BEFORE THE

OREGON ENERGY FACILITY SITING COUNCIL

IN THE MATTER OF THE APPLICATION FOR SITE CERTIFICATE FOR THE YELLOW **ROSEBUSH ENERGY CENTER**	**OREGON DEPARTMENT OF ENERGY RESPONSE TO PETITIONER'S EXCEPTIONS TO THE PROPOSED CONTESTED CASE ORDER** **OAH Case No. 2024-ABC-06692**

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Attachments

I. GENERAL OVERVIEW/ODOE POSITION

The contested case in this matter addressed whether the proposed Yellow Rosebush Energy Center complies with the Energy Facility Siting Council's (EFSC) Fish and Wildlife Habitat standard, which requires consistency with Oregon Department of Fish and Wildlife (ODFW) Habitat Mitigation goals and standards. The Hearing Officer in the contested case granted Motions for Summary Determination brought by the Applicant and the Department.

Council will have the opportunity to review the Hearing Officer's Proposed Contested Case Order (PCCO), exceptions to the PCCO filed by Mr. Alvin Alexanderson, who participated in the contested case, and the Applicant and Department's responses to those exceptions. Council will decide whether to approve, modify, or reject the PCCO and Proposed Order. The Department recommends Council adopt the PCCO, with some minor modifications discussed below, as well as the Proposed Order.

II. PROPOSED FACILITY

The Yellow Rosebush Energy Center is a proposed 800-megawatt (MW) solar photovoltaic power generation facility with related or supporting facilities including battery storage system, transmission line (two alternatives), substation, O&M building, and new and improved roads.

If approved, the facility would be located approximately eight miles east of Maupin, Oregon and occupy up to 4,992 acres[1] within an approximately 8,075 acre site boundary of private land zoned for Exclusive Farm Use (EFU) in Wasco and Sherman counties.

The Applicant has proposed locating the facility in this area because (among other reasons) of its proximity to the regional electrical grid – the proposed site is directly adjacent to an existing Bonneville Power Administration (BPA) 500-kilovolt (kV) transmission line corridor; the Applicant proposes to interconnect to the grid at a proposed BPA switchyard that is within the facility site boundary, or at BPA's existing Buckley Substation located to the north.

All land within the proposed facility's site boundary is on land designated as Category 2 Big Game Winter Range (BGWR) by ODFW. Per ODFW mapping, much of central and eastern Oregon is BGWR.

III. PROCEDURAL HISTORY

A. Proposed Order

On December 5, 2025, the Department issued its Proposed Order, recommending Council issue a site certificate, subject to recommended conditions set forth therein.

[1] The Department's Proposed Order states the facility would occupy 7,026 acres; that is not correct. While the micrositing area will be 7,026 acres, the estimated permanent impact of the facility is 4,992 acres. This would be corrected in the Final Order, should Council approve the ASC.

B. Contested Case

Pursuant to Council rules, there is an opportunity to request to participate in a contested case regarding a Proposed Order. Mr. Alvin Alexanderson sought limited party status in the contested case, contending the proposed facility does not comply with the Council's Fish and Wildlife Habitat standard; he argued the Applicant has not demonstrated impacts to BGWR habitat were unavoidable nor demonstrated mitigation would be consistent with the applicable ODFW rules.

The Hearing Officer granted Mr. Alexanderson standing to participate – following was the sole issue addressed in the contested case:

> *Whether, pursuant to OAR 345-022-0060(1) the design, construction, and operation of the 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.*

Per OAR 635-415-0025(2):

> *(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.*
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> * * *

<u>Motions for Summary Determination</u>

On April 6, 2026, the Applicant and the Department each filed a Motion for Summary Determination (MSD) seeking a favorable ruling on the sole issue for the contested case hearing. In a contested case, a Hearing Officer shall grant an MSD if: 1) the pleadings and record in the contested case show there is no genuine dispute regarding a fact that is relevant to resolution of the legal issue as to which a decision is sought (thus there is no reason to engage in the fact finding procedures in a contested case such as examination of witnesses) and 2) the party filing the motion is entitled to a favorable ruling as a matter of law.[2]

In their respective MSDs, the Applicant and Department argued: 1) Mr. Alexanderson's proposed scope for assessing if an impact is "unavoidable" goes beyond the scope of what is required under EFSC rules because he contended Council should not look at the facility as proposed by the applicant but rather identify, or require the applicant to identify possible

[2] OAR 137-003-0580(6).

alternative locations for the facility, and 2) conducting mitigation on non-Category 2 habitat, as Mr. Alexanderson suggested should be done, is not required for the mitigation to be consistent with the applicable ODFW rule.

Hearing Officer Ruling/Proposed Contested Case Order

On June 12, 2026, the Hearing Officer, Administrative Law Judge (ALJ) Kate Triana issued a Consolidated Ruling on the MSDs and Proposed Contested Case Order (Consolidated Ruling/PCCO). In the June 12, 2026, ruling, ALJ Triana:

- granted the Applicant and Department's MSDs
- concluded the design, construction, and operation of the proposed facility, taking into account mitigation, are consistent with ODFW general fish and wildlife habitat mitigation goals and standards for Habitat Category 2 fish or wildlife species and
- proposed that EFSC issue a Final Order granting the requested site certificate consistent with the Department's Proposed Order dated December 5, 2025, including recommended site certificate conditions.

C. Exceptions

Per OAR 345-015-0475 parties and limited parties may file exceptions to the proposed contested case order with the Council and the other parties and limited parties may file responses to any exceptions.

Per OAR 345-015-0480:

> *(1) After the period for filing responses to exceptions to the proposed contested case order described in OAR 345-015-0475 (3) and (4), the Council shall:*
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> > *(a) Evaluate the exceptions and responses to the proposed contested case order;*
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> > *(b) Review the hearing officer's proposed contested case order;*
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> > *(c) Review the Department's proposed order; and*
> >
> > *(d) Issue a final order. The final order may adopt, modify, or reject the hearing officer's proposed order and also the Department's proposed order.*

On July 10, 2026, Mr. Alexanderson's filed 14 exceptions, many of which contain overlapping themes/arguments.

IV. DEPARTMENT RESPONSES TO MR. ALEXANDERSON'S EXCEPTIONS

Exception 1: The [PCCO] asks the Council to dismantle the long standing and carefully crafted rules against BGWR damage and destruction by:

- **Eliminating "quantity" of habitat from the no-net-loss equation, allowing net closure**,

ODOE Response: Per OAR 345-015-0475(3), "[i]n an exception, the party shall specifically identify the finding of fact, conclusion of law or, in contested case proceeding on an application for a site certificate or a proposed site certificate amendment, recommended site certificate condition to which the party excepts and shall state the basis for the exception." This rule serves to facilitate Council's evaluation of exceptions and its decision under OAR 345-015-0480(1) whether to adopt, modify, or reject a hearing officer's proposed contested case order and the Department's proposed order.

Mr. Alexanderson has not satisfied this essential requirement for the eleven assertions he makes in Exception 1. Given his failure to meet this requirement, the Department opposes Mr. Alexanderson's Exception 1 in its entirety.

Subject to and without waiving that objection, the Department responds as follows.

The evidence in the record demonstrates there will not be a net loss of habitat quantity but rather will be a net gain. It is anticipated that construction and operation of the proposed facility would result in approximately 4,992 acres of permanent impacts to habitat (4,670 acres of which is Category 2 habitat)[3]. To meet the ODFW Category 2 mitigation goal of no net loss and a net benefit in habitat quantity, the Applicant proposes Habitat Mitigation Areas (HMAs) that total up to ~6,675 acres. The Tygh Ridge Ranch HMA is ~5,020 acres and the Facility HMA is ~1,655 acres. Prior 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 (*e.g.*, through a conservation easement). Absent this protection, these areas could be subject to development.

In the Proposed Order, the Department recommends Council impose Fish and Wildlife Conditions 7, 8, and 9, requiring the Applicant to: a) provide the legal agreement entered into (*e.g.*, conservation easement) to ensure that it provides for access, long-term management and enhancement of the HMAs to cover the permanent and temporal habitat loss from the facility (recommended Fish and Wildlife Condition 7); b) finalize the Habitat Mitigation Plan (HMP) prior to construction (recommended Fish and Wildlife Condition 8), and c) during operation, to provide reports on the status of long-term management and enhancement of the HMAs, consistent with the HMP (recommended Fish and Wildlife Condition 9).[4]

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[3] Attachment 5, Applicant's Draft Habitat Mitigation Plan, Table 1 (included as Attachment P-3 to the Proposed Order).

[4] ODOE - YRBAPPDoc2 Proposed Order w Attachments 2025-12-05.pdf. pg. 207 of 1101 (p. 195 of the Proposed Order itself).

- **Holding that the developer's choice of site is untestable, leaving the Council to "micro-siting" the arrangement of facilities**,

ODOE Response: Council evaluates impacts of a facility based on the facility and site that is included in the Application for Site Certificate (ASC), as proposed by the applicant. Council rules for solar electricity generating facilities do not require evaluation of alternative sites or locations. *See additional discussion below of Mr. Alexanderson's last argument in this exception; this assertion is repeated in Exception 4*.

- **Blinding itself to the state's expert findings of mule deer conditions and needs, specifically the statutory Mule Deer Management Plan (MDMP) and the supporting Delineation of Mule Deer Herd Ranges data on how mule deer use their habitat, and what is causing their population collapse,**

ODOE Response: ODFW, which prepared the referenced Mule Deer Management Plan, worked with the Applicant regarding mitigating impacts to BGWR habitat. ODFW recommended the Tygh Ridge Ranch as an HMA for the Yellow Rosebush Energy Center and supports its selection as an HMA.[5] ODFW also conferred with the Applicant about the area within the proposed site boundary to be used for habitat mitigation (the "Facility HMA"), stated it concurs with that area being used for mitigation/it is an acceptable area for habitat conservation and provides an adequate opportunity to benefit species impacted by the proposed facility location.[6] *This assertion is repeated in Exception 2*.

- **Holding that changing the plants on existing winter range can offset a 50 mile maze of fence-out area twice the size of Portland International Airport,**

ODOE Response: The fact that the facility will be fenced has been taken into consideration when assessing its impact (*i.e.*, all area within the fenceline is considered a permanent habitat impact given that the land is no longer accessible to wildlife, even though the site itself will be revegetated and could have ongoing benefit to avian species and other small mammals) and proposed mitigation measures. *This assertion is repeated in Exception 3*.

- **Redefining "in-proximity" (meaning close) as anywhere on the Columbia Plateau stretching from Mt. Hood to Pendleton,**

ODOE Response: The proposed HMAs constitute "in-proximity" mitigation under ODFW rules. Under ODFW rule OAR 635-415-0005(13), "in proximity" means within the same home range or watershed as will best benefit the affected populations. Under ODFW rule OAR 635-415-0005(9) "Home Range" means the area that a species traverses in the scope of normal life-cycle activities. Here, ODFW recommended Tygh Ridge Ranch as an HMA because it is similar (in-kind) habitat, preserves connectivity between key wildlife areas and will provide benefits to species impacted by the facility.[7] *See further discussion in ODOE's Response to Exception 8*

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[5] ODOE – YRBAPPDoc29 pASC Reviewing Agency Comment ODFW 2025-07-18.
[6] ODOE – YRBAPPDoc29 pASC Reviewing Agency Comment ODFW 2025-07-18, second page; ODOE - YRBAPPDoc19-12 ASC Review Agency Comment ODFW 2025-09-29, pg. 3-4 of 6.
[7] YRBAPPDoc29 pASC Reviewing Agency Comment ODFW 2025-07-18.

regarding the Tygh Ridge Ranch HMA being within the same watershed and home range as the proposed facility.

- **Disregarding previously approved abutting fences leaving a public highway as the only way for animals to go through the combined projects,**

ODOE Response: Council should reject this exception because Mr. Alexanderson failed to follow relevant procedural requirements established in Council rule. Mr. Alexanderson did not raise a cumulative effects argument in his petition to participate in the contested case and it was not included in the issue addressed in the contested case. As further discussed in ODOE's Response to Exception 7, Mr. Alexanderson had the opportunity to clarify the framing of his issue(s) to include such an argument, and to appeal the framing of his issue to Council. However, he consistently failed to follow Council's procedural rules. Council should reject this 11th hour attempt to insert into the exceptions hearing a new argument.

- **Dismissing the common sense increased risk of vehicle collisions**

ODOE Response: Council should reject this exception because Mr. Alexanderson failed to follow relevant procedural requirements established in Council rule. Mr. Alexanderson did not raise the issue of increased risk of vehicle collision in his petition to participate in the contested case, hence this argument was not addressed in the contested case MSD briefing. The Department's Response to Exception 7 below further discusses Council's applicable procedural rules.

Nevertheless, if Council disregards those procedural rules and chooses to consider this argument, the Department notes that proposed Site Certificate Fish and Wildlife condition CON-FW-05 limits construction vehicle speed to 20 miles per hour, for the purpose of minimizing vehicle collision risks.

- **Requiring no compensatory mitigation for deletory effects of the fence occurring outside the fence,**

ODOE Response: The Hearing Officer appropriately rejected this argument, holding that "*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 . . . ODFW had an opportunity to review Applicant's final ASC . . . ODFW concurred almost entirely with the mitigation proposed by the Applicant. 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."[8] Thus, for purposes of granting the MSDs, the Hearing Officer first assumed Mr. Alexanderson's contentions were true, including his allegations about effects outside of the fenceline, but still ruled that his issue should be dismissed as a matter of law, given that the evidence demonstrated ODFW was aware of the fence and concurred with the proposed mitigation.

[8] Attachment 4, PCCO, p. 42 (emphasis added).

Nonetheless, the Department makes clear that the Council's Fish and Wildlife Habitat Standard include an evaluation of both direct and indirect impacts. Direct impacts are evaluated based on physical, ground disturbance; indirect impacts are evaluated based on potential disturbance to wildlife in areas near facility components during proposed facility construction or operation. Mr. Alexanderson alleges that deletory effects outside the fenceline have not been considered but, in fact, they have. In ASC Exhibit P Section 6.1, Table P-4 presents a table of state sensitive wildlife species with the potential to occur within the analysis area; the analysis area extends 0.5 mile from the proposed site boundary. In other words, all state sensitive species with a potential to occur within 0.5 mile of the proposed facility site, based on the underlying habitat and literature review, have been identified. Then, based on the potential for those species to be present within or near the site, the applicant proposed avoidance, minimization and mitigation measures in ASC Exhibit P Section 9.0. These avoidance, minimization and mitigation measures have been incorporated into the draft Site Certificate.

Indirect effects to wildlife species outside of the fenceline evaluated in the ASC and the Department's Proposed Order include impacts to habitat from noxious weed infestations occurring due to ground disturbance during construction or operation; vehicular collision from vehicles travelling to and from the site; disturbance to wildlife from lighting and during sensitive nesting seasons. Fish and Wildlife Conditions 3, 5, 6, 12, 13 and 14 have all been recommended to address indirect impacts to wildlife species outside the fenceline.

- **Holding that a Proposed Order is presumed correct and complete and that Intervenors must provide evidence on standards the applicant must satisfy,**

ODOE Response: This is the same argument raised in Exception 11. See ODOE's response to Exception 11 below.

- **Deciding fact disputes on summary determination as if a hearing had already been held,**

ODOE Response: In this exception, Mr. Alexanderson does not identify what material facts he contends are disputed. However, this appears to be the same argument he has raised in Exceptions 5 and 13. See ODOE's responses to Exceptions 5 and 13 below.

- **Holding that a substation picked by a developer justifies obliteration of BGWR at the site, no alternatives need be considered.**

ODOE Response: Council evaluates the impacts of a facility based on the facility and site that is included in the ASC, as proposed by the applicant. Council rules for solar electricity generating facilities do not require evaluation of alternative sites or locations.

