

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
on behalf of the
STATE OF OREGON ENERGY FACILITY SITING COUNCIL**

IN THE MATTER OF:

YELLOW ROSEBUSH ENERGY CENTER

**YELLOW ROSEBUSH ENERGY CENTER
LLC’S RESPONSE TO
ALEXANDERSON’S EXCEPTIONS TO
THE PROPOSED CONTESTED CASE
ORDER**

OAH Case No. 2024-ABC-06692

I. INTRODUCTION

Pursuant to OAR 345-015-0475(4), Yellow Rosebush Energy Center LLC (“Yellow Rosebush” or “Applicant”) files this Response to Alvin Alexanderson’s Exceptions to the Proposed Contested Case Order. Mr. Alexanderson raises 14 exceptions to the Consolidated Ruling on Motions for Summary Determination and Proposed Contested Case Order (“PCCO”), but the exceptions do not identify any actual error made by Senior Administrative Law Judge (“ALJ”) Kate Triana under the Energy Facility Siting Council’s (“EFSC” or “Council”) guiding statutes or rules. Instead, Mr. Alexanderson urges a novel but flawed interpretation of the law, and opposes EFSC’s adherence to its own statutes, rules, prior precedent, and reliance on the analysis and recommendations of the Oregon Department of Fish and Wildlife (“ODFW”).

Fundamentally, Mr. Alexanderson argues that Yellow Rosebush’s Application for Site Certificate (“ASC”) should be denied because he does not agree with how EFSC evaluates and addresses potential impacts to wildlife habitat from proposed energy facilities under its Fish and Wildlife Habitat Standard. As ALJ Triana correctly concluded in the PCCO, there are no genuine issues as to any material facts that are relevant to the resolution of this contested case and Yellow Rosebush and the Oregon Department of Energy (“Department”) are entitled to a favorable ruling as a matter of law. Accordingly, Yellow Rosebush urges the Council to adopt the PCCO with the minor modification outlined below and approve Yellow Rosebush’s ASC.

II. BACKGROUND¹

A. The Proposed Facility

The Yellow Rosebush Energy Center (“Facility”) is an 800-megawatt solar facility located in Wasco and Sherman counties.

¹ For a detailed summary of the procedural history, *see* Yellow Rosebush’s Motion for Summary Determination and Argument in Support (“Applicant’s MSD”) at 1-2.

In the Matter of Yellow Rosebush Energy Center - OAH Case No. 2024-ABC-06692

Yellow Rosebush Energy Center LLC’s Response to Alexanderson’s Exceptions to the Proposed Contested Case Order

B. The Site Certificate Application Process

Yellow Rosebush submitted a Notice of Intent to file an ASC on September 28, 2023 and a preliminary ASC on August 30, 2024. Following review of the preliminary ASC and with close coordination with the ODFW on wildlife habitat issues, the Department issued its draft proposed order (“DPO”) on October 1, 2025. On the same date, the Department issued a Public Notice of a 32-day comment period and a public hearing on the DPO to be held October 23, 2025. Mr. Alexanderson submitted comments during the open record period.

At its November 21, 2025 meeting, the Council reviewed and provided comment on the DPO, the public comments on the DPO (including Mr. Alexanderson’s), and the Department’s recommendations for the Proposed Order (“PO”). On December 5, 2025, the Department issued the PO and Notice of Opportunity to Request to Participate in a Contested Case. The PO recommended the Council approve the ASC and issue a site certificate for the Facility.

C. The Single Issue in the Contested Case

Mr. Alexanderson timely filed a Petition for Limited Party Status. In his petition, Mr. Alexanderson raised a single issue, which ALJ Triana summarized as follows in the Order on Petitions for Party Status and Issues for Contested Case:

“Whether, pursuant to OAR 345-022-0060(1) the design, construction, and operation of the [F]acility, 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.”

D. Yellow Rosebush and the Department’s Motions for Summary Determination

On April 6, 2026, Yellow Rosebush and the Department filed Motions for Summary Determination, arguing that there are no genuine issues of material fact and the Department and the Applicant are entitled to a favorable ruling as a matter of law. Mr. Alexanderson declined to file a Motion for Summary Determination.

