in its Reply, Mr. Alexanderson had the opportunity to participate in the permitting processes for previously approved projects in the area, and he will have the opportunity to participate in future projects. Furthermore, Mr. Alexanderson's concerns regarding the cumulative effect of multiple facilities on the land is not really a criticism of whether this Project meets ODFW's mitigation goals, but rather a larger concern regarding the state's energy policies and planning goals. As such, the contested case for a single facility, limited to the issue of whether the Proposed Facility meets ODFW's mitigation goals is not the appropriate forum to address that larger issue. As such, this argument is outside the scope of this hearing.

4. Conclusion: The design, construction, and operation of the Proposed Facility, taking into account mitigation, are consistent with ODFW's general fish and wildlife habitat mitigation goals and standards for "Habitat Category 2" fish or wildlife species, population, or unique assemblage of species, in that it results in a no net loss of either habitat quantity or quality and provides a net benefit of habitat quantity or quality.

As discussed in section 3.1, above, to meet the requirements of OAR 635-415-0025(2)(b)(B), Applicant must show: (1) impacts to the habitat are unavoidable, (2) how it will mitigate the impacts of the Project through the reliable recreation of similar habitat structure and function within the same home range as the affected wildlife populations resides, (3) that the mitigation measures, once completed and considered as a whole, will not result in an overall loss of habitat quantity or quality, and (4) that the mitigation measures will provide an increase in the overall habitat quantity or quality.

As discussed in section 3.2.1 above, Applicant has shown that the impacts to Category 2 habitat are unavoidable. Through discussions with ODFW, Applicant drafted an HMP showing how it plans to mitigate impacts of the Project. Applicant identified two sites – the Tygh Ridge Ranch and a portion of the land near the Project – for uplift actions to improve the overall quality of Category 2 habitat. The identified land is within the same home range as the affected wildlife populations reside. Applicant contends, and ODFW concurs, that, comparing the total habitat loss from the Project to the total habitat mitigation measures that Applicant will undertake, there will be a net benefit of Category 2 habitat quality.

The evidence shows that, pursuant to OAR 345-022-0060(1) (March 8, 2017), the design, construction, and operation of the Proposed Facility, taking into account mitigation, are consistent with the general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1) through (6) in effect as of February 24, 2017, for "Habitat Category 2" fish or wildlife species, population, or unique assemblage of species, in that it results in a no net loss of

either habitat quantity or quality and provides a net benefit of habitat quantity or quality.

RULINGS ON MOTIONS

The Department's Motion for Summary Determination is GRANTED.

Yellow Rosebush Energy Center, LLC's Motion for Summary Determination is GRANTED.

ORDER

I propose the Oregon Department of Energy, Energy Facility Siting Council issue a Final Order granting the requested site certificate consistent with the Department's Proposed Order dated December 5, 2025, including the recommended site certificate conditions.

/s/ Kate Triana

Kate Triana, Senior Administrative Law
Judge/Hearings Officer
Contested Case Proceeding for the Yellow
Rosebush Energy Center Facility Application
for Site Certificate

EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER

EXCEPTIONS. Pursuant to OAR 345-015-0475(3) parties and limited parties may file exceptions to this proposed contested case order. Any party or limited party filing an exception must: a) in the exception(s) specifically identify the finding of fact, conclusion of law or recommended site certificate conditions to which the party excepts and state the basis for the exception; and b) email the exception(s) to Jesse Ratcliffe, legal counsel to EFSC in this contested case at Jesse.D.Ratcliffe@doj.oregon.gov, to the other parties/limited parties, and to the Office of Administrative Hearings no later than 5:00 p.m. Pacific Time on **July 10, 2026**.

RESPONSES. Pursuant to OAR 345-015-0475(4), parties and limited parties may file responses to exceptions. All responses must be emailed to Mr. Ratcliffe, the other parties/limited parties, and the Office of Administrative Hearings no later than 5:00 p.m. Pacific Time on **July 24, 2026**.

EFSC HEARING ON PROPOSED CONTESTED CASE ORDER AND EXCEPTIONS. The Council will conduct a hearing to review the Proposed Contested Case Order and the parties' and limited parties' exceptions and responses. Parties and limited parties will be provided notice of that hearing once scheduled.

SERVICEMEMBERS' CIVIL RELIEF ACT

Unless otherwise stated in this order, the Office of Administrative Hearings (OAH) has no reason to believe that a party to this proceeding is subject to the Servicemembers' Civil Relief Act (SCRA). If a servicemember is a party to this proceeding and did not appear for a hearing that convened during the servicemember's period of service or within 90 days after their termination of service, the servicemember should immediately contact the agency to address any rights they may have under the SCRA.

CERTIFICATE OF MAILING

On June 12, 2026, I mailed the foregoing CONSOLIDATED RULING ON MOTIONS FOR SUMMARY DETERMINATION AND PROPOSED CONTESTED CASE ORDER issued on this date in OAH Case No. 2024-ABC-06692.

By: Electronic Mail

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