In the contested case, Mr. Alexanderson argued the Hearing Officer must deny the MSDs (and that EFSC must deny the ASC) because impacts are "avoidable" by relocating the facility to non-BGWR lands and building a transmission line to reach the grid. EFSC's Fish and Wildlife

Habitat standard (OAR 345-022-0060) requires Council to "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 September 1, 2025." The Fish and Wildlife Habitat standard requires Council to assess the proposed facility and determine if, taking mitigation into account, the design, construction, and operation are consistent with ODFW's mitigation policy; it does not require Council (or the applicant) to identify or analyze alternative sites for a facility to avoid mapped BGWR habitat or other impacts.

Council's analysis of "avoidability"/whether an impact to habitat can be avoided – focuses on environmentally sensitive areas within a site and whether impacts of a proposed facility to these areas or resources can be avoided within the proposed site boundary.[9] In situations such as this one, where impacts within the site boundary are unavoidable because Category 2 habitat overlaps the entire site selected based on grid interconnection feasibility, Council focuses its analysis on whether the facility layout and design have avoided higher-quality habitat within the site boundary to the maximum extent – here, avoidance of impacts to canyon areas, (adjacent Buck Hollow and Hauser Canyon) and tributary channels leading to the canyon areas; and shrub-steppe habitat. Council then analyzes whether proposed mitigation complies with the ODFW Habitat Mitigation goals and standard – *i.e.*, Council assesses whether the proposed mitigation is in-kind, in proximity and demonstrates an ability to achieve no net loss to habitat quantity and quality and a net benefit to habitat quantity or quality.

Council does <u>not</u> analyze whether impacts of a facility that generates solar electricity could be avoided by siting the proposed facility in an alternative location. There is no such requirement in EFSC's Fish and Wildlife Habitat standard. Further, the Oregon Supreme Court has confirmed that EFSC is not required to perform an alternatives analysis even when taking exceptions to statewide planning goals.[10] While this decision addressed whether an "alternatives analysis" is required for Council to take an exception to a statewide planning goal, it is consistent with the Department's position that applicants seeking an EFSC site certificate for a solar electricity-generating facility[11] are not required to provide, and EFSC is not required to consider, alternatives to the proposed development when assessing if the facility is consistent with the habitat mitigation goals and standards of OAR 635-415-0025(1) through (6). *See further discussion in ODOE's Response to Exception 4.*

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[9] "Site boundary" means the perimeter of the site of a proposed energy facility, its related or supporting facilities, all temporary laydown and staging areas and all corridors and micrositing corridors proposed by the applicant. OAR 345-001-0010(31).

[10] <u>Save Our Rural Oregon v. Energy Facility Siting Council</u>, 339 Or. 353, 372, 121 P.3d 1141, 1152 (2005), holding "the legislature did not intend to require the council to perform an alternatives analysis in making a determination under ORS 469.502(2)(c) that an exception could be taken to a land use planning goal."

[11] Under Council rules, an applicant is required to present an evaluation of alternatives to a proposed facility if they are seeking a site certificate for a nongenerating facility (transmission line or natural gas pipeline), to which Council's Need standard (OAR 345-023-0005) applies, and the applicant seeks to demonstrate need for the facility under Council's Least-Cost Plan rule (OAR 345-023-0020). That rule requires electric transmission facilities, natural gas pipeline facilities and storage facilities for liquified natural gas to consider alternatives to the proposed facility (e.g., implementation of cost-effective conservation, a smaller facility). Similarly, as discussed in the below response to Exception 4, certain non-generating facilities are required to provide information regarding reasonable alternatives in order to be sited in an Exclusive Farm Use zone.

Exception 2: **The [PCCO] holds that the facts and causes of mule deer population decline are <u>not relevant</u>. It specifically rejects the Mule Deer Management Plan (MDMP) and the included study "Delineating Mule Deer Herd Ranges. [PCCO] p. 32. The information there is the best and only available evidence. Without it there is little to inform the Council on any aspect of mule deer habitat use, change or compensatory mitigation**.

ODOE Response: The Hearing Officer did not reject ODFW's MDMP, rather she rejected the relevance of a fact Mr. Alexanderson attributed to the MDMP.

In the contested case, Mr. Alexanderson requested that the Hearing Officer take judicial notice (accept as a proven fact) that the mule deer population in central and eastern Oregon has collapsed from 306,000 in the 1980s to 162,600 in 2022. In support, he cited the 2024 ODFW MDMP. The Hearing Officer ruled that, regardless of whether this is true, it is not pertinent to the outcome of the decision.[12] That ruling was correct. The issue in the contested case was whether *the 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).* The fact that mule deer population has been declining is not relevant to determining whether the proposed facility, taking into account mitigation, is consistent with the ODFW habitat mitigation goals.

Further, Mr. Alexanderson's assertion in this exception that the ASC and Proposed Order does not assess how the 4,992 acres impacted by the proposed facility can be compensated for/how mitigation can deliver a net benefit of habitat quantity or quality is simply incorrect. Section IV.H of the Proposed Order analyzes the proposed facility's compliance with Council's Fish and Wildlife Habitat standard, including evaluation of impacts to Category 2 BGWR/Mule Deer habitat and mitigation of those impacts. And the Applicant's proposed HMP,[13] developed in coordination with ODFW, addresses those impacts consistent with ODFW's mitigation goals and standards for Category 2 habitat.

Exception 3: The [PCCO] and PO excuse the developer from efforts to avoid installing 50 miles of big game barrier fence in BGWR. [PCCO] 3.2.1 p.39. Although some fencing will be needed around high voltage grid connections, the array fencing can go outside of BGWR.

ODOE Response: In this exception, Mr. Alexanderson again makes an alternative site argument, asserting "Council must not permit a developer to disregard alternatives and just pick a site on Google Earth near a 500kv substation." As discussed above and immediately below, Council considers the impacts to habitat within the site boundary as proposed by an applicant. Council does not require an alternatives analysis for solar electricity-generating facilities.

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[12] <u>Attachment 4</u>, Consolidated Rulings/PCCO, p. 7. (There is no discussion of the Mule Deer Management Plan on p. 32 of the PCCO).
[13] ODOE - YRBAPPDoc2 Proposed Order w Attachments 2025-12-05, Attachment P-3 (beginning at p. 952 of 1101).

Exception 4: The [PCCO] limits the role of the Council to "micro-siting" design issues such as where equipment should be placed withing the site boundary. 3.2.1 p 39. This abdicates the Council's statutory siting authority.

ODOE Response: In this exception, Mr. Alexanderson again makes an alternative site argument, asserting the Hearing Officer incorrectly determined Council considers the impacts to habitat only within the site boundary as proposed by the Applicant. That ruling was correct. As discussed above, Council evaluates impacts of a solar facility based on the facility and site that is included in the ASC, as proposed by the applicant. Council rules for solar electricity generating facilities do not require evaluation of alternative sites or locations.

In this exception, Mr. Alexanderson also contends "Council frequently requires developers to evaluate alternative sites" and in support of this position cites a 2003 court case addressing Council having required Northwest Natural Gas Co. to study alternatives[14] and also cites to Council's Final Order approving the second amendment to the site certificate for the Boardman to Hemingway Transmission Line.[15] Mr. Alexanderson did not cite to either of these matters in the contested case, thus it is not appropriate for him to make arguments about them for the first time when bringing exceptions to the PCCO, nor is it necessary for the Council to consider those matters when evaluating this exception.

Nevertheless, the Department notes there is a clear distinction between this ASC and the projects referenced for which Council required information about alternatives. Here, the Applicant seeks a site certificate for a facility that will generate electricity from a *solar facility*, whereas in the two matters Mr. Alexanderson now cites, the applicants sought a site certificate for non-generating, linear facilities, specifically *a natural gas pipeline and a transmission line*. Pursuant to Council rule OAR 345-020-0011(1)(d), if a proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility it must identify at least two proposed corridors, or if it identifies only a single proposed corridor it must explain why alternate corridors are unlikely to better meet the applicant's needs and satisfy the Council's standards.[16]

Further, under state law, ORS 215.275, to be sited in an Exclusive Farm Use (EFU) zone certain "utility facilities" must demonstrate they are necessary for public service. Following ORS 215.275(2), to demonstrate that a utility facility is necessary, an applicant for a site certificate must show that reasonable alternatives have been considered and that the facility must be sited in an EFU zone due to one or more factors (e.g., technical and engineering feasibility, public health and safety).

To be sited in an EFU zone, natural gas pipelines and transmission lines must demonstrate they are necessary for public service and, as part of that demonstration, must show reasonable

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[14] Friends of Parrett Mountain v. Nw. Nat. Gas Co., 336 Or. 93, 79 P.3d 869 (2003).

[15] https://www.oregon.gov/energy/facilities/Facilities%20library/2024-08-23-B2HAMD2-Final-Order.pdf

[16] Additionally, as noted in the above discussion of Mr. Alexanderson's final assertion in Exception 1, Under Council rules, an applicant is required to present an evaluation of alternatives to a proposed facility if they are seeking a site certificate for a nongenerating facility (transmission line or natural gas pipeline), and seeking to demonstrate the need for the facility under Council's Least-Cost Plan rule.

alternatives have been considered before they can be sited in an EFU zone. However, commercial facilities that generate electrical power for public use by sale are explicitly excluded from being classified as a "utility facility necessary for public service" under Oregon land use laws. ORS 215.213(1)(c) and ORS 213.283(1)(c) define "utility facilities necessary for public service" for EFU zones. Both laws contain express language stating that this category does not include "commercial facilities for the purpose of generating electrical power for public use by sale."

Power generation facilities are instead categorized separately under ORS 215.213(2)(g) and ORS 215.283(2)(g) as "commercial utility facilities for the purpose of generating power for public use by sale." Per those statutes, such power generating facilities may be established in EFU zones, subject to certain requirements, but ***solar facilities are not required to demonstrate reasonable alternatives to the proposed facility site have been considered, nor is EFSC (or a local authority) required to evaluate alternative site to a proposed solar facility site when determining whether it complies with land use requirements.***

Exception 5: Alternatively, the fact of avoidability is disputed. The [PCCO] finds that impacts are unavoidable p. 39 3.2.1. The [PCCO] may not weigh evidence or pick a winner on a motion for summary disposition. A hearing is required.

ODOE Response: A full contested case hearing is not required because the Hearing Officer correctly dismissed Mr. Alexanderson's issue. Per OAR 137-003-0580(6), an administrative law judge shall grant a motion for summary determination if the record in the contested case shows "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 the "agency or party filing the motion is entitled to a favorable ruling as a matter of law."

It is undisputed that nearly all of the land within the proposed site boundary is Category 2 BGWR habitat. Conducting a full contested case hearing (*e.g.,* with witness testimony and cross examination) will not change that fact. Mr. Alexanderson contends the impact to Category 2 BGWR habitat could be avoided by siting the proposed facility in a different location. Whether Council must consider alternative locations is a legal dispute, not a factual one. In Section 3.2.1 of the PCCO, the Hearing Officer reached a legal conclusion that ODFW and Council consider only the impacts to habitat within the site boundary as proposed by the Applicant. Given these circumstances, the Hearing Officer appropriately applied the standard for granting the MSDs brought by the Applicant and the Department.

Exception 6: The [PCCO] fails to evaluate habitat degradation that will occur outside the fence. The mitigation plan provides no compensation for these effects. This violates the explicit text of the EFSC Fish and Wildlife Standard (OAR 345-022-0060). Exception is taken to the [PCCO] determination not to consider the issue based on these statements: "These are facts that, had the case proceeded to 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." p. 39. 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." p. 39.

ODOE Response: The Hearing Officer appropriately rejected this argument. As noted in the response to Mr. Alexanderson's Exception 1 (re: his contention about the deletory effects of the of the fence), indirect effects to habitat and wildlife species have been evaluated on the record and the ALJ held that "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. ODFW had an opportunity to review Applicant's final ASC . . . ODFW concurred almost entirely with the mitigation proposed by the Applicant. 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."[17] Thus, for purposes of granting the MSDs, the Hearing Officer first assumed Mr. Alexanderson's contentions were true, but still ruled that his issue should be dismissed as a matter of law.

Exception 7: The [PCCO] refuses consideration of cumulative effects of abutting fencing based on an incorrect claim that Intervenor did not timely raise the issue. P 43 Section 3.2.6.

ODOE Response: Council should reject this exception because Mr. Alexanderson failed to follow relevant procedural requirements established in Council rule.

Mr. Alexanderson did not follow relevant procedural requirements because in his petition to participate in the contested case he did not mention cumulative impacts nor reference any comment about cumulative impacts that he made in his comments on the DPO.[18]

Per OAR 345-015-0415 (addressing participation in contested cases):

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> (6) In a petition to request party or limited party status, the person requesting such status must include:

[17] PCCO, p. 42 (emphasis added).
[18] Attachment 1: Amended Notice of Petitions for Party Status and Order Scheduling Prehearing Conference (January 8, 2026); Mr. Alexanderson's Petition is the first attachment thereto (pp. 7–9 of the 15 page pdf).

(a) The information required under OAR 137-003-0535(4);

(b) *A short and plain statement for each issue that the person desires to raise in the contested case proceeding; the statement should be worded the way the person requests the issue be worded for the contested case proceeding*; and

(c) *A reference to the person's comments on the record of the draft proposed order showing that the person raised the issue or issues on the record of the draft proposed order*.

(Emphasis added).

Mr. Alexanderson did not comply with these explicit requirements in Council's rules – he did not include a short and plain statement that he wished to raise a cumulative impacts issue in the contested case. Nor did he reference any cumulative impacts comment he made on the record of the DPO.

Even after that step, Mr. Alexanderson had opportunities to clarify the issue(s) he wished to raise in the contested case. On January 15, 2026, the Applicant and Department each filed responses to his Petition, and the Hearing Officer issued a Prehearing Conference Agenda, describing the issue Mr. Alexanderson had raised as follows:

"W*hether, pursuant to OAR 345-022-0060(1) the design, construction, and operation of* ***the facility****, taking into account mitigation, are consistent with the" ODFW general fish and wildlife habitat mitigation goals and standards . . .* (Emphasis added).[19]

The January 15, 2026, Prehearing Conference Agenda included notice that at the January 23 prehearing conference there would be an opportunity to present argument "regarding the wording, addition or removal of issues from the issues list."[20] However, Mr. Alexanderson did not attend the January 23, 2026, prehearing conference.

Pursuant to OAR 345-015-0430(6), *Failure to raise an objection regarding . . . a proposed description of an issue during the prehearing conference when such procedures and issues are being discussed and established by the hearing officer constitutes waiver of that objection*

On February 9, 2026, the Hearing Officer issued an Order on Petitions for Party Status and Issues for Contested Case. That Order provided the same description of Mr. Alexanderson's issue (the sole issue in the contested case) as set forth in the January 15 Prehearing Conference Agenda.[21]

That Order also expressly stated:

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[19] Attachment 2: Prehearing Conference Agenda (January 15, 2026), pp. 5–6 Issues List (Draft)
[20] *Id*., p. 4.
[21] Attachment 3 Order on Petitions for Party Status and Issues for Contested Case (February 9, 2026), p. 10 of 13.

Appeal Rights

> Pursuant to OAR 345-015-0415(9), the Hearing Officer's determination on a request to participate as a party or limited party, as stated in this order, is final unless the petitioner submits an appeal, with supporting arguments and documents, to the Council within seven (7) days after the date of service of the determination.[22]

If Mr. Alexanderson (in spite of his failure to request that the contested case address cumulative impacts in his petition for limited party status, and his failure to attend the January 23 Prehearing Conference and address the phrasing of his issue) believed the scope of the contested case should have been expanded to include consideration not just of the impacts of the facility itself but also of cumulative impacts, he could and should have appealed that to Council after the ALJ issued the February 9, 2026, Order on Petitions for Party Status and Issues for Contested Case. However, Mr. Alexanderson again did not follow the contested case procedures established in Council rules.

Yet he now asks Council to ignore that process and consider his cumulative impacts argument. Council should not do so. The contested case rules are intended to provide structure and clarity to the contested case process, which is inherently complex; failure to comply with the rules results in a situation such as that created by Mr. Alexanderson now – attempting to bring arguments before Council after the contested case has been completed that should have been addressed far sooner in the process.