E. Mr. Alexanderson’s Response

On April 20, 2026, Mr. Alexanderson filed a response to the Motions for Summary Determination. In his response, he argued that there are “numerous disputed facts” that would presumably require further evaluation and that the ALJ should grant summary determination in his favor.

F. Yellow Rosebush and the Department's Replies

On April 27, 2026, the Department and the Applicant filed replies to Mr. Alexanderson's response. It was difficult to reconcile Mr. Alexanderson's arguments under the applicable standard of review (which entitles the moving party to a ruling as a matter of law if there are no genuine issues of material fact relevant to resolution of the legal issues, *see* OAR 137-003-0580(6)); accordingly, the Department and Applicant's replies focused on the "issues" Mr. Alexanderson characterized as "disputed material facts" and explained that those issues were not, in fact, disputed facts relevant to the legal issue in this contested case. As the replies explained, the "disputed facts" instead reflect Mr. Alexanderson's: (a) disagreement with the wildlife habitat standards that apply to EFSC's evaluation of proposed energy facilities, (b) focus on habitat issues that are not relevant to resolution of this contested case, or (c) misunderstanding or misreading of evidence in the administrative record.

G. The Proposed Contested Case Order

In the PCCO, ALJ Triana addressed the issues raised by Mr. Alexanderson and concluded that there were no genuine issues of material fact and the Department and Applicant were entitled to a favorable ruling as a matter of law. ALJ Triana explained:

"[The] Applicant has shown that the impacts to Category 2 habitat are unavoidable. Through discussions with ODFW, Applicant drafted [a Habitat Mitigation Plan ("HMP")] showing how it plans to mitigate impacts of the [Facility]. Applicant identified two sites – the Tygh Ridge Ranch and a portion of the land near the [Facility] – 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 [Facility] to the total habitat mitigation measures that Applicant will undertake, there will be a net benefit of Category 2 habitat quality."

PCCO at 44.

H. The Exceptions Process

Following issuance of the PCCO, Mr. Alexanderson filed exceptions to the PCCO. Parties to a contested case may file exceptions to a proposed contested case order with the Council. OAR 345-015-0475(3). A party filing an exception is required to "specifically identify the finding of fact, conclusion of law or, in [*sic*] contested case proceeding on an application for a site certificate * * * recommended site certificate condition to which the party excepts and shall state the basis for the exception." *Id.* The Applicant responds to Mr. Alexanderson's exceptions below.

III. RESPONSE TO EXCEPTIONS

Mr. Alexanderson filed 14 exceptions to the PCCO. Where appropriate and for ease of review by the Council, Yellow Rosebush responds to multiple exceptions that address the same finding of fact or conclusion of law.

In the Matter of Yellow Rosebush Energy Center - OAH Case No. 2024-ABC-06692

Yellow Rosebush Energy Center LLC's Response to Alexanderson's Exceptions to the Proposed Contested Case Order

A. Exception 1 – Summary of Argument

Exception 1 restates multiple arguments that Mr. Alexanderson advanced during the contested case but does not specifically identify a finding of fact or conclusion of law in the PCCO to which he excepts. As noted above, a party filing an exception is required to “*specifically identify the finding of fact [or] conclusion of law* * * * to which the party excepts.” OAR 345-015-0475(3) (emphasis added). To the extent Exception 1 may relate to specific findings of fact or conclusions of law, those findings and conclusions are addressed in response to Exceptions 2 through 14.

B. Exception 2 – Mule Deer Management Plan

In Exception 2, Mr. Alexanderson argues that specific facts related to mule deer population trends, including some addressed in ODFW’s Mule Deer Management Plan, should have been admitted by the ALJ. The ALJ rightly rejected those facts because they are not relevant to the single issue in this contested case: whether the design, construction, and operation of the Facility, taking into account mitigation, are consistent with the EFSC’s Fish and Wildlife Habitat Standard and the ODFW Habitat Mitigation Policy.