Finally, the Department notes that Council's evaluating such an argument now would not only be inconsistent with Council rules, but it would also send a message to other persons seeking to, or participating in Council contested cases that the procedural rules may be ignored.

Exception 8: Movant YR seeks summary determination that the mitigation site qualifies and satisfies the mitigation Rule. Intervenor objects to the finding at p. 42, 3.2.4 that the Tygh Ridge Ranch selected for the HMP is in-proximity to the project. . . . YR did not present any evidence describing the home range of project mule deer. . .

ODOE Response: Tygh Ridge Ranch meets the definition of in-proximity mitigation. Under ODFW rule OAR 635-415-0005(13), "In-proximity Habitat Mitigation" means:

> *habitat mitigation measures undertaken within or in proximity to areas affected by a development action. For the purposes of this policy, "in proximity to" means* ***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.*

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[22] Attachment 3 Order on Petitions for Party Status and Issues for Contested Case (February 9, 2026), p. 11 of 13.

(Emphasis added).

Under ODFW rule OAR 635-415-0005(9) "Home Range" means *the area that a* ***species*** *traverses in the scope of* ***normal life-cycle activities***.

Mr. Alexanderson neglects to mention this definition in his Exception 8, even though it is fundamental to this Exception. Rather, Mr. Alexanderson asserts there is no evidence that the Tygh Ridge Ranch HMA "will ever be visited by *project* mule deer" and alleges the mitigation must protect or restore the welfare "of the *sub-population* directly affected" and cites to OAR 635-415-0005(5). In that rule "habitat" is defined *as 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.* Thus, the definition of habitat encompasses the geographic range of the entire species, while considering the affect that conditions within that range might have on the species or a sub-species. That definition does not mean, as Mr. Alexanderson implies that to constitute in-proximity mitigation, the mitigation must serve to protect the particular sub-population members of a species.

To determine what constitutes in-proximity mitigation, one must look at the definition of "In-proximity Habitat Mitigation" – as noted above it means within the same home range or watershed. And the definition of home range means the area that *a species* traverses *in the scope of normal life-cycle activities*. It makes no mention of sub-species. Therefore, particular animals within a species that may be impacted by a proposed facility do not need to access a mitigation area for the mitigation area to be considered "In-proximity Habitat Mitigation."

Here, ODFW recommended Tygh Ridge Ranch as an HMA for the Yellow Rosebush Energy Center and supports its selection as an HMA.[23] ODFW noted that the proposed Tygh Ridge Ranch HMA "is in similar (in-kind) habitat" as the proposed facility, that it is "a high-density winter range location for mule deer" and that it "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."[24]

While ODFW did not explicitly address the definition of "In-proximity Habitat Mitigation" in its comments on the proposed facility, the fact that ODFW recommended the Tygh Ridge Ranch HMA is a clear indication it concluded that HMA is in proximity to the habitat impacted by the proposed facility. Indeed, an ODFW technical report that describes the methods ODFW used to identify mule deer herd ranges in Oregon shows there is a volume of intercept – a measure of assumed overlap and potential interchange – of 10% between the established Biggs herd range where the proposed Yellow Rosebush facility lies and the adjoining Mid-Columbia herd range where the proposed Tygh Ridge Ranch mitigation site is located.[25] This intercept

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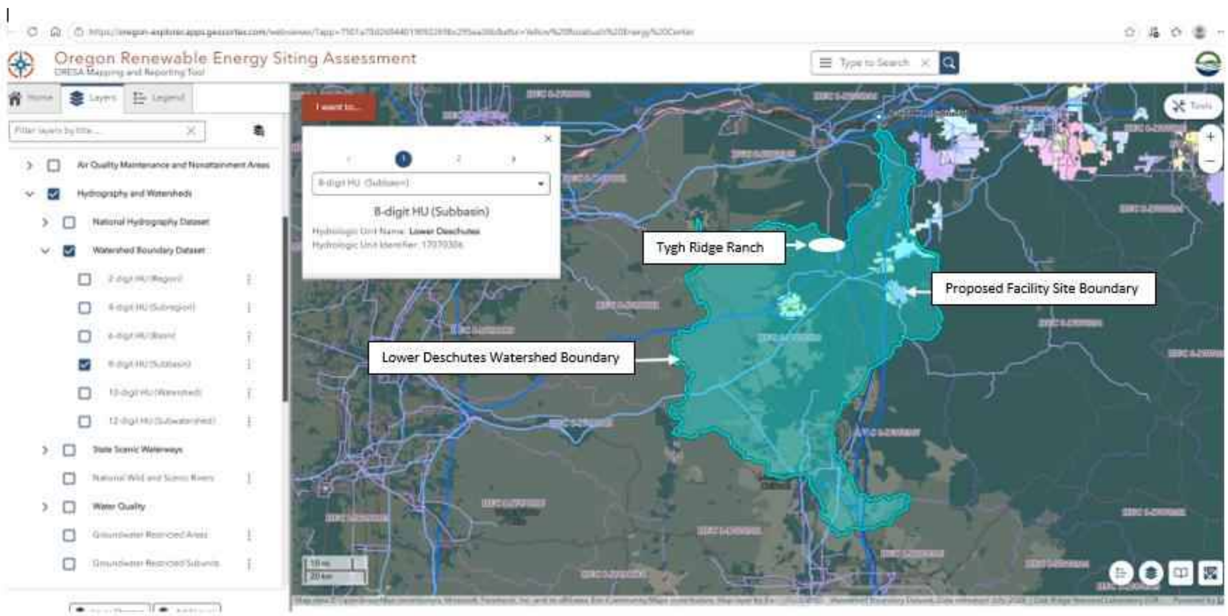
[23] ODOE – YRBAPPDoc29 pASC Reviewing Agency Comment ODFW 2025-07-18.
[24] *Id.*
[25] Attachment 6. Delineating Mule Deer Herd Ranges in Oregon: Internal Technical Report of Methods and Results (ODFW January 2023); available at https://www.dfw.state.or.us/wildlife/management_plans/mule_deer/Delineation_of_Mule_Deer_Herd_ranges_in_Eastern_Oregon_Draft_Final_11Jan23.pdf
Table A-2 on p.12 shows the 10% intercept; Figures 5, 7 and 8 present related data. ODOE did not provide this document in the MSD briefing but given that it is publicly available, ODOE believes it is appropriate for Council to

demonstrates the Tygh Ridge Ranch is within the same home range as the proposed facility site and therefore constitutes "In-proximity Habitat Mitigation."

Further, as can be seen from the following map[26], the proposed Tygh Ridge Ranch HMA is also within the same watershed as the proposed facility site. Both are within the Lower Deschutes watershed.



Additionally, while not relevant to resolution of this issue, the Department reminds Council that the Applicant has proposed facility layout/design features to avoid potential impacts to wildlife, including mule deer, by avoiding areas within the proposed site that demonstrated habitat characteristics that are most likely to be utilized by mule deer. *See, e.g.*, Proposed Order Attachment P-4 Design Features to Minimize Wildlife Impacts[27] which states, among other items: *"[t]he Applicant has microsited the Facility layout to set back from Buck Hollow and*

consider when evaluating Mr. Alexanderson's argument there is a lack of evidence supporting the conclusion that Tygh Ridge Ranch is in-proximity mitigation/within the home range of deer impacted by the facility.

[26] This image was produced using ODOE's publicly available ORESA tool, which includes watershed[26] boundary data, showing that the proposed facility site is within the Lower Deschutes watershed, HUC 8-17070306. The proposed Tygh Ridge Ranch Habitat Mitigation Area is approximately 13 miles northwest from the northernmost point of the site boundary, within the same watershed. The location of Tygh Ridge Ranch HMA presented in the above map is based on the location of the HMA presented in ASC Exhibit P Attachment P-2 Figure 1.

OAR 635-415-0005(31) defines "watershed" as drainage basin encompassing a stream, its tributaries, and associated uplands at the USGS 4th Field Hydrologic Unit level. The USGS 4th Field Hydrologic Unit refers to the Cataloging unit, identified by an 8-digit Hydrologic Unit Code (HUC-8). It is the fourth level in the original fourth level hierarchy. Source: https://water.usgs.gov/themes/hydrologic-units/

[27] ODOE – YRBAPPDoc2 Proposed Order w Attachments 2025-12-05.pdf, pp. 989-993 of 1101.

Hauser canyons where feasible to reduce impacts to Priority Wildlife Connectivity Areas and shrub-stepped Strategy Habitats as well as the higher quality habitats mapped in these areas."

Further, Recommended Fish and Wildlife Condition 12 would require that prior to facility construction, the Applicant provide the Department an updated version of the Design Features to Minimize Wildlife Impacts based on final facility design.

Exception 9: The [PCCO] rejects the only evidence presented on the home range of the affected sub-population. The [PCCO] states "The identified land is within the same home range as the affected wildlife populations reside." p. 39. The evidence is contrary. This issue is central to the "in-proximity" standard. Arguments regarding Exceptions 8 and 9 apply to both.

ODOE Response: The intervenor again misleadingly focuses on particular individual deer that may use the proposed facility site rather than the overall species. As discussed in the above response to Exception 8, ODFW mitigation rules are aimed at protecting habitat, not particular members of a species. Evidence in the record demonstrates the proposed HMAs meet ODFW's definition of "in-proximity Habitat Mitigation."

Exception 10: The [PCCO] improperly shifts the burden of disproving "in-proximity" to Intervenor saying he would have to prove the mitigation site is not in-proximity. [PCCO] p. 43.

ODOE Response: The Hearing Officer correctly explained and applied the burdens of proof, consistent with the governing statutes and Council rules. In the PCCO (pp. 3–4), the Hearing Officer addresses the burdens of proof, explaining:

> . . . 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*." . . .
>
> . . . 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 the 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 claims or alleged facts*.
>
> (Emphasis added).

Here, Mr. Alexander takes issue with the following passage in the PCCO (p. 43):

> OAR 635-415-0005(123) 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 and preserves the connectivity between key wildlife areas and will provide a benefit to the 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)*.
>
> (Emphasis added).

In the contested case, Mr. Alexander took the position the proposed facility is not consistent with ODFW's fish and wildlife habitat mitigation goals and standards in OAR 635-415-0025. In the language Mr. Alexanderson takes issue with, the Hearing Officer is simply pointing out what is expressly stated in ORS 183.450(2) (of the Oregon Administrative Procedures Act) and EFSC rule OAR 345-015-0440 – that in the contested case Mr. Alexanderson bears the burden to present evidence in support of his position.

Exception 11: The [PCCO] incorrectly states that a proposed order creates a presumption that the applicant has satisfied all requirements and standards. P. 41 No such presumption exists under Oregon Administrative Rules or the Oregon Administrative Procedures Act.

ODOE Response: ODOE agrees there is not a "rebuttable presumption" regarding a Proposed Order and recommends Council not adopt that language from the PCCO.

It appears Mr. Alexanderson takes issue with the italicized portions of the following statements the PCCO,[28] p. 4 (rather than p. 41):

> Accordingly, Applicant maintains the burden to show by a preponderance of 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*

[28] Attachment 4.

> *presumption stands and* Applicant is not required to make additional showings at the contested case.
>
> 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.
>
> 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).

ODOE agrees that there is not a general rebuttable presumption in favor of the Department's Proposed Order in a contested case hearing. The legal frameworks under ORS Chapter 469 and OAR Chapter 345 treat the Proposed Order as a staff recommendation, not a legally binding or presumed-correct decision. The Department's issuance of a Proposed Order recommending Council approve an ASC (or amendment to a site certificate) does not shift the ultimate legal burden away from the Applicant. The Applicant (developer) maintains the burden of proving, by a preponderance of the evidence, that the proposed facility complies with all applicable EFSC standards. Persons opposing the Proposed Order who have standing in the contested case do not have to "rebut a presumption" that the ODOE's recommendation is correct.

However, as discussed in response to Exception 10, participants in the contested case must present evidence and legal arguments to support their position that the applicant has failed to meet a specific EFSC standard. The Hearing Officer correctly cited and applied the relevant statutes and rules regarding burden of proof when ruling on the MSDs.

Mr. Alexanderson cites two instances in which he appears to contend the Hearing Officer's applying a rebuttable presumption resulted in the Hearing Officer incorrectly granting the MSDs – a supposed lack of evidence addressing habitat degradation outside the fence line and supposed lack of evidence regarding the home range of the affected sub-population of big game/mule deer. With regard to the argument about impacts outside the fence line, there will be impacts to habitat. That is what prompts the need for mitigation. However, evidence in the record demonstrates ODFW was aware of the fence, the Applicant worked with ODFW to develop the draft HMP and concurred that the proposed HMP offsets those impacts consistent with ODFW's habitat mitigation policy. The Department agrees that the proposed mitigation is consistent with ODFW's Habitat Mitigation Policy and Council's Fish and Wildlife Habitat standard.

As to the supposed lack of evidence regarding the home range of the affected sub-population of big game, as discussed above in the Response to Exceptions 8 and 9, ODFW's mitigation rules do not assess impacts to sub-populations of a species. Thus, lack of evidence in the record regarding the home range of a sub-population is not relevant to evaluation of the issue in the contested case or compliance with Council's Fish and Wildlife standard. Nevertheless, in response to Exception 8, ODOE has provided a publicly available document demonstrating that the Tygh Ridge Ranch is within the home range of mule deer in the area of the proposed facility.

Therefore, while the Department agrees with Mr. Alexanderson that persons opposing the Department's recommendations in a Proposed Order don't have to "rebut a presumption" that ODOE's recommendation is correct, that doesn't mean the Hearing Officer incorrectly granted summary determination. The standard for granting a summary determination is if the record in the contested case shows 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 the agency or party filing the motion is entitled to a favorable ruling as a matter of law. The Hearing Officer correctly applied that standard in granting the Applicant and Department's MSDs.

Under OAR 345-015-0480(1)(d), when issuing a final order, Council "may adopt, modify, or reject the hearing officer's proposed order and also the Department's proposed order."

The Department recommends that Council modify the Hearing Officer's PCCO to omit statements therein regarding a rebuttable presumption.

Exception 12: The [PCCO] misinterprets the no-net-loss Rule. It effectively eliminates the term "quantity" and allows unreplaced closure of BGWR. P. 41 Both quantity and quality must be preserved (Council's words). The [PCCO] states 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." 3.2.2

ODOE Response: Per OAR 635-415-0025(2)(b)(B) the mitigation goal for Category 2 habitat is "no net loss of either habitat quantity or quality and to provide a net benefit of habitat quantity or quality." ODOE agrees with Mr. Alexanderson that "no net loss of either habitat quantity or quality" means both habitat quantity and quality must be preserved. Contrary to Mr. Alexanderson's assertions, however, the Applicant's proposed HMP will result in no net loss of habitat quantity and no net loss of habitat quality, consistent with ODFW rules.

The proposed facility will cause a loss of Category 2 habitat – approximately 4,670 acres will be permanently impacted and approximately 168 acres will be temporarily impacted. However, given the proposed mitigation, there will <u>not</u> be a net loss of Category 2 habitat quantity, as Mr. Alexanderson alleges but rather a net gain.

OAR 635-415-0025(2)(b)(B) provides standards to achieve the mitigation goals for impacts to Category 2 habitat, including that mitigation be through "in-kind" habitat mitigation. OAR 635-415-0005(22) defines "net loss" as "a loss of habitat quantity and/or habitat quality resulting from a development action *despite mitigation measures having been taken*" (emphasis added). OAR 635-415-0005(12) defines "in-kind mitigation" as habitat mitigation measures which "recreate *similar habitat structure and function* to that existing prior to the development action" (emphasis added).

Here, the Applicant's draft HMP proposes to mitigate the facility's impacts by placing conservation easements on other Category 2 habitat (thus meeting the "in-kind" requirement), which will result in more Category 2 habitat being protected than the facility will impact – a total of up to 6,675 acres will be protected in two HMAs – approximately 5,020 acres on Tygh Ridge Ranch and 1,655 acres located to the north and east of within the proposed site boundary, known as the Facility HMA.[29] Thus, there will not be a net loss of Habitat 2 quantity but rather a net gain because more BGWR Category 2 habitat will be protected from development in the HMAs than will be impacted by the proposed facility.

Additionally, the Applicant will not only protect those lands from development it will take measures to enhance the quality of Category 2 habitat on those lands, including by planting shrubs and Oregon White Oak, controlling weeds and removing fences and conducting long-term monitoring.[30]

Therefore, the Applicant's proposed mitigation would not result in a net loss to habitat quantity or quality but rather a net gain to both.

Further, in the Proposed Order, the Department recommended Council impose Fish and Wildlife Conditions 7, 8 and 9, requiring the applicant to: a) provide the conservation easement or other legal agreement entered into to ensure that it provides for access, long term management and enhancement of the HMAs to cover the permanent and temporal habitat loss from the facility (Recommended Fish and Wildlife Condition 7); b) finalize the HMP prior to construction (Recommended Fish and Wildlife Condition 8); and c) during operation, to provide reports on the status of long-term management and enhancement of the HMAs, consistent with the HMP (Recommended Fish and Wildlife Condition 9).

Nevertheless, Mr. Alexanderson has contended throughout this process that because Category 2 habitat will be impacted, to meet the "no net loss" mitigation requirement the applicant must protect land that isn't Category 2. That argument is fundamentally flawed. First, it disregards the requirement in ODFW's rules that mitigation be "in-kind" (*i.e.,* via similar habitat structure and function).[31] Second, it ignores the reality that, while the proposed Tygh Ridge Ranch and Facility HMAs consist of existing Category 2 land, those lands currently have no protections from development. Through the applicant's Habitat Mitigation Plan and recommended conditions in the Proposed Order, those lands will be protected, via a conservation easement (or similar legal instrument) for the life of the facility.

ODOE provided this same explanation in its MSD and Reply briefs filed with the ALJ. The Applicant presented similar arguments.

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[29] See ODOE Motion for Summary Determination, Statement of Facts 7 through 11 and documents cited therein.
[30] See the applicant's draft Habitat Mitigation Plan at Attachment 5. It is in the record at ODOE – YRBAPPDoc1-17 ASC Exhibit P Fish and Wildlife Habitats and Species 2025-09-05, pp. 108–110 of 198. See also ODOE Motion for Summary Determination, Statement of Facts 13.
[31] OAR 635-415-0005(12).

The Hearing Officer ruled in favor of the Applicant and ODOE, finding that the OAR 635-415-0025(2)(b)(B) Category 2 "no net loss" mitigation goal "does not require a 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."[32]

ODOE agrees that the Hearing Officer's explanation could have been articulated more cogently. Mr. Alexanderson interprets this explanation as meaning the Hearing Officer ruled that under OAR 635-415-0025(2)(b)(B) there may be a net loss of Category 2 habitat quantity as long as mitigation provides a net benefit in habitat quality. While it is not clear to ODOE that is what the Hearing Officer ruled, ODOE would not agree with such a ruling. Accordingly, ***for purposes of the Council's Final Order, the Department recommends Council not adopt the PCCO Section 3.2.2*** but rather supplement the analysis of the Fish and Wildlife standard in Council's Final Order to find that the design, construction and operation of the facility, taking into account mitigation, are consistent with the general fish and wildlife habitat mitigation goals and standard of OAR 635-415-0025(1) through (6) for the following reasons:

- Per OAR 635-415-0025(2)(b)(B) the mitigation goal for Category 2 habitat is "no net loss of either habitat quantity or quality and to provide a net benefit of habitat quantity or quality."
- The applicant has demonstrated there will be no net loss of Category 2 habitat quantity. While the proposed facility will permanently impact approximately 4,670 acres and temporally impact approximately 168 acres of BGWR Category 2 habitat, under the applicant's Habitat Mitigation Plan (and subject to Fish and Wildlife Conditions 7, 8 and 9) the applicant will protect 6,675 acres of in-kind BGWR Category 2 habitat via a conservation easement or similar legal instrument.
- The proposed facility will not result in a net loss of BGWR Category 2 habitat quality but rather will provide a net benefit for habitat quality through enhancement and uplift actions described in the Habitat Mitigation Plan (including through planting shrubs and Oregon White Oak, controlling weeds, and removing fences and conducting long term monitoring).

Exception 13: The [PCCO] incorrectly states: "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". 3.2.3 The proposed mitigation plan does not meet the goals and applicable goals and standards.

ODOE Response: The Hearing Officer correctly applied the undisputed material facts to the law; summary determination was appropriate.

In Exception 13, Mr. Alexanderson argues "[a] determination of no-net-loss cannot be made on the record absent a hearing because factual predicates are missing or disputed as set out in other

[32] PCCO, p. 41 of 48.

Exceptions herein" and contends he would be "denied due process in a contested case hearing with respect to disputed facts prematurely decided in a summary disposition proceeding."

Mr. Alexanderson's arguments regarding the ODFW no-net loss requirement for Category 2 habitat present a legal dispute, not a factual one. His argument that mitigation must take place on non-Category 2 land is a legal argument that, as discussed above, is in conflict with ODFW's definition of "in-kind mitigation" in OAR 635-415-0005(12) (mitigation measures that serve to recreate *similar habitat structure and function*).

Conversely, the facts that are material to determining whether there would be a net loss are undisputed. It is undisputed that the proposed facility will cause a loss of Category 2 habitat within the fence line – approximately 4,670 acres will be permanently impacted and approximately 168 acres will be temporarily impacted. Nor is it disputed that the Applicant proposes to mitigate the facility's impacts by placing conservation easements on other Category 2 habitat – a total of up to 6,675 acres will be protected in the two HMAs – approximately 5,020 acres at the Tygh Ridge Ranch HMA and 1,655 acres at the Facility HMA. Conducting a full contested case hearing (e.g., with witness testimony and cross examination) will not change those facts. The Hearing Officer correctly applied the undisputed material facts to the law; summary determination was appropriate.

Exception 14: The PO, the ASC and the HMP all fail to show where and how much Priority Wildlife Connectivity Area will be crossed or blocked by the project. The applicant's required inventory of habitat degradation and closure is incomplete, preventing a finding of unavoidability, net loss or benefit. Intervenor takes this Exception 14 as to any determination of those standards without an account of fencing and/or arrays located in or blocking PWCAs.

ODOE Response: ODOE objects to this exception because it sets forth a new argument that was not addressed in the contested case. When requesting to participate in the contested case, Mr. Alexanderson did not allege, as he now does, that a "required inventory of habitat degradation and closure is incomplete" or that the record was not complete/insufficient for evaluating compliance with Council's Fish and Wildlife standard. To the contrary, he alleged that the Applicant does not comply with the standard. If there was not enough information to assess compliance with the Fish and Wildlife Habitat standard, then that lack of information would prevent *any* conclusion regarding compliance with the standard, including his own conclusion that the standard is not met. Mr. Alexanderson can't have it both ways. This argument is disingenuous and procedurally inappropriate. Because this allegation was not addressed in the contested case, it cannot be raised for the first time in a supposed exception to the Proposed Contested Case Order.

Subject to and without waiving that objection, the Department notes that OAR 345-022-0060(3) sets forth the information an applicant for a site certificate must provide to assist the Council in determining whether the Fish and Wildlife Habitat standard is met, including biological and botanical surveys and identification of fish and wildlife habitat in the analysis area. The Applicant provided this information in its ASC Exhibit P. In the Proposed Order (pp. 184–203), the Department evaluates at length the information the Applicant provided in Exhibit P and recommended Council find the Applicant had met the standard, subject to recommended Fish and Wildlife Habitat site certificate conditions. The Department continues to stand by that recommendation.

V. CONCLUSION

For the reasons set forth above, the Department recommends the Council reject Mr. Alexanderson's Exceptions 1 through 14 and adopt the Hearing Officer's Proposed Contested Case Order, with two modifications: remove the discussion of a "rebuttable presumption" on PCCO p. 4 and not adopt the PCCO Section 3.2.2.

DATED this 24th day of July, 2026.

Respectfully submitted

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Attorney General

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Senior Assistant Attorney General
Counsel for the Oregon Department of Energy

PGR:etb/1027905339

CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2026, the foregoing OREGON DEPARTMENT OF ENERGY'S **RESPONSE TO PETITIONER'S EXCEPTIONS TO THE PROPOSED CONTESTED CASE ORDER**, was served by e-mailing a true copy of the above-listed document to:

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DATED this 24th day of July 2026.

/s/ Emma Borg
Emma Borg
Legal Secretary
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Attachment 1

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

IN THE MATTER OF:	)	**AMENDED NOTICE OF PETITIONS**
	)	**FOR PARTY STATUS AND ORDER**
YELLOW ROSEBUSH ENERGY	)	**SCHEDULING PREHEARING**
CENTER	)	**CONFERENCE**[1]
	)	
	)	OAH Reference No.: 2024-ABC-06692

PURPOSE OF NOTICE: This notice is provided to notify the Oregon Department of Energy ("ODOE" or "Department"), Yellow Rosebush Energy Center (Applicant), and Petitioners requesting party status or limited party status, of the petitions for party status or limited party status received by the undersigned Administrative Law Judge (ALJ).[2]

On December 5, 2025, ODOE issued a Proposed Order in the Matter of the Application for a Site Certificate for the Yellow Rosebush Energy Center and issued a Notice of Proposed Order and Opportunity to Request to Participate in a Contested Case. Petitions for Party or Limited Party Status in the contested case proceeding were required to be received by the Hearing Officer in writing by U.S. mail or email by 5:00 p.m. Pacific Time on January 5, 2026.

The time for submitting Petitions for Party or Limited Party Status having passed, the Hearing Officer gives notice of the following:

1. Attached to this Notice are the Petitions for Party or Limited Party Status in the contested case proceeding for the above-referenced matter that the Hearing Officer has received, and a Service List.[3]
2. The Applicant is a party to the contested case pursuant to ORS 469.370(5).
3. ODOE shall have the right to participate in the contested case with all of the rights granted to a party pursuant to OAR 345-015-0415(1).
4. The deadline for the Applicant and the Department to respond to the Petitions for Party or Limited Party Status is **January 16, 2026 at 10:00 a.m. Pacific Time**.
5. The Prehearing Conference on this matter will be held via Cisco Webex Video Conference on **January 23, 2026 at 10:00 a.m. Pacific Time**. An appointment for the prehearing conference will be sent separately via email to every party on the Service List.

Certain procedural requirements apply to Petitioners, Applicant, and ODOE, as described below:

[1] On January 7, 2026, the OAH issued a Notice of Petitions for Party Status and Order Scheduling Prehearing Conference that failed to include the Petitions for Party or Limited Party Status. Later on January 7, 2026, the OAH issued the Notice of Petitions for Party Status and Order Scheduling Prehearing Conference a second time with the Petitions for Party or Limited Party Status attached. This Amended Notice is being issued to formally include the attachment of Petitions for Party or Limited Party Status which were inadvertently omitted from the original Notice.

[2] Administrative Law Judge (ALJ) and Hearing Officer are used interchangeably in this Notice.

[3] The Service List is titled CERTIFICATE OF MAILING.

Requirements for Party or Limited Party Status: A petition for party or limited party status itself does not entitle the Petitioner to that status. The Hearing Officer must review the petitions and determine, by written order, whether each Petitioner is entitled to party status or limited party status. Only those Petitioners who have commented in person or in writing on the record of the public hearing on the DPO may be granted party or limited party status in the contested case proceeding on an ASC. Under OAR 137-003-0535(9), a petition for party status may be treated as a petition to participate as a limited party.

In ruling on petitions, the Hearing Officer shall consider whether Petitioner has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding; whether any such affected interest is within the scope of the agency's jurisdiction and within the scope of the notice of contested case hearing; the qualifications of the Petitioner to represent that interest when a public interest is alleged; and, the extent to which the Petitioner's interest will be represented by existing parties. OAR 137-003-0535(8).

To raise an issue in a contested case proceeding, the issue must be within the jurisdiction of the Energy Facility Siting Council (EFSC), and the Petitioner must have raised the issue in person or in writing on the record of the DPO public hearing. If a Petitioner has not raised an issue on the record of the DPO public hearing(s) with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the Hearing Officer shall not consider the issue in the contested case proceeding. To have raised an issue with sufficient specificity, the Petitioner must have:

(a) identified the recommended findings of fact, conclusions of law, or conditions of approval to which they object;
(b) specified the Council standard or other applicable state and local requirements on which their objection is based; and
(c) presented facts or statements supporting that objection on the record of the draft proposed order. OAR 345-015-0415(4).

Until such time as the Hearing Officer issues a written order addressing the petitions for party or limited party status, Petitioner(s) will be provided all rights and notices as if that Petitioner has been granted party status. The Hearing Officer will issue an order on party status following the Prehearing Conference specifying whether the petitioner is eligible to participate in the proceeding as a party or limited party and the issues any petitioner granted limited party status may participate on. The Hearing Officer may specify additional procedural limitations as they deem appropriate. OAR 137-003-0535.

Following the prehearing conference/oral argument, scheduled for **January 23, 2026**, the Hearing Officer will issue an Order on Party Status. Following issuance of the Order on Party Status, the Hearing Officer will issue a Case Management Order. The Case Management Order will be served upon all those granted party or limited party status.

Deadline for Responses Regarding Party Status: Copies of the petitions received by the Hearing Officer on or before the deadline are attached hereto. Any responses to petitions must be received by the Hearing Officer in hard copy by either hand delivery or U.S. First Class Mail, or by e-mail followed by a hand delivered or U.S. First Class Mail hard copy no later than **10:00 a.m. Pacific Time on January 16, 2026**. The Applicant and the Department must provide copies of responses to one another and the person who submitted the petition for party or limited party status. OAR 345-015-0415(7).

Representation in the Contested Case. All parties and limited parties have the right to be represented by counsel; legal aid organizations may be able to assist a party with limited financial resources. However, both full and limited parties may use lay representation (*i.e.,* do not need to be represented by an attorney) in the contested case proceeding. OAR 345-015-0403.

Future Submissions: Other than responses to Petitions for Party Status, which the Applicant and Department must provide to Hearing Officer, each other and the person who submitted the petition, any submissions to the Hearing Officer from Petitioners, ODOE or the Applicant, from the date of this Notice of Petitions for Party Status and Order Scheduling Prehearing Conference, must be served on all of the individuals listed on the Service List attached to this Notice of Petitions for Party Status and Order Scheduled Prehearing Conference. Any Petitioner who wishes to be removed from the Service List or withdraw its request for party or limited status must do so by written request to the Hearing Officer. Any Petitioner, Applicant or ODOE, whose address changes during the Contested Case proceeding must notify in hard copy by either hand delivery or U.S. First Class Mail, or by e-mail followed by a hand delivered or U.S. First Class Mail hard copy, all others on the Service List in a timely manner.

Acceptable Filing Methods: The Hearing Officer will accept filing and service by hand delivery, U.S. First Class Mail (postage prepaid) and e-mail at the address below. Any item sent by e-mail must be followed by a hard copy by either hand delivery or U.S. First Class Mail. Items must be received by the Hearing Officer by the applicable deadline to be considered timely filed. It is the responsibility of anyone filing by e-mail to produce adequate proof of delivery, if requested. All filed documents must include an authorized certificate of filing and service, including name and address of individuals served and method/date of service. Please also include the OAH case number (2024-ABC-06692) on all filed documents.

Senior Administrative Law Judge Kate Triana
Oregon Office of Administrative Hearings
Mailing Address:
PO Box 14020
Salem, OR 97309-4020
Hand Delivery Address:
4600 25th Ave. NE, Suite 140
Salem, OR 97301
Phone: 503-947-1637
Fax: 503-947-1531
Email: oed_oah_referral@employ.oregon.gov

Service on all others included in the Service List must be by U.S. First Class Mail (postage prepaid) and by e-mail (if an e-mail address is provided in the Service List).