The Habitat Mitigation Policy addresses habitat at the ecosystem level; while impacts to specific species are considered, ODFW’s Habitat Mitigation Policy directs ODFW to require or recommend, “mitigation for losses of *fish and wildlife habitat* resulting from development actions.” OAR 635-415-0010 (emphasis added). Thus, the specific facts about mule deer populations, while carefully monitored by ODFW, are not relevant to the question of whether impacts to wildlife habitat from Facility design, construction, and operation have been appropriately mitigated.² Accordingly, ALJ Triana correctly rejected Mr. Alexanderson’s invitation to focus on mule deer population trends rather than on the sufficiency of the Facility’s habitat mitigation approach.

C. Exceptions 3-5 – Avoidance of Impacts Through Alternatives

Exceptions 3, 4, and 5 all address Mr. Alexanderson’s contention that the Facility did not properly “avoid” habitat impacts, specifically impacts to big game winter range (“BGWR”). Each of these exceptions fails for a single reason – Mr. Alexanderson misreads the avoidance obligation that applies to Category 2 habitat.

First, avoidance of all habitat impacts is not required. To issue a site certificate, EFSC must find that the design, construction, and operation of the facility are consistent with ODFW’s Habitat Mitigation Policy. Unlike the Habitat Mitigation Policy’s standard for Category 1 lands, which requires

² Despite this ecosystem-level approach, ODFW nonetheless emphasizes the value of big game winter range (“BGWR”) by treating all designated BGWR as Habitat Category 2, which requires mitigation of unavoidable impacts to achieve no net loss of either predevelopment habitat quantity or quality without regard to the habitat quality of the BGWR-designated land.

avoidance of all impacts, the standard for Category 2 lands requires avoidance *or* mitigation of impacts.³ OAR 635-415-0025(2)(b) states:

(b) [ODFW] 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 * * *.

Under this requirement, avoidance is required “through alternatives to the proposed development action,” and “alternatives to the proposed development” must be viewed through the lens of the project proposed by the project applicant. The Habitat Mitigation Policy does not require site certificate applicants to evaluate alternative projects (e.g. a wind facility rather than a solar facility) or project locations (e.g. a solar facility on land that the applicant does not have under lease) or, as Mr. Alexanderson suggests in this instance, to avoid Category 2 habitat entirely. Instead, EFSC applicants must avoid impacts within the context of the proposed project, such as alternative designs or layouts.

Mr. Alexanderson contends that a hearing is required to determine whether habitat impacts were avoidable, and since the Facility could have been built outside of BGWR, the Facility inherently failed to “avoid” impacts. This attempts to dress a legal issue up as a factual dispute. The Habitat Mitigation Policy requires site-specific avoidance where feasible, and the Applicant satisfied that requirement here. The Applicant coordinated closely with ODFW to microsite the Facility to avoid impacts to the highest-value habitat in and near the Facility site boundary, along Hauser Canyon and Buck Hollow Canyon. Yellow Rosebush avoided impacts in that manner by siting the solar array in a 4,992-acre permanent impact footprint within the 8,075-acre Facility site boundary, using a layout that avoids and minimizes impacts on wildlife corridors and other priority habitat.

Mr. Alexanderson also contends in Exception 4 that EFSC’s requirement for an analysis of alternative sites for natural gas pipeline projects undermines the ALJ’s conclusion that Applicant is not required to evaluate alternative project sites. However, the approval criteria at issue in *Friends of Parrett Mountain v. Northwest Natural Gas Co.*—which prompted Northwest Natural Gas Co. to evaluate three pipeline alternatives—are not applicable to the Facility. *See* 336 Or 93, 79 P3d 869 (2003). The natural gas pipeline at issue in that case was subject to ORS 215.275, which explicitly requires an alternatives analysis. The Facility is not subject to ORS 215.275, and accordingly the alternative-site analysis discussed in *Friends of Parrett Mountain* is inapplicable here.⁴

At bottom, Mr. Alexanderson appears to argue that the Habitat Mitigation Policy requires project applicants to select a physical alternative that would avoid habitat impacts entirely, regardless of

³ If the Habitat Mitigation Policy required total avoidance of impacts to BGWR, the BGWR overlay would apply a Category 1 designation, under which full avoidance is required. Instead, the BGWR overlay applies a Category 2 designation, which explicitly considers that some impacts will be unavoidable and may be mitigated.