Prehearing Conference Agenda: The Hearing Officer will issue a Prehearing Conference Agenda to the Applicant, the Department and all of the Petitioners no later than **January 16, 2026**. The Prehearing Conference will be conducted by Cisco Webex Video Conference.

Prehearing Date: January 23, 2026 **Prehearing Time: 10:00 a.m. Pacific Time**

Location: Cisco Webex Video Conference
An appointment for this prehearing will be sent separately via email to all parties

on the Service List.[1]

Important note: If you have any trouble connecting to the Cisco Webex Video Conference and it has been more than five (5) minutes past the prehearing start time, call the Office of Administrative Hearings immediately at (503) 947-1608.

If you fail to join the prehearing conference within **five (5) minutes** after the time set for the prehearing conference, the prehearing conference may proceed without you.

Per OAR 345-015-0430(6), failure to raise an objection regarding suggested procedures to be followed in the contested case or a proposed description of an issue during the prehearing conference when such procedures and issues are being discussed and established by the Hearing Officer constitutes waiver of that objection.

Per OAR 345-015-0430(7), failure to raise an issue in the Pre-Hearing conference constitutes waiver of that issue in the contested case. The Pre-Hearing Conference will be recorded.

This Notice is dated: January 8, 2025.

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

[1] If anyone listed on the Service List failed to receive the email appointment for the Prehearing Conference, please contact the OAH immediately.

CERTIFICATE OF MAILING

On January 8, 2026, I mailed the foregoing AMENDED NOTICE OF PETITIONS FOR PARTY STATUS AND ORDER SCHEDULING PREHEARING CONFERENCE issued on this date in OAH Case No. 2024-ABC-06692**.**

<u>By: Electronic Mail</u>

Alvin Alexanderson
6739 SE Haycreek Rd.
Madras, Oregon 97741
al7401@aol.com

Warnock Ranches
Jerod Warnock & Cassi Johnson
91440 Bakeoven Road
Maupin, OR 97037
warnockranches@gmail.com

Yellow Rosebush Energy Center
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Sarah Esterson, Agency Representative
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sarah.esterson@energy.oregon.gov

Patrick G Rowe, Assistant Attorney General
Department of Justice
1162 Court Street NE
Salem OR 97301
Email: Patrick.G.Rowe@doj.oregon.gov

Lucy M Garcia
Hearing Coordinator

From:	Al7401
To:	OED_OAH_REFERRAL * OED; SLOAN Kathleen * ODOE; info@yellowrosebushenergycenter.com
Subject:	Petition to Participate as a Party-Yellow Rosebush-Attn ALJ Kate Triana-Case 24-ABC-06692
Date:	Sunday, January 4, 2026 9:26:55 AM
Attachments:	Yellow Rosebush Petition to Participate as a Party - Google Docs.pdf

You don't often get email from al7401@aol.com. Learn why this is important

Please file the attached Petition. Thank you

Alvin Alexanderson
503 705 8040

Petition to Participate as a Limited Party in the Yellow Rosebush Contested Case.

1. Petitioner is Alvin Alexanderson, whose local address and property ownership is 6739 SE Haycreek Rd. Madras, Oregon.
2. Petitioner seeks party status limited to **noncompliance with the no-net-loss of quantity of essential and limited category 2 habitat per OAR 345-022-0060.** The DPO would allow the Applicant to fence out and evict all big game from a designated Big Game Winter Refuge (BGWR) area of about 10 square miles. Specific objections to the DPO findings and conclusions related to this issue are detailed in Petitioner's comments timely lodged in response to the DPO. These are incorporated herein by reference.
3. Petitioner seeks an Order **rejecting the application for failure to avoid evicting big game animals** from their designated winter refuge where private appropriation and destruction of this habitat is readily avoidable by simply locating the fenced-out (exclusion) area on nearby non BGWR land.
4. Alternatively, Petitioner seeks an order **suspending the application until such time as the exclusion area is relocated outside BGWR.**
5. Alternatively, Petitioner seeks an order **suspending the application until the Applicant has actually acquired an equal replacement amount of land or land rights** to adequately protect non-BGWR land for the duration of the proposed facility.
6. Petitioner does not challenge the proposed HV transmission line because power lines do not evict big game. Transmission is the means by which solar arrays and other equipment incompatible with big game should be sited without destroying their essential and limited habitat.
7. Petitioner's participation cannot be duplicated by other parties because no other commenter raised this issue. Other parties are adverse or silent. Should ODFW become a party, that agency is opposed by Petitioner for violating its own rules. Alternatively, ODFW violates the Oregon Administrative Procedures Act by ad hoc enacting a defacto amendment, excusing industrial solar, without following statutory rulemaking procedures.
8. Plaintiff has a personal interest as a 25-year owner of three square miles of BGWR in Madras. Petitioner's family ranch is also completely surrounded by BGWR and would-be solar sponsors are soliciting those landowners for solar leases. Existing development restrictions on these lands are needed for the diminished mule deer herds now in major decline from loss of habitat. If allowed to appropriate BGWR protected lands, Yellow Rosebush will encourage more and more BGWR closures of "essential and limited" habitat. Petitioner's three square miles cannot alone protect the needed habitat.
9. Petitioners' private interest is congruent with longstanding public interest in preventing mule deer, pronghorn and elk herds from further evictions, and to carry out the mandates and priorities of Goal 5. If solar sponsors are not required to avoid and do not have to replace the habitat they destroy, more will come, as shown by the unfortunate Bakeoven precedent. The lure to develop vacant BGWR is strong. Landowners can see an otherwise unavailable explosion in value from evicting big game. An exception for solar may not stop with solar. It could logically apply to any favored industrial use. Why not airports, hospitals, housing, or nuclear plants? Artificial Intelligence data centers, solar

panel and chip factories would make sense next to a solar project sited far from load centers.

s/Alvin Alexanderson, Petitioner, pro se

From:	Warnock Ranches
To:	OED_OAH_REFERRAL * OED; SLOAN Kathleen * ODOE
Subject:	Petition against Yellow Rose Bush Energy Center
Date:	Monday, January 5, 2026 12:03:07 PM
Attachments:	YellowRoseBushEnergyCenter.pdf

You don't often get email from warnockranches@gmail.com. Learn why this is important

Please see the attached petition.

Yellow Rosebush Energy Center

Public Notice on Proposed Order and Opportunity to Request a Contested Case Proceeding

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PETITIONER INFORMATION

Petitioner Name:

Warnock Ranches

Petitioner Address:

91440 Bakeoven Road
Maupin, OR 97037

Email: warnockranches@gmail.com

Petitioner Attorney:

None

Authorized Representative(s):

Jerod Warnock

Cassi Johnson

Name of Any Organization Petitioner Represents:

Warnock Ranches

Party Status Requested:

Limited Party Status

Warnock Ranches seeks limited party status to address the fish and wildlife habitat and wildfire risk issues identified below.

ISSUE 1: IMPACTS TO MULE DEER WINTER RANGE AND HABITAT (FISH AND WILDLIFE)

Issue Statement

The Proposed Order does not contain substantial evidence demonstrating that impacts to mule deer winter range habitat within and adjacent to the project area will be adequately avoided, minimized, or mitigated, as required by applicable EFSC fish and wildlife standards. In particular, the reliance on off-site mitigation measures fails to address site-specific and near-site impacts to mule deer habitat relied upon by adjacent landowners.

Explanation of Issue and Applicable Standards

The project site is located entirely within Oregon Department of Fish and Wildlife (ODFW) designated mule deer winter range, which the applicant has classified as Category 2 (essential) habitat. Category 2 habitat requires a heightened standard of protection, including avoidance, minimization, and mitigation sufficient to maintain habitat function.

The Proposed Order relies in part on habitat mitigation measures located outside the immediate project area, including mitigation across the Deschutes River. Mule deer habitat use, particularly winter range use, is location-specific and dependent on site fidelity, forage availability, movement corridors, and security cover. Off-site mitigation that does not replace these functions in or near the project footprint does not demonstrate functional equivalency for winter range habitat.

Additionally, mule deer populations in the region are documented as declining. The loss, fragmentation, and disturbance of essential winter range habitat within a declining herd context increases the significance of project impacts and requires careful, site-specific analysis. Oregon's Mule Deer Management Plan states that maintaining habitat connectivity and the ability for mule deer to migrate and disperse is important to ensure animals have access to critical seasonal ranges, and the corridors connecting these ranges. With the combination of this facility and a currently existing 2,000-acre solar facility adjacent to it, it creates a massive barrier for seasonal migration. The Proposed Order does not adequately demonstrate that displacement, fencing barriers, construction disturbance, and long-term operational activity will not reduce mule deer use of habitat near the project boundary.

Personal Interest

Warnock Ranches owns and operates agricultural land adjacent to and near the project area. Mule deer regularly use the lands associated with the ranch, and this use contributes to both the ecological value of the property and established ranch operations, including hunting-related revenue. Displacement of mule deer from the project area would directly reduce deer presence on and near the ranch, resulting in economic and operational harm.

Date and Manner Issue Was Raised on the Record

This issue was raised in written comments submitted during the Draft Proposed Order public comment period and/or oral testimony provided at the Draft Proposed Order public hearing.

ISSUE 2: WILDFIRE RISK, HABITAT DEGRADATION, AND COMPOUNDED IMPACTS TO MULE DEER AND RURAL LANDS

Issue Statement

The Proposed Order does not adequately demonstrate that wildfire risk associated with the project, including construction and long-term operation, will be mitigated to a level that prevents significant adverse impacts to wildlife habitat, agricultural lands, and adjacent properties, as required by EFSC wildfire prevention and safety standards.

Explanation of Issue and Applicable Standards

The applicant acknowledges that a substantial portion of the project site has high to very high wildfire burn probability and is dominated by grass and shrub fuel models. These vegetation types overlap directly with designated mule deer winter range and agricultural lands relied upon by Warnock Ranches and other rural landowners.

While the Proposed Order includes wildfire mitigation plans, it does not adequately evaluate compounded impacts where wildfire risk intersects with habitat fragmentation, fencing, infrastructure installation, and ongoing human activity. Wildfire events in altered landscapes can further degrade mule deer winter range, eliminate forage, and disrupt recovery patterns. The Proposed Order does not demonstrate that mitigation measures will prevent these compounded effects or that emergency response capacity is sufficient given the rural location and limited firefighting resources.

The removal of vegetation, construction of extensive fencing, and installation of electrical and battery storage infrastructure increase ignition sources and alter post-fire recovery dynamics. The Proposed Order does not adequately address how these factors affect both wildlife habitat and adjacent agricultural operations in the event of a wildfire.

Personal Interest

Warnock Ranches relies on surrounding rangelands for agricultural production and wildlife habitat. Increased wildfire risk threatens grazing resources, infrastructure, wildlife populations, and the long-term viability of ranch operations. Wildfire-related habitat loss would further exacerbate mule deer population declines and directly harm the ranch's economic and operational interests.

Date and Manner Issue Was Raised on the Record

This issue was raised in written comments submitted during the Draft Proposed Order public comment period and/or oral testimony provided at the Draft Proposed Order public hearing.

RELATIONSHIP BETWEEN ISSUES

The mule deer habitat and wildfire risk issues are interrelated. Wildfire risk compounds habitat loss and fragmentation impacts, particularly in designated mule deer winter range already experiencing population declines. The Proposed Order does not adequately evaluate or mitigate these combined effects, nor does it demonstrate compliance with EFSC standards when these impacts are considered together.

REQUESTED RELIEF

Warnock Ranches requests that the Hearing Officer grant limited party status and require:

1. Revised findings demonstrating compliance with EFSC fish and wildlife standards using site-specific analysis;
2. Enforceable, measurable mitigation conditions addressing mule deer winter range function within and near the project area;

3. Wildfire mitigation conditions that address compounded impacts to wildlife habitat and agricultural lands;
4. Adaptive management and monitoring requirements triggered by demonstrated declines in mule deer use or increased wildfire impacts.

Submitted by:
Warnock Ranches

Authorized Representatives:
Jerod Warnock
Cassi Johnson

Email: warnockranches@gmail.com

Date: 1/5/2026

Attachment 2

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

In the Matter of: **the Application for** **SITE CERTIFICATE FOR THE YELLOW ROSEBUSH ENERGY CENTER**	)))))))	**PREHEARING CONFERENCE AGENDA** OAH Case No. 2024-ABC-06692

TO: APPLICANT/PETITIONERS IN CONTESTED CASE PROCEEDING FOR PROPOSED ORDER ON YELLOW ROSEBUSH ENERGY CENTER

Below is the agenda for the Prehearing Conference scheduled on **January 23, 2026, at 10:00 a.m. PST** via Cisco Webex Video Conference.

To participate in the conference:
An appointment for this prehearing conference has been sent separately via email to each of the email addresses listed on the Service List (Certificate of Mailing).[1]

The conference shall begin promptly at 10:00 a.m. PST. If you are having trouble connecting to the conference, please call Sarah Esterson, Oregon Department of Energy Senior Policy Advisor at (503) 559-5218 or call the Office of Administrative Hearings at (503) 947-1608.

PREHEARING CONFERENCE AGENDA
January 23, 2026 at 10:00 a.m. PST

1. PARTICIPANTS

   a. Participants represented by licensed attorney
      i. Applicant, represented by Sarah Stauffer Curtiss, Stoel Rives LLP
      ii. Oregon Department of Energy, , represented by Senior Assistant Attorney General (AAG) Patrick Rowe, Department of Justice

[1] If anyone listed on the Service List failed to receive the email appointment for the Prehearing Conference, please contact the OAH immediately.

b. Pro se participants
    i. Warnock Ranches, represented by Jerod Warnock and Cassi Johnson
    ii. Alvin Alexanderson

2. PETITIONS FOR PARTY OR LIMITED PARTY STATUS

    a. Opportunity for argument on petitions for party status. Argument is limited to whether or not each petitioner has satisfied the requirements to be eligible for party or limited party status:

        (1) Only those persons who have commented in person or in writing not later than the close of the record of the Draft Proposed Order public hearing, from October 1, 2025 through November 3, 2025[2], may request to participate as a party or limited party in a contested case proceeding on an application for a site certificate. ORS 469.370(3), OAR 345-015-0415(2).

        Any issue that may be the basis for a contested case shall be raised in the comments with sufficient specificity to afford the Council, the Department and the Applicant an adequate opportunity to respond to each issue. ORS 469.370(3).

        To raise an issue with sufficient specificity, the person must have:

        (a) identified the recommended findings of fact, conclusions of law, or conditions of approval to which they object;
        (b) specified the Council standard or other applicable state and local requirements on which their objection is based; and
        (c) presented facts or statements supporting that objection on the record of the draft proposed order. OAR 345-015-0415(4).

        If a petitioner has not raised an issue on the record of the Draft Proposed Order with sufficient specificity to afford the Council, the Department, and the Applicant an adequate opportunity to respond to the issue, the Hearing Officer shall not consider the issue in the contested case proceeding. ORS 469.370(3), OAR 345-015-0415(3).

        (2) The petitioner submitted a written petition for party or limited party status by the deadline and in the manner specified in the Department's Public Notice of the Proposed Order and Opportunity to Petition for Party or Limited Party Status in the Contested Case (or similarly titled Notice addressing how to request to participate in a contested case).

[2] The Public Notice indicated that written comments must be received by November 3, 2025, at 5:00 p.m. PST.

(3) The petitioner demonstrated, in the Petition for Party or Limited Party status, a personal interest in the outcome of the proceeding or that they represent a public interest in the outcome of the proceeding.

(4) The petitioner's Petition for Party or Limited Party status complies with the requirements of OAR 345-015-0415(6) by including:

(a) The information required under OAR 137-003-0535(4):
- Names and addresses of the petitioner and of any organization the petitioner represents;
- Name and address of the petitioner's attorney, if any;
- A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;
- If the petitioner seeks to protect a personal interest in the outcome of the agency's proceeding, a detailed statement of the petitioner's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;
- If the petitioner seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner's qualifications to represent such public interest;
- A statement of the reasons why existing parties to the proceeding cannot adequately represent the interest identified in subsection (4)(d) or (e) of this rule.

(b) A short and plain statement for each issue that the person desires to raise in the contested case proceeding; the statement should be worded the way the person requests the issue be worded for the contested case proceeding; and

(c) A reference to the person's comments on the record of the Draft Proposed Order showing that the person raised the issue or issues on the record of the Draft Proposed Order.

b. The Hearing Officer shall review each petition in the order set forth in the following part c. The order of proceedings on each petition shall be as follows:

- Identification of any written challenges timely received by Hearing Officer to the Petition for Party or Limited Party status. In this matter, the deadline for the Applicant and the Department to respond to Petitions for Party or Limited Party Status is **10:00 a.m. PST on January 16, 2026.**
- Opportunity for any participant who submitted a timely written challenge to verbally explain their challenge to the Petition for Party or Limited Party status (limited to 10 minutes). Argument will not be accepted regarding the merits of the issues raised within the petition.

- If one or more challenges are made, the challenged petitioner may make a verbal reply (limited to 10 minutes).
- Questions from the Hearing Officer, if any.

c. List of Petitioners:

1. Warnock Ranches, represented by Jerod Warnock and Cassi Johnson
2. Alvin Alexanderson

d. In ruling on Petitions for Party or Limited Party status, the Hearing Officer shall consider the criteria described in OAR 137-003-0535(8). The Hearing Officer may rule on any matters related to Petitions for Party or Limited Party status during the conference or after the conference. The Hearing Officer shall issue a written Order ruling on the Petitions for Party or Limited Party Status as soon as practicable after the conference.

3. IDENTIFICATION OF ISSUES. Attached to this agenda is a list of issues identified in the Petitions for Party or Limited Party status, as determined by the Hearing Officer. To be within the scope of the contested case proceeding, issues must:

a. Have been properly identified in person or in writing on the record of the Draft Proposed Order public hearing, unless the Department did not follow the requirements of ORS 469.370(2) or (3) or unless the action recommended in the proposed order described in OAR 345-015-0230 and OAR 345-015-0403 including any recommended conditions of approval, differs materially from the action recommended in the draft proposed order, in which case the person may raise only new issues within the jurisdiction of the Council that are related to such differences;
b. Be within the Energy Facility Siting Council's jurisdiction; and
c. Be related to an applicable approval standard or law.

Argument shall be heard regarding the wording, addition, or removal of issues from the issues list, as follows:

- Applicant (limited to 15 minutes).
- Other participants (limited to 15 minutes per participant).
- Applicant's rebuttal, if any (limited to 10 minutes).
- Questions from the Hearing Officer, if any.

Depending on time constraints, the prehearing conference may be limited to eligibility for Party/Limited Party status and identification of issues raised in the Petitions for Party or Limited Party status, as described in Sections 2 and 3 above. Matters pertaining to the contested case process (outlined below in Section 4) may be addressed in this prehearing conference or in a second prehearing conference as scheduled by the Hearing Officer.

4. EXPLANATION OF CONTESTED CASE PROCESS. The Hearing Officer shall make a brief presentation regarding the following:
    a. Clarification of requirements regarding service
    b. Submission of motions, including Motions for Summary Determination
    c. Burden of proof
    d. Discovery
    e. Presentation of evidence/argument
        i. Written direct testimony
        ii. Written rebuttal testimony
        iii. Requests for cross-examination of other witnesses
        iv. Oral cross-examination hearing (if requested)
        v. Written closing argument
    f. Hearing Officer's Proposed Contested Case Order
    g. Written exceptions to Hearing Officer's Proposed Contested Case Order

5. RESOLUTION OR SETTLEMENT OF ISSUES (Optional): The participants may discuss settlement or resolution or any or all issues in the proceeding, or the use of a collaborative dispute resolution process in lieu of or preliminary to holding the contested case hearing.

6. CONCLUSION OF CONFERENCE: The Prehearing Conference shall end no later than **12:30 p.m. PST.** Following the Conference the Hearing Officer will:

    a. Prepare a record of any stipulations, rulings, or agreements made at the conference.
    b. Issue a prehearing order or orders as soon as practicable ruling on the Petitions for Party or Limited Party Status, stating the issues to be addressed in the contested case hearing, the parties, the limited parties, the issue(s) on which each limited party may participate, the contested case procedures, the case schedule and, if necessary, a revised Service List.

ISSUES LIST
(DRAFT)

Issue	Identified By
Whether, pursuant to 345-022-0060(1) the design, construction, and operation of the 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	Alvin Alexanderson & Warnock Ranches

and provides a net benefit of habitat quantity or quality.	
Whether, pursuant to OAR 345-022-0115(1)(b), the facility will be designed, constructed, and operated in compliance with a Wildfire Mitigation Plan (WMP) which has appropriately identified procedures to minimize risks to public health and safety, the health and safety of responders, and damages to resources protected by Council standards in the event that a wildfire occurs at the facility site, regardless of ignition source.	Warnock Ranches

Dated: January 15, 2026

/s/ Kate Triana

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

CERTIFICATE OF MAILING

On January 15, 2026, I mailed the foregoing PREHEARING CONFERENCE AGENDA issued on this date in OAH Case No. 2024-ABC-06692**.**

By: Electronic Mail

Alvin Alexanderson
6739 SE Haycreek Rd.
Madras, Oregon 97741
Email: al7401@aol.com

Warnock Ranches
Jerod Warnock & Cassi Johnson
91440 Bakeoven Road
Maupin, OR 97037
Email: warnockranches@gmail.com

Yellow Rosebush Energy Center
Jeffrey Watson
422 Admira Blvd.
Kansas City MO 64106
Email: jwatson@savionenergy.com

Sarah Stauffer Curtiss
Stoel Rives LLP
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Portland OR 97205
Email: sarah.curtiss@stoel.com

Linnea Fossum
Tetra Tech, Inc
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Anesia N Valihov *for* Lucy M Garcia
Hearing Coordinator

Attachment 3

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

IN THE MATTER OF: **the Application for:** **SITE CERTIFICATE FOR THE YELLOW ROSEBUSH ENERGY CENTER**	)))))))	**ORDER ON PETITIONS FOR PARTY STATUS AND ISSUES FOR CONTESTED CASE** OAH Case No. 2024-ABC-06692 Agency Case No.

BACKGROUND

This matter involves the Application for a Site Certificate (ASC) for the Yellow Rosebush Energy Center 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 had filed petitions for limited party status and gave the Department and Application 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 the Prehearing Conference for the contested case proceeding in the above-referenced matter on January 23, 2026, at 10:00 a.m. PST, by Webex videoconference. Applicant and the Department representatives are automatic parties to the contested case and

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

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

were also present.[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.[4] The ALJ provided Applicant and the Department an opportunity to respond to the draft proposed issue statements.[5] 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 as raised in their petition.[6]

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. He 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 emails. On February 5, 2026, the Department and Applicant submitted timely responses to Mr. Alexanderson's emails.

An evaluation of the requirements for participating in the contested case, the issues raised and whether they are permissible in the contested case proceeding is presented below.

I. Legal Standards for Requests for Party or Limited Party Status

A. Standards for Determining Eligibility for Participation

Pursuant to ORS 469.370(5) and OAR 345-015-0415, in order to become a party or limited party, a person must meet the following requirements:

1. The person must have commented either in writing or in person on the record of the Draft Proposed Order public hearing, from October 1, 2025, until 5:00 p.m. on November 3, 2025.

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[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 set aside time and would have allowed both petitioners opportunity to address whether they had satisfied the eligibility requirements for party or limited party status.

[5] The ALJ had set aside time and would have allowed both petitioners an opportunity to clarify their interests in the outcome of the proceeding and the issues identified in their respective petitions.

[6] 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 either draft issue statement.

a. Any issue that may be the basis for a contested case must be within the jurisdiction of the Energy Facility Siting Council and must have been raised in the comments on the record of the Draft Proposed Order with sufficient specificity to afford the Council, the Department and the Applicant an adequate opportunity to respond to each issue. ORS 469.370(3); OAR 345-015-0415(2).

b. To raise an issue with sufficient specificity, the person must have:

   i. Identified the recommended findings of fact, conclusions of law, or conditions of approval to which they object;

   ii. Specified the Council standard or other applicable state and local requirements on which their objection is based; and

   iii. Presented facts or statements supporting that objection on the record of the Draft Proposed Order. OAR 345-015-0415(4).

c. If a petitioner has not raised an issue on the record of the Draft Proposed Order with sufficient specificity to afford the Council, the Department, and the Applicant an adequate opportunity to respond to the issue, the Hearing Officer shall not consider the issue in the contested case proceeding. ORS 469.370(3), OAR 345-015-0415(3).

2. The person must have submitted a written petition for party or limited status by the deadline and in the manner specified in the Department's Public Notice of the Proposed Order and Opportunity to Petition for Party or Limited Party Status in the Contested Case (or similarly titled Notice addressing how to request to participate in a contested case).

3. The person must have demonstrated, in the petition for party or limited status, a personal interest in the outcome of the proceeding or demonstrate that they represent a public interest in the outcome of the proceeding. Pursuant to OAR 137-003-0535(8), when a petitioner alleges a public interest, the Hearing Officer must consider, among other items, the qualifications of the petitioner to represent that interest and the extent to which the petitioner's interest will be represented by existing parties. A public interest is one that is "shared by a significant part of the public or considered to be an element in the overall public interest." *Marbet v. Portland General Electric*, 277 Or 447, 455 (1977). To avoid redundancy, the agency may require petitioners for party status to join in one presentation or to address separate aspects of the public interest if the effect is not to exclude an asserted public interest altogether. *Id.*

4. The petitioner's Petition for Party or Limited Party Status complies with the requirements of OAR 345-015-0415(6) by including:

   a. The information required under OAR 137-003-0535(4):

      i. Names and addresses of the petitioner and of any organization the petitioner represents;

      ii. Name and address of the petitioner's attorney, if any;

      iii. A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;

      iv. If the petitioner seeks to protect a personal interest in the outcome of the agency's proceeding, a detailed statement of the petitioner's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;

      v. If the petitioner seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner's qualifications to represent such public interest; and

      vi. A statement of the reasons why existing parties to the proceeding cannot adequately represent the interest identified in subsection (4)(d) or (e) of this rule.

   b. A short and plain statement for each issue that the person desires to raise in the contested case proceeding; the statement should be worded the way the person requests the issue be worded for the contested case proceeding; and

   c. A reference to the person's comments on the record of the Draft Proposed Order showing that the person raised the issue or issues on the record of the Draft Proposed Order.

5. In ruling on Petitions for Party or Limited Party status, the Hearing Officer shall consider the criteria described in OAR 137-003-0535(8).[7]

[7] OAR 137-003-0535(8) provides:

> In ruling on petitions to participate as a party or a limited party, the [Hearing Officer] shall consider:
> (a) Whether the petitioner has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding;
> (b) Whether any such affected interest is within the scope of the agency's jurisdiction and within the scope of the notice of contested case hearing;

6. Under OAR 137-003-0535(9), a petition to participate as a party may be treated as a petition to participate as a limited party. If the Hearing Officer grants a petitioner status as a limited party, the Hearing Officer will specify the issues the limited party may participate on or any procedural limitation the Hearing Officer deems appropriate.

B. Attendance at Prehearing Conference – Waiver of Issues

Pursuant to OAR 345-015-0430(6), the failure to raise an objection regarding suggested procedures to be followed in the contested case or a proposed description of an issue during the prehearing conference when such procedures and issues are being discussed and established by the ALJ constitutes waiver of that objection.

As discussed above, Mr. Alexanderson failed to appear at the January 23, 2026 prehearing conference. Following the conference, Mr. Alexanderson submitted emails with information about the draft issue statement pertaining to his petition. Because Mr. Alexanderson failed to appear at the prehearing conference, he waived the right to object to the draft issue statement. However, even considering the arguments found in his email, the issue statement should not be changed as he requested. In his email, Mr. Alexanderson argued:

> The statement of my one issue in the draft prehearing order should be amended to include, or at least not read to exclude, the obligation to avoid damage or loss of Category 2 habitat. See **635-415-0005 Definition 16.** One only gets to the no-net-loss command if necessary. My petition challenges locating the arrays and 20-some miles of new fence within BGWRange instead of on close and closer land lying outside the BGWRange boundary. The Applicant may wish to interpret the ODFW rule differently, of course. I want to be sure this issue is not excluded at the prehearing stage.

(Emphasis original, hyperlink removed.) The draft issue statement related to Mr. Alexanderson's petition accurately captures the issue raised in his petition and the amendment suggested by Mr. Alexanderson does not further clarify the issue, and may, in fact, misstate the applicable standards. Mr. Alexanderson may argue at the contested case hearing regarding the applicability of OAR 635-415-0005(16), but the draft issue statement shall not be revised.

II. Evaluation of Request for Party Status & Issues Raised

An evaluation of whether or not the requirements described in Section I were fulfilled by each petitioner follows:

(c) When a public interest is alleged, the qualifications of the petitioner to represent that interest;
(d) The extent to which the petitioner's interest will be represented by existing parties.

A. Warnock Ranches

1. Issue(s) Raised

Petitioner Warnock Ranches raised two issues in its petition for limited party status. The first issue related to the "substantial fire hazard posed by a facility of this scale in an area already classified as very high fire risk." The second issue related to the environmental impacts of the facility on wildlife.

a. Raised on Record of the Draft Proposed Order

Pursuant to OAR 345-015-0415(2), only persons who have commented (in person or in writing) on the record of the public hearing may request to participate as a party or limited party in a contested case proceeding. In this matter, the time period to comment on the record of the Draft Proposed Order public hearing ran from October 1, 2025, until 5:00 p.m. PST on November 3, 2025. Petitioner Warnock Ranches submitted a written comment, via email, to the Department on November 3, 2025, at 5:35 p.m. PST. This was 35 minutes after the deadline and after the record of the Draft Proposed Order public hearing closed. As such, petitioner Warnock Ranches failed to comment on the record of the Draft Proposed Order and, pursuant to OAR 345-015-0415(2), is not entitled to participate as a party or limited party in this contested case proceeding.[8]

B. Alvin Alexanderson

1. Issue(s) Raised

Petitioner Alvin Alexanderson raised one issue in his petition for limited party status. In his petition, Mr. Alexanderson indicated that he "seeks party status limited to noncompliance with the no-net-loss of quantity of essential and limited category 2 habitat per OAR 345-022-0060." (Emphasis removed.)

a. Raised on Record of the Draft Proposed Order

On November 2, 2025, Mr. Alexanderson submitted written comments on the draft proposed order to the Department. In those comments, Mr. Alexanderson raised concerns about the fencing and destruction of acres of Big Game Winter Range (BGWR) habitat for mule deer (Category 2 affected habitat). He alleged that the proposed mitigation site is also protected BGWR land and thus the proposed mitigation would result in a net loss of habitat quantity. He argued that solar arrays eliminate habitat and therefore should be sited outside of the BGWR, and further that such land exists.

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[8] At the prehearing conference, the Department indicated that a good cause standard for late submissions of public comments on the draft proposed order public hearing may be applicable here. However, because petitioner Warnock Ranches failed to appear at the prehearing conference or otherwise provide information as to why it submitted its comment after the close of the record, it is unnecessary to address whether good cause for the late submission exists.

b. Jurisdiction

Pursuant to OAR 345-022-0060, before the Council can issue a site certificate, it must find that "the design, construction and operation of the facility, taking into account mitigation, are consistent with * * * [the] general fish and wildlife habitat mitigation goals and standards of [the Department of Fish and Wildlife Habitat Mitigation Policy]." The Department of Fish and Wildlife's Habitat Mitigation Policy provides that the mitigation goal 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). Thus, Mr. Alexanderson's raised issue regarding whether the facility results in a no-net-loss of quantity of essential and limited Category 2 habitat per OAR 345-022-0060 is within the Council's jurisdiction.

c. Sufficient Specificity

As discussed above, OAR 345-015-0415(3) and (4) provides that:

> (3) Subject to the exceptions in ORS 469.370(5), if a person has not raised an issue at the public hearing with sufficient specificity to afford the Council, the Department and the applicant an adequate opportunity to respond to the issue, the hearing officer may not consider the issue in the contested case proceeding.
>
> (4) To have raised an issue with sufficient specificity, the person must have:
>
> (a) identified the recommended findings of fact, conclusions of law, or conditions of approval to which they object;
>
> (b) specified the Council standard or other applicable state and local requirements on which their objection is based; and
>
> (c) presented facts or statements supporting that objection on the record of the draft proposed order.