⁴ For further discussion of the futility of an alternatives analysis, *see* Yellow Rosebush Energy Center’s Reply to Petitioner’s Response to Motions for Summary Determination (“Applicant’s Reply”) at 3.

location feasibility. Not only is that approach inconsistent with the Habitat Mitigation Policy (which does not require such an alternatives analysis or total avoidance of impacts of Category 2 habitat), it ignores the many real-world constraints that govern siting decisions, including zoning restrictions, landowner participation, and grid interconnection considerations, and instead amounts to an argument that the Facility should not be built at all.⁵

D. Exception 6 – Off-site Habitat Impacts

In Exception 6, Mr. Alexanderson restates an argument that he advanced during the contested case related to offsite habitat impacts. To the extent Mr. Alexanderson argues that the ALJ incorrectly excluded analysis of offsite impacts, Mr. Alexanderson again attempts to expand the scope of the Habitat Mitigation Policy's requirements. As ALJ Triana correctly concluded in the PCCO, Mr. Alexanderson raises issues that are not relevant to compliance with the applicable standard.

The single issue in this contested case is whether the design, construction, and operation of the Facility, taking into account mitigation, is consistent with the Habitat Mitigation Policy. Rather than contesting certain facts on which compliance with the Habitat Mitigation Policy is contingent (e.g. acres of permanent and temporary impacts and the agreed-upon mitigation ratio), Mr. Alexanderson focuses on habitat issues that are not relevant to a determination of compliance with the Habitat Mitigation Policy.

When ODFW makes recommendations under its Habitat Mitigation Policy, it uses the basic currency of acreage to determine the appropriate amount of mitigation. The mitigation acreage is based on the proposed facility's acres of permanent and temporary impacts and the applicable mitigation ratio, which is developed in close coordination with ODFW and dependent on the category of habitat being impacted. And, indeed, Yellow Rosebush is providing mitigation in this instance to offset permanent and temporary impacts to wildlife habitat through provision of mitigation at two Habitat Mitigation Areas ("HMA") at the Tygh Ridge Ranch HMA and the Facility HMA. If there were no impact, there would be no need for Yellow Rosebush to provide mitigation.

At bottom, embedded in the Habitat Mitigation Policy is the express understanding that projects can impact wildlife habitat and still comply with the Habitat Mitigation Policy. Such an understanding underpins the no-net-loss and net benefit requirement, which guarantees that aggregate impacts be addressed through compensatory mitigation. Mr. Alexanderson alleges, without evidence other than his personal experience living in the Madras area, that the Department (and ODFW) did not consider potential impacts outside the Facility fence or incorporate them into its analysis of compliance with the Habitat Mitigation Policy's no net loss requirement. But EFSC's Fish and Wildlife Habitat Standard and ODFW's Habitat Mitigation Policy require EFSC to consider the requirement of no net loss and net benefit to wildlife habitat as a whole. They do not require EFSC to focus on the specific issues raised by Mr. Alexanderson. Avoidance of all impacts to every habitat priority identified by any third party is not required under the applicable law.

⁵ For further discussion of the variables used to site a project, *see id.*

E. Exception 7 – Cumulative Effects

In Exception 7, Mr. Alexanderson alleges that the ALJ incorrectly refused to consider cumulative impacts from the Facility and other nearby solar facilities. As a practical matter, Mr. Alexanderson does not describe exactly how the cumulative impacts analysis should work – likely because ODFW’s Habitat Mitigation Policy does not require such an analysis. A habitat mitigation plan is required when “the **impacts of the proposed development action** may, in the opinion of the Department, be so significant in nature, extent, or duration that mitigation measures to achieve the goals and standards of OAR 635-415-0025 cannot be identified without the evaluation that would be provided in a written mitigation plan.” OAR 635-415-0020(5) (emphasis added). Nowhere in the policy is the word “cumulative” used or is there a requirement that the impacts of the development action be aggregated with impacts from other development actions. “Impact” is defined as “an adverse effect of **a development action** upon fish and wildlife habitat.” OAR 635-415-0005(10) (emphasis added).

In practice, ODFW implements the Habitat Mitigation Policy by evaluating potential habitat impacts and proposed avoidance and minimization measures, and requiring that for every acre impacted by the development action, a certain number of acres be conserved and/or enhanced.⁶ As shown in the HMP, the acreage provided is based on the habitat value of the land impacted by a project and the land to be conserved.⁷

Further, Mr. Alexanderson’s proposed cumulative impacts requirement is not administrable. Beyond advocating for a standard that appears nowhere in the applicable rules, Mr. Alexanderson never identifies the scope of development activities that would be included in the analysis.⁸ Must an applicant consider only other solar facilities, or all development affecting the same species? Must the analysis account for existing projects, proposed projects, reasonably foreseeable projects, or all future development? Mr. Alexanderson offers no limiting principle.

Should Mr. Alexanderson have concerns about the cumulative impacts of solar energy development on BGWR or more generally throughout Eastern Oregon, he may go to the Oregon Legislature, directly to ODFW or the Department, or otherwise attempt to change EFSC or renewable energy laws or policies within the state of Oregon. However, Mr. Alexanderson may not turn a contested case process over the adequacy of mitigation efforts for a single project into a wholesale evaluation of the standards that **should** apply to solar energy development in Eastern Oregon.

F. Exceptions 8-9 – In-Proximity Habitat Mitigation

The Department and ODFW determined that Tygh Ridge Ranch would serve as appropriate in-proximity mitigation for the Facility. In Exceptions 8 and 9, Mr. Alexanderson contends that Tygh Ranch is too far away from the local sub-population (Biggs herd) to adequately serve as in-proximity habitat mitigation. But Mr. Alexanderson misconstrues the appropriate legal standard.

⁶ For further discussion of how ODFW implements the Habitat Mitigation Policy in practice, see Applicant’s Reply at 4-5.

⁷ Applicant’s Draft HMP (Applicant’s MSD Exhibit 7), at 3, details the baseline habitat category before application of the BGWR overlay.

⁸ For further discussion of the practical impacts of a cumulative impacts test, see Applicant’s Reply at 3-4.

“In-proximity Habitat Mitigation” means “within the same home range, or watershed * * * whichever will have the highest likelihood of benefitting fish and wildlife populations directly affected by the development.” OAR 635-415-0005(13).

“Home Range” means “the area that *a species* traverses in the scope of normal life-cycle activities.” OAR 635-415-0005(9) (emphasis added).

“Habitat” means “the physical and biological conditions within the geographic range of occurrence of a species, extending over time, that affect the welfare of the species *or* any sub-population *or* members of the species.” OAR 635-415-0005(5) (emphasis added).

These definitions make clear that habitat benefits may be evaluated at the species level. Mr. Alexanderson reaches a contrary conclusion only by selectively quoting isolated words and phrases from ODFW’s Habitat Mitigation Policy. Based on that reading, Mr. Alexanderson argues that Tygh Ridge Ranch is not “in-proximity” to the Facility and that the ALJ improperly relied on benefits to affected species.

The HMP, however, expressly advances its in-proximity mitigation objectives through the protection of habitat that ODFW has determined is of particular value to multiple big game species because of its migratory corridor benefits. Consistent with that approach, Tygh Ridge Ranch was recommended by ODFW and selected by the Applicant to provide benefits to species affected by the Facility, including mule deer, the species with which Mr. Alexanderson is concerned.

As the ALJ found, Tygh Ridge Ranch (1) is located in the same ecoregion as the Facility; (2) is in BGWR; (3) contains habitat similar to that affected by the Facility; and (4) was selected because it will benefit big game species impacted by the Facility (elk and mule deer). Mr. Alexanderson offers no scientific basis for disregarding ODFW’s use of ecoregions and habitat characteristics in evaluating proximity. Instead, Mr. Alexanderson would substitute his own view for ODFW’s expert determination of which habitat provides the greatest mitigation value. The practical effect would be to limit ODFW’s role in helping applicants identify appropriate mitigation sites. Mr. Alexanderson’s disagreement with ODFW’s judgment does not render the site outside the definition of “in-proximity.”