In his comments on the DPO submitted on November 3, 2025, Mr. Alexanderson cited several statements in the DPO and draft habitat mitigation plan to which he had concerns. This included statements about the proposed location for the facility being in the BGWR; that the mitigation area contains Category 2 habitat; the inability to site the facility outside of the BGWR due to its "interconnection point at Bakeoven or Buckley substations, which are also in the winter range," leading to the unavoidable impacts to Category 2 habitat; and that the final mitigation approach would have "enough suitable habitat to achieve the ODFW goal of no net loss of habitat quantity or quality." Thus, Mr. Alexanderson met the requirement of OAR 345-015-0415(4)(a).

In his petition for limited party status, Mr. Alexanderson indicated that he was specifically seeking limited party status related to the "noncompliance with the no-net-loss of quantity of essential and limited category 2 habitat per OAR 345-022-0060." Likewise, Mr.

Alexanderson referenced the "no net loss" ODFW rule in his comments on the DPO and draft habitat mitigation plan, which is a reference to language found in OAR 635-415-0025(2)(a), the ODFW mitigation habitat mitigation policy referenced in OAR 345-022-0060. Thus, Mr. Alexanderson has also met the requirement of OAR 345-015-0415(4)(b).

Finally, Mr. Alexanderson provided facts or statements supporting his objections to statements in the DPO and draft habitat mitigation plan in his comments submitted on November 3, 2025. For example, he argued that the solar arrays eliminate habitat and therefore should (and could) be placed northeast of the proposed site, outside of the BGWR. He indicated that the loss of habitat is not limited solely to the acres inside the fence, but that the loss extends beyond that due to complications related the fencing (such as fawns running into fences and becoming pray, deer detouring fencing and being struck by automobiles, or deer detouring fencing causing an increased depletion of winter fat stores). He further argued that the draft mitigation plan results in a net loss of quantity of BGWR protected acres. Additionally, he argued that compliance with the ODFW habitat mitigation policy is compulsory, and that the DPO and draft habitat mitigation plan do not show compliance with that policy. Therefore, Mr. Alexanderson has met the requirement of OAR 345-015-0415(4)(c).

For the foregoing reasons, Mr. Alexanderson raised his issue at the public hearing with sufficient specificity to afford the Council, the Department and the applicant an adequate opportunity to respond to the issue. As such, he met the requirements of OAR 345-015-0415(3).

2. Submission of Petition for Party Status

Mr. Alexanderson timely submitted his petition for limited party status on January 4, 2026, before the January 5, 2026 deadline set out in the Notice of the Proposed Order.

OAR 345-015-0415(6) requires that petition seeking party or limited party status must include:

> (a) The information required under OAR 137-003-0535(4);
>
> (b) A short and plain statement for each issue that the person desires to raise in the contested case proceeding; the statement should be worded the way the person requests the issue be worded for the contested case proceeding; and
>
> (c) A reference to the person's comments on the record of the draft proposed order showing that the person raised the issue or issues on the record of the draft proposed order.

OAR 137-003-0535(4) provides:

> The petition shall include the following:
>
> (a) Names and addresses of the petitioner and of any organization the petitioner represents;

> (b) Name and address of the petitioner's attorney, if any;
>
> (c) A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;
>
> (d) If the petitioner seeks to protect a personal interest in the outcome of the agency's proceeding, a detailed statement of the petitioner's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;
>
> (e) If the petitioner seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner's qualifications to represent such public interest;
>
> (f) A statement of the reasons why existing parties to the proceeding cannot adequately represent the interest identified in subsection (4)(d) or (e) of this rule.

In the petition for limited party status, Mr. Alexanderson included a short and plain statement for the single issue he was raising for the contested case proceeding: the "noncompliance with the no-net-loss of quantity of essential and limited category 2 habitat per OAR 345-022-0060." In the petition, Mr. Alexanderson referenced the objections he raised in his comments on the DPO findings and conclusions. Thus, Mr. Alexanderson's petition met the requirements of OAR 345-015-0415(6)(b) and (c).

Mr. Alexanderson's petition also included his name and address. It included a statement that his petition was for limited party status, "limited to [to the issue of] noncompliance with the no-net-loss of quantity of essential and limited category 2 habitat per OAR 345-022-0060." As discussed in more detail in Section (II)(B)(3), below, Mr. Alexanderson has alleged a personal interest in the outcome of the proceeding as a 25-year landowner of three square miles of BGWR land. Finally, Mr. Alexanderson alleges that his participation cannot be duplicated by other parties because "no other comments raised this issue." He alleges that, even if ODFW were a party, it cannot adequately protect Petitioner's interest because it has violated its own rules. For the foregoing reasons, Mr. Alexanderson's petition met the requirements of OAR 345-015-0415(6)(a).

3. Demonstration of Interest

As discussed above, to be granted limited party status, a petitioner must show that they have a private or public interest in the outcome of the proceeding. OAR 137-003-0535(4)(d). Mr. Alexanderson had alleged a personal interest in the outcome of the proceeding as a landowner whose land contains acres of BGWR land and is surrounded by BGWR land. He has further alleged that surrounding landowners have been solicited for solar development, and that if the facility is allowed to proceed with the draft mitigation plan found in the DPO, it could set precedent that would result in future destruction of BGWR land. This could, according to Mr. Alexanderson, impact the value and development of his and surrounding land.

The Department argues that Mr. Alexanderson had adequately identified a personal interest that could be affected by the outcome of the proceeding. Applicant, however, argues that Mr. Alexanderson's alleged interest in the protection of the BGWR habitat is "a broader policy matter rather than personal interest." While true that Mr. Alexanderson's alleged interest intersects with a general public environmental interest in the preservation of habitat, that does not negate the personal interest Mr. Alexanderson has raised in his petition. As discussed above, Mr. Alexanderson had adequately demonstrated that he has personal interest in the outcome of this proceeding.

4. Conclusion

For the reasons set out above, Mr. Alexanderson had met the requirements of ORS 469.370(5) and OAR 345-015-0415, to become a limited party to this proceeding.

III. Order on Petitions for Party Status and Issues

Based on the above evaluations of the petitions submitted, I make the following determinations:

A. Warnock Ranches' request to participate as a limited party to the contested case is denied.

B. Alvin Alexanderson' request to participate as a limited party to the contested case is granted.

IV. Identification of Issues

The following table identifies the issues for the contested case and the party and/or limited parties with standing to participate in the contested case on that issue. As noted previously, the Applicant and the Department are parties as to all issues.

Table of Issues and Parties/Limited Parties

Issue No.	Subject Matter/Issue	Standing
1	Whether, pursuant to OAR 345-022-0060(1) the design, construction, and operation of the 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.	Alvin Alexanderson, the Department, and Applicant

V. Service List

Following the issuance of this Order, the Service List shall be updated to remove Warnock Ranches.

It is so ORDERED.

/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

Dated: February 9, 2026

Appeal Rights

Pursuant to OAR 345-015-0415(9), the Hearing Officer's determination on a request to participate as a party or limited party, as stated in this order, is final unless the petitioner submits an appeal, with supporting arguments and documents, to the Council within seven (7) days after the date of service of the determination.

CERTIFICATE OF MAILING

On February 9, 2026, I mailed the foregoing ORDER ON PETITIONS FOR PARTY STATUS AND ISSUES FOR CONTESTED CASE issued on this date in OAH Case No. 2024-ABC-06692**.**

By: Electronic Mail

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Lucy M Garcia
Hearing Coordinator

Attachment 4

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

IN THE MATTER OF: **the Application for:** **SITE CERTIFICATE FOR THE YELLOW ROSEBUSH ENERGY CENTER**	)))))))	**CONSOLIDATED RULING ON MOTIONS FOR SUMMARY DETERMINATION AND PROPOSED CONTESTED CASE ORDER** 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).

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[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, 2017[6]) 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 notice[8] 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

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[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.

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[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 plan[12] 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.

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[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 remainer 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; YRBAPPDoc2 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). (YRBAPPDoc2 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. (YRBAPPDoc23 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. (YRBAPPDoc28-1 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. (YRBAPPDoc28-1 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:

> <u>Mitigation ratios:</u>
> 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).
>
> <u>Tygh Ridge HMA:</u>
> 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.

<u>Weed management:</u>
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.

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

<u>Onsite mitigation:</u>
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 micrositing 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. (YRBAPPDoc1-1 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. (YRBAPPDoc1-17 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. (YRBAPPDoc1-17 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 micrositing 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. (YRBAPPDoc1-17 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 micrositing 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.

(YRBAPPDoc1-17 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. (YRBAPPDoc1-17 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).

(YRBAPPDoc1-17 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. (YRBAPPDoc1-17 ASC Exhibit P. Fish and Wildlife Habitat 2025-09-05 at 36.) During the Proposed Facility design and micrositing 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) micrositing the Proposed Facility layout to set back from canyon areas to reduce impacts on big game and higher-quality habitats. (YRBAPPDoc1-17 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. (YRBAPPDoc1-17 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. (YRBAPPDoc1-17 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. (YRBAPPDoc1-17 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 micrositing decision for the Proposed Facility as follows:

> The Applicant will minimize Category 2 habitat impacts by siting facilities on agricultural lands within the proposed micrositing corridor to the maximum extent possible. Because there is minimal agricultural land within the proposed micrositing 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 microsite 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
	4	Eastside Grasslands	1,123	1.5:1	2,420
		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
	5	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. (YRBAPPDoc1-17 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. (YRBAPPDoc1-17 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

(YRBAPPDoc1-17 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 micrositing) and avoiding important habitat types will be key.

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[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 quantitively 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 ODFWs 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 micrositing 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

(YRBAPPDoc1 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." (YRBAPPDoc1 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." (YRBAPPDoc1 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." (YRBAPPDoc1 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 condition[15] 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.

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

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[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 .. [*sic*] 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.

(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.

(YRBAPPDoc2 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. (YRBAPPDoc2 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

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[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.

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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. **<u>Conclusion</u>: 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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Anesia N Valihov *for* Lucy M Garcia
Hearing Coordinator

Attachment 5

Attachment P-3: Draft Habitat Mitigation Plan

Draft Habitat Mitigation Plan

Yellow Rosebush Energy Center
September 2025

Prepared for
Yellow Rosebush Energy Center, LLC

~~ODOE Edits for Draft Proposed Order~~

Prepared by

TETRA TECH

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1.0 Introduction

This Habitat Mitigation Plan (HMP) describes how Yellow Rosebush Energy Center, LLC (Applicant) will mitigate for the unavoidable wildlife habitat impacts of the Yellow Rosebush Energy Center (Facility). Specifically, this HMP[1] outlines how the Applicant will construct and operate the Facility consistent with the Oregon Department of Fish and Wildlife (ODFW) Habitat Mitigation Policy. This plan addresses mitigation for both the permanent impacts of Facility components (permanent impacts) and the temporal impacts associated with the Facility construction (select temporary impacts). The Applicant proposes to protect and enhance a habitat mitigation area (HMA) and/or provide commensurate funding for a third party to enhance and monitor an HMA. In addition, the Applicant reserves the right to pursue alternative mitigation pathways if available in the future by pursuing an amendment to this HMP, as provided under Section 7.0 below. This HMP specifies preliminary habitat enhancement actions and example monitoring procedures to evaluate the success of those actions, as applicable. The Applicant identified a mitigation option for the Facility in this HMP. If it is determined at final design of any phase of Facility development that additional mitigation is needed, mitigation would be developed in a like manner as the mitigation approach identified in this HMP, subject to ODFW review and approval by Oregon Department of Energy (ODOE).

1.1 Pre-construction HMP Finalization

Prior to construction, this Draft HMP will be finalized based on the following:

1. Conduct a field habitat characterization of the Tygh Ridge Ranch HMA;
2. Designate specific locations for habitat enhancement actions;
3. Develop monitoring protocol in coordination with ODFW and ODOE; and
4. Develop success criteria for habitat enhancement actions.

2.0 Description of the Impacts Addressed by the HMP

The Facility is located entirely within the ODFW Designated Mule Deer Winter Range. ODFW (2013) describes winter range in eastern Oregon as limited and essential habitat for big game; therefore, should be considered as Category 2 under ODFW's Habitat Mitigation Policy. It is not possible to site the Facility outside of the designated winter range because the Facility is location-dependent on its interconnection point at Bakeoven or Buckley substations, which are also in the winter range.

[1] This HMP will be incorporated by reference in the site certificate for the Yellow Rosebush Energy Center and must be understood in that context. It is not a "stand-alone" document.

Therefore, impacts to Category 2 are unavoidable due to the Facility's interconnection location and the overlapping mule deer winter range.

Notwithstanding the overarching habitat categorization, the area within the Facility micrositing corridor is primarily composed of eastside grasslands (habitat type Upland Grassland, Shrub-Steppe and Shrubland; subtype Eastside Grasslands), shrub-steppe (habitat type Upland Grassland, Shrub-Steppe and Shrubland; subtype Shrub-Steppe), and planted grasslands (habitat type Agriculture, Pasture, and Mixed Environs; subtype Planted Grasslands) (Exhibit P, Tables P-2 and P-3). Essential 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 (Exhibit P, Section 8.1.1). Approximately 72 acres of Category 2 and 2,464 acres of Category 3 shrub-steppe habitat were field-characterized within the Facility micrositing corridor. Approximately 402 acres of Category 3 eastside grasslands habitat were field-characterized within the Facility micrositing corridor. Category 4 planted grasslands account for 1,247 acres (18 percent) of the Facility micrositing corridor. Areas of eastside grasslands and shrub-steppe habitat dominated by non-native plant species (Categories 4 and 5) comprise 2,460 acres (35 percent) of the Facility micrositing corridor (see Exhibit P, Table P-3).

Permanent impact areas are those that would be converted from the existing condition to a different condition for the life of the Facility including all areas within the fenced perimeter. Fenced areas include all solar arrays, the collector substation, the operations and maintenance (O&M) building, and the battery storage area, as required by electrical code or security needs (see Exhibits B and C). Temporary impacts include a 6-foot buffer around all fenced areas that will be mitigated through successful implementation of the Revegetation Plan (Attachment P-3 to Exhibit P). However, some areas of shrub-steppe within temporary impact areas include sagebrush stands that could take longer than five years to be restored. Even where restoration of this habitat subtype is successful, there is a loss of habitat function during the restoration period. Therefore, this HMP includes mitigation for both permanently impacted habitat and select areas of temporarily impacted shrub-steppe and eastside grasslands habitat that result in a temporal loss of habitat quality.

The Facility will not impact Category 1 habitat. No mitigation is required for impacts to Category 6 areas. Remaining Category 2, 3, 4, and 5 habitat is considered Category 2 habitat because the Facility is within ODFW's Designated Mule Deer Winter Range, which overlaps the areas of temporary and permanent impact (ODFW 2013). Based on this definition, Table 1 presents anticipated impact acres for Category 2 habitat present at the Facility, in addition to the preliminary habitat categorization.

Table 1. Potential Impacts by Habitat Category, Type and Subtype

Final Habitat Category	Preliminary Habitat Category	Habitat Type	Habitat Subtype	Impacts (Acres)	
				Permanent	Temporary
2	2	Upland Grassland, Shrub-steppe and Shrubland	Shrub-steppe	52.8	4.2
		Open Water – Lakes, Rivers, Streams	Perennial Streams	—	<0.1*
		Wetlands	Scrub-shrub Wetlands	—	<0.1*
	Category 2 Total			**52.8**	**4.3**
2	3	Cliffs, Caves, and Talus	Cliffs, Caves, and Talus	0.1	3.7
		Open Water – Lakes, Rivers, Streams	Intermittent or Ephemeral Streams	<0.1*	<0.1*
		Upland Grassland, Shrub-steppe and Shrubland	Eastside Grasslands	228	28.8
		Upland Grassland, Shrub-steppe and Shrubland	Shrub-steppe	1,210	69.0
		Wetlands	Emergent Wetlands	<0.1*	—
	Category 3 Total			**1,438**	**102**
2	4	Agriculture, Pasture, and Mixed Environs	Planted Grasslands	1,144	14.6
		Open Water – Lakes, Rivers, Streams	Intermittent or Ephemeral Streams	<0.1*	<0.1*
		Upland Grassland, Shrub-steppe and Shrubland	Eastside Grasslands	1,123	48.2
		Upland Grassland, Shrub-steppe and Shrubland	Shrub-steppe	63.7	18.1
	Category 4 Total			**2,331**	**80.9**
2	5	Open Water – Lakes, Rivers, Streams	Intermittent or Ephemeral Streams	0.3*	0.2*
		Open Water – Lakes, Rivers, Streams	Seasonal Ponds	0.2*	0.4*
		Upland Grassland, Shrub-steppe and Shrubland	Eastside Grasslands	847	10.5
		Wetlands	Emergent Wetlands	0.3*	—
	Category 5 Total			**848**	**11.1**
Category 2 Final Total				**4,670**	**198**

<table>
<tr><th rowspan="2">Final Habitat Category</th><th rowspan="2">Preliminary Habitat Category</th><th rowspan="2">Habitat Type</th><th rowspan="2">Habitat Subtype</th><th colspan="2">Impacts (Acres)</th></tr>
<tr><th>Permanent</th><th>Temporary</th></tr>
<tr><td rowspan="3">6</td><td rowspan="2">6</td><td>Agriculture, Pasture, and Mixed Environs</td><td>Orchards, Vineyards, Wheat Fields, Other Row Crops</td><td>292</td><td>15.2</td></tr>
<tr><td>Urban and Mixed Environs</td><td>Urban and Mixed Environs</td><td>30.3</td><td>13.1</td></tr>
<tr><td colspan="3">Category 6 Total</td><td>322</td><td>28.3</td></tr>
<tr><td colspan="4">Category 6 Final Total</td><td>322</td><td>28.3</td></tr>
<tr><td colspan="4">Grand Total</td><td>4,992</td><td>226</td></tr>
<tr><td colspan="6">Note: Totals in this table may not be precise due to rounding. “-“ means no acres while <0.1 means greater than zero but less than 0.05 acres.
* Impacts to wetlands and Waters of the State will be avoided during final design (see Exhibit J). Wetlands and Waters of the State within the fenced solar array area are considered permanently impacted for the purposes of habitat impacts but will not be disturbed by the Facility.</td></tr>
</table>

The Applicant proposes to begin construction as soon as June 2027 and to construct the Facility in phases. The size and construction schedule for each phase will be based on market demand, but the entire Facility, including all phases, will be completed by 2035 unless the Applicant seeks an amendment to extend the construction deadline. Table 2 provides an example phased Facility schedule. The impact analysis presented in the Application for Site Certificate and mitigation outlined in this HMP represents the fully built-out scenario of 800 megawatts (MW).

Table 2. Example Facility Schedule

Year	Activity
2025	Issuance of Yellow Rosebush Energy Center site certificate.
2027	Final engineering and begin construction.
2027 - 2035	Phased construction to operation.
2027 - 2035	Phased construction to operation.
2027 - 2030	Phase 1 construction; approximately 36 months (400 MW).
2027	Mitigation actions commence with the start of Phase 1 construction.
2030	Anticipated Phase 1 construction completion deadline; commence Phase 1 commercial operation.
2032 - 2035	Phase 2 construction; approximately 36 months (400 MW).
2032	Mitigation actions commence with the start of Phase 2 construction.
2035	Anticipated Phase 2 construction completion deadline; commence Phase 2 commercial operation for full buildout.
2030-2075	Facility operating life (anticipated to be 40 years from start of commercial operations).
2075	Facility decommissioning, site restoration, and completion of habitat mitigation requirements.

3.0 Methods for Calculating the Size of the Mitigation Area

The acreage required for mitigation was determined based on the Facility design and actual habitat impacts (i.e., Category 2 vs. Category 6 habitat). Before beginning construction of each phase of the Facility, the Applicant will provide ODOE with a map showing the final design configuration for that phase of the Facility and a table with estimated acres of permanent and temporary impacts by habitat category (Table 1). 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~~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).

Table 3. Compensatory Mitigation Calculation

Final Habitat Category[1]	Preliminary Habitat Category[2]	Habitat Subtype	Impact (acres)	Mitigation Ratio	Mitigation Need (acres)
Permanent Impacts[3]					
2	2	Perennial Streams, Scrub-shrub wetlands	—	2:1	—
		Shrub-steppe	52.8	2:1	106
	3	Cliffs, Caves, Talus, Emergent Wetlands, Intermittent or Ephemeral Streams	0.3	2:1	0.6
		Eastside Grasslands	228	2:1	456
		Shrub-steppe	1,210	2:1	2,420
	4	Eastside Grasslands	1,123	1.5:1	1,685
		Intermittent or Ephemeral Streams	0.1	2:1	0.2
		Planted Grasslands	1,144	1.2:1	1,373
		Shrub-steppe	63.7	2:1	127
	5	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[4]					
2	2	Shrub-steppe	4.2	0.5:1	2.1
		Perennial Streams, Scrub-shrub 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	9.1
	5	Eastside Grasslands, Emergent Wetlands, Intermittent or Ephemeral Streams, Seasonal Ponds	11.1	None	—
6	6	Wheat Fields and Other Row Crops, Urban and Mixed Environs	28.3	None	—
Total			**5,218**		**6,675**

1. Final Category following application of ODFW Designated Mule Deer Winter Range overlay.
2. Current habitat condition and category as mapped by the Applicant prior to construction.
3. Permanent impact areas based on final design and include the Facility's footprint. No mitigation offered for Category 6 habitat.
4. Compensatory mitigation for temporal habitat loss to current Category 2, 3, or 4 Upland Grassland, Shrub-Steppe and Shrubland – Shrub-Steppe and Eastside grasslands habitat subtypes (see Table 1) due to sagebrush component. Other habitat types will be restored following the methods described in the Revegetation Plan.

4.0 Mitigation

The mitigation obligation for the Facility is 6,675 acres based on the ratios and calculations in Table 3. Through coordination with ODFW, the Applicant preliminarily identified two potential mitigation areas for addressing the mitigation obligation where habitat protection and enhancement is feasible and consistent with this HMP. The HMAs are on the Columbia Plateau and "in proximity" to the Facility. If it is determined at final design of any phase of Facility development that additional mitigation is needed, mitigation would be developed in a like manner as the mitigation approach identified in this HMP, subject to ODFW review and approval by ODOE. The Applicant has not eliminated the possibility for alternative mitigation options (i.e., using another potential HMA or payment to a mitigation bank) should additional suitable options be identified. The final mitigation approach will offer enough suitable habitat to achieve the ODFW goal of no net loss of habitat quantity or quality. A net benefit in habitat quantity will be achieved through a 2:1 ratio for key habitats and a net benefit in quality will be achieved through appropriate enhancement actions.

As the HMAs are largely within ODFW-mapped Mule Deer Winter Range, acquisition of these areas constitutes acquisition of primarily Category 2 habitat regardless of the habitat condition (excluding Category 6 habitat, such as cultivated cropland and developed land), and thus meets the ODFW goal of no net loss of habitat quantity (Figure 1). Successful enhancement actions (including on a subset of the acquired areas or at other in-proximity locations) would result in a net benefit in habitat quality. Prior 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[2] by means of an outright purchase, conservation easement, or similar conveyance.

4.1 Tygh Ridge Ranch Habitat Mitigation Area

Through coordination with ODFW, the Applicant identified parcels at Tygh Ridge Ranch available for establishing conservation easements in-proximity to the Facility (Figure 1). The identified parcels consist of 5,020 acres on Tygh Ridge Ranch near the town of Tygh Valley, approximately 15 miles northwest of the Facility. Tygh Ridge Ranch is within the Columbia Plateau ecoregion and is composed of similar habitat types suitable for in-kind mitigation. 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. The majority of the Tygh Ridge Ranch HMA is currently enrolled in year 2 of a 15-year contract with the Grassland Conservation Reserve Program (CRP). ODFW confirmed during a site visit on January 29, 2025, that the objectives of the Grassland CRP are compatible with joint use as a HMA as long as CRP funds are not used to implement enhancement actions described in this Plan.

[2] As used in this Plan, "life of the facility" means continuously until the Facility site is restored and the site certificate is terminated in accordance with Oregon Administrative Rules 345-027-0110.

The Applicant performed a desktop analysis of the Tygh Ridge Ranch HMA. The property contains Flowing Water and Riparian, Grassland, and Sagebrush ODFW Conservation Strategy Habitats (ODFW 2016). The primary habitat type on the property is grassland/herbaceous (i.e., upland grasslands), followed by shrub/scrub (i.e., shrub-steppe) (Table 4; Figure 1). Oregon white oak (*Quercus garryana*) is present in Bonnie Canyon and Big Canyon along Highway 197. 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. The Applicant may partner with a third-party for long-term enhancement and monitoring of the mitigation parcels.

In 2024, the Larch Creek Fire burned the western third of the Tygh Ridge Ranch HMA. The fire burned quickly through the area and destroyed an internet tower on the property. The burned area provides an opportunity for uplift, as described in Section 4.1.1

The Applicant will continue to work with ODFW to identify opportunities to protect and enhance habitats in this area, and to define the appropriate monitoring of mitigation parcels. A preliminary list of habitat enhancement actions is described below.

Table 4. Land Cover Types within the Tygh Ridge Ranch Habitat Mitigation Area

Land Cover Type	Acres	Percent of Tygh Ridge Ranch Mitigation Area
Cultivated Crops	0.1	0.0
Deciduous Forest	3.4	0.1
Developed, High Intensity	<0.1	<0.1
Developed, Low Intensity	1.9	<0.1
Developed, Medium Intensity	1.3	<0.1
Developed, Open Space	105	2.1
Emergent Herbaceous Wetlands	1.6	<0.1
Evergreen Forest	80.0	1.6
Grassland/Herbaceous	2,840	56.4
Mixed Forest	6.7	0.1
Shrub/Scrub	1,990	39.5
Woody Wetlands	8.3	0.2
Total	5,040[1]	100

Note: Totals in this table may not be precise due to rounding. <0.1 means greater than zero but less than 0.05 acres.
1. Total excluding cultivated crops and developed land cover types is 4,930 acres.

4.1.1 Tygh Ridge Ranch Habitat Enhancement Actions

The Applicant or a third party will address habitat enhancement at Tygh Ridge Ranch as described in this section. The objectives of habitat enhancement are to protect habitat within the Tygh Ridge Ranch HMA from degradation and to improve the quality of ODFW-designated Mule Deer Winter Range. By achieving these objectives, the Applicant can address the permanent and temporary habitat impacts of the Facility and meet the ODFW goals of no net loss of habitat quantity or quality and a net benefit in habitat quantity or quality for impacts to Category 2 habitat. The following enhancement actions were selected in consultation with ODFW and the landowner to improve habitat conditions at the Tygh Ridge Ranch HMA:

1. Shrub Planting. The Applicant will plant sagebrush and/or bitterbrush shrubs, as recommended by ODFW, on hillsides where existing sagebrush and bitterbrush were burned in the Larch Creek Fire. The Applicant will complete the initial shrub planting within 1 year after beginning construction of the Facility. The Applicant will obtain shrubs from a qualified nursery and will identify specific planting areas after consultation with ODFW, subject to final approval by ODOE. The Applicant will mark planted shrub clusters at the time of planting for later monitoring purposes and will keep a record of the number of shrubs planted.
2. Oregon White Oak Planting. The Applicant will plant Oregon white oak seedlings, as recommended by ODFW, in portions of Big Canyon that were burned in the Larch Creek Fire. Oak woodlands are an Oregon Strategy Habitat in the adjacent East Cascades ecoregion and provide habitat for many wildlife species (ODFW 2016). The Tygh Ridge Ranch HMA is on the eastern edge of the Oregon white oak range, and planting seedlings will facilitate expansion of oak woodland habitat.
3. Weed Control. The Applicant will implement a weed control program including working with the landowner to locate and treat noxious weed infestations and invasive annual grasses. Three noxious weeds have been observed within the Tygh Ridge Ranch HMA: diffuse knapweed (*Centaurea diffusa*), yellow starthistle (*Centaurea solstitialis*), and rush skeletonweed (*Chondrilla juncea*). Weeds may be controlled through mechanical or chemical treatment. The Applicant will notify the landowner and ODOE of specific chemicals to be used and when treatment will occur. When necessary to protect desirable plants, spot-spraying may be used instead of broadcast spraying. The Applicant will continue weed control monitoring at the Tygh Ridge Ranch HMA, as needed, for the life of the Facility.
4. Fire Control. The Applicant will implement a fire control plan (Draft Habitat Mitigation Area Fire Control Plan included as Appendix A) for wildfire minimization when Facility staff are working within the Tygh Ridge Ranch HMA. The fire control plan includes appropriate fire prevention measures and a protocol for fire response if a fire were to occur when Facility staff were present at the Tygh Ridge Ranch HMA. If any part of the Tygh Ridge Ranch HMA is damaged by future wildfire, the Applicant will assess the extent of the damage and implement appropriate actions to restore habitat quality in the damaged area.

5. Fence Maintenance and Removal. Fencing will be repaired or improved along the eastern boundary with private landowners to prevent encroachment by grazing cattle. The Applicant will remove unused boundary and internal fencing to promote big game movement through the Tygh Ridge Ranch HMA.

6. Habitat Protection. The Applicant will restrict uses of the Tygh Ridge Ranch HMA that are inconsistent with the goals of no net loss of habitat quantity or quality and a net benefit in Category 2 habitat quantity or quality. The landowner will retain the right to the following uses of the Tygh Ridge Ranch HMA:

   a. Hiking, hunting, horseback riding, and driving for personal recreation. Driving will be limited to existing roads except in certain cases for hunting and land management conducted by the landowner.
   b. Existing contracts for two internet antennas: one in the northern part and one on a central ridgeline within the Tygh Ridge Ranch HMA. The contract includes access to the antennas along existing roads in the Tygh Ridge Ranch HMA for maintenance twice a year.
   c. Existing contracts for research and testing. The landowner owns a drone company and uses the research and testing area to conduct research on drone applications for agriculture (Figure 1). The research and testing area is zoned Industrial/Commercial and was not included in the Tygh Ridge Ranch HMA; however, the landowner will allow for use of the research and testing area to access the southern part of Tygh Ridge Ranch off of Highway 197, including staging trees or shrubs for planting and parking or storage of equipment as needed.

7. Spring/water maintenance and improvement as required for wildlife and domestic water use. There are multiple springs within the Tygh Ridge Ranch HMA. The landowner maintains the spring closest to the house for domestic water use. He installed water troughs at several other springs throughout the Tygh Ridge Ranch HMA and maintains them for wildlife use.

Table 5 outlines the anticipated benefits of various enhancement actions to Mule Deer Winter Range.

Table 5. Enhancement Actions and Benefits to Mule Deer Winter Range

Action	Benefit
Shrub Planting	Provide access to nutritious woody vegetation during winter, especially severe winters when snow covers grass forage, in order to improve over-winter survival. Deer on winter ranges without a shrub component often have high rates of over-winter mortality (ODFW 2011).
Weed Control	Reduce competition with desirable forage species to improve or maintain mule deer forage quality and