G. Exception 10 – Burden Shifting

In Exception 10, Mr. Alexanderson argues that the PCCO “improperly shifts the burden of disproving ‘in proximity’ to [Mr. Alexanderson] saying he would have to prove the mitigation site is not in-proximity.” Mr. Alexanderson argues that this constitutes a procedural error and that he is entitled to a hearing. Mr. Alexanderson disregards the burden he bears as a participant in the contested case.

For EFSC to issue a site certificate, an applicant must demonstrate that a preponderance of evidence supports a conclusion that the facility complies with applicable Council standards. ORS 469.403(1); OAR 345-022-0000(1). However, under ORS 183.450(2), “[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.*” (Emphasis added.) Nothing in the EFSC rule removes the statutory burden of a party in a contested case to present evidence to support a fact or position they take in a contested case.

As the ALJ stated in the PCCO:

“[the] Applicant maintains the burden to show by preponderance of the evidence in the decision record that the Proposed Facility complies with Council’s siting standards and other applicable statutes and rules * * *. With regard to those provisions of the Department’s Proposed Order challenged through the petitions for party status/request 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.”

PCCO at 4.

In the contested case, Mr. Alexanderson repeatedly argued that the proposed Tygh Ridge Ranch mitigation site was not “in proximity” to the Facility. The ALJ concluded that Mr. Alexanderson failed to provide any evidence to support his allegation. This is not an impermissible shifting of the burden. To the contrary, the ALJ was holding Mr. Alexanderson to the burden he bears under ORS 183.450(2).

H. Exception 11 – Rebuttable Presumption

In Exception 11, Mr. Alexanderson argues that the PCCO incorrectly states that the PO creates a rebuttal presumption that the Applicant has satisfied all standards. As discussed in Applicant’s response to Exception 10, the burden of evidence to support a claim in a contested case rests on the party making such claims. ORS 183.450(2). This is not a presumption that the Facility is compliant with the Habitat Mitigation Policy. It is instead, as the ALJ correctly states, a standard under which “the party/limited party bears the burden of producing evidence sufficient to establish the claim with regard to that issue.” PCCO at 4 (citing OAR 137-003-0580(8)); *see also* ORS 183.450(2) (“The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.”). Applicant is not required to disprove unsubstantiated claims.

To the extent Mr. Alexanderson argues that the ALJ has improperly applied or relied upon a presumption, such an action had no material impact on the ALJ’s decision. At no point did the ALJ invoke a presumption to reach a finding of fact or conclusion of law. Nonetheless, for clarity, Yellow Rosebush respectfully requests that the Council adopt the PCCO as drafted but revise page 4 to strike all references to any presumption.

I. Exceptions 12-13 – No Net Loss

In Exceptions 12 and 13, Mr. Alexanderson contends that the ALJ errs by concluding that “mitigation by the Applicant does not require physical replacing lost acres of range land.” Mr. Alexanderson appears to advance the theory that any loss of designated BGWR acreage must be replaced by designating new BGWR acreage elsewhere. The practical effect is that under Mr. Alexanderson’s reading of the Habitat Mitigation Policy, no project can be constructed on BGWR because there is no mechanism to designate additional BGWR. This argument (1) runs contrary to EFSC’s prior decisions

In the Matter of Yellow Rosebush Energy Center - OAH Case No. 2024-ABC-06692

Yellow Rosebush Energy Center LLC’s Response to Alexanderson’s Exceptions to the Proposed Contested Case Order

on solar project impacting BGWR, and (2) would effectively convert all designated BGWR to Habitat Category 1, where avoidance is the only mitigation allowed.

First, the Council has approved multiple energy facilities in Eastern Oregon, many of them located partially or entirely on BGWR. Yellow Rosebush's HMP protects and enhances more habitat per acre of land affected by solar development than any nearby solar project and protects some of the highest-value habitat in the region. One third of the affected acres will be mitigated with a 2:1 mitigation ratio, considerably higher than the highest mitigation ratio in any nearby solar projects.⁹ Second, ODFW determined that the designation of the Facility site as BGWR results in a Category 2, not a Category 1 designation. The only acceptable mitigation on Category 1 land is avoidance. But Category 2 lands can achieve mitigation through avoidance *or* other actions. ODFW applied a Category 2 designation to the BGWR lands on which the Facility is sited, not a Category 1 designation. Thus, the Habitat Mitigation Policy, through practice, allows for mitigation that provides net improvements and no-net loss, even if a project temporarily or permanently affects the usability of certain BGWR for big game. Mr. Alexanderson's interpretation isolates the operative phrase "no net loss of quantity or quality" from the structure of the Habitat Mitigation Policy for Category 2 lands that seeks to improve aggregate habitat conditions.

J. Exception 14 – Priority Wildlife Connectivity Areas

In Exception 14, Mr. Alexanderson produces maps showing Priority Wildlife Connectivity Areas ("PWCA") near the Facility site to support his argument that the Applicant did not complete the "required inventory of habitat degradation and closure * * * preventing a finding of unavailability, net loss or benefit." Mr. Alexanderson again creates a requirement that exists nowhere in ODFW's Habitat Mitigation Policy. Mr. Alexanderson also ignores Applicant's efforts to (1) microsite Facility components away from PWCAs and protect some of those areas through on-site mitigation;¹⁰ and (2) protect and enhance one of ODFW's highest-value PWCAs as part of its off-site mitigation. The Facility is set back from both Buck Hollow Canyon and Hauser Canyon, the PWCAs identified by Mr. Alexanderson's maps. ODFW was clearly aware of the PWCAs covering Hauser Canyon and Buck Hollow Canyon and advised the Applicant to ensure Facility impacts to those PWCAs were minimized. The Applicant then used the off-site mitigation to protect Tygh Ridge Ranch, an ODFW-identified priority wildlife corridor for migratory elk between the Mount Hood National Forest and Deschutes Wildlife Management Area.

The combination of these actions demonstrates that ODFW was aware of the PWCAs, considered them in its evaluation of the Applicant's HMP, and, consistent with the Habitat Mitigation Policy, recommended that the Applicant conserve and enhance high-value on-site and off-site PWCA lands to offset permanent and temporary impacts from the Facility.

⁹ For a detailed discussion of prior projects located on BGWR, *see* Applicant's MSD at 8-9.

¹⁰ For further discussion of on-site mitigation away from Hauser Canyon and Buck Hollow Canyon, *see* Applicant's MSD at 4-5. For a map showing how those setbacks were implemented, *see* Applicant's MSD Exhibit 5.

IV. CONCLUSION

Yellow Rosebush respectfully requests that EFSC adopt the PCCO as drafted, with the minor revisions discussed above.

DATED: July 24, 2026

Respectfully submitted,

STOEL RIVES LLP



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CERTIFICATE OF FILING AND SERVICE

On July 24, 2026, I hereby certify that I filed the foregoing YELLOW ROSEBUSH ENERGY CENTER LLC'S RESPONSE TO ALEXANDERSON'S EXCEPTIONS TO THE PROPOSED CONTESTED CASE ORDER in OAH Case No. 2024-ABC-06692 with the Oregon Office of Administrative Hearings by emailing one correct copy to:

Senior Administrative Law Judge Kate Triana
Oregon Office of Administrative Hearings
PO Box 14020
Salem, OR 97309-4020
Email: oad_referral@employ.oregon.gov

On July 24, 2026, I also certify that I served the foregoing YELLOW ROSEBUSH ENERGY CENTER LLC'S RESPONSE TO ALEXANDERSON'S EXCEPTIONS TO THE PROPOSED CONTESTED CASE ORDER in OAH Case No. 2024-ABC-06692 emailing one correct copy to:

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DATED: July 24, 2026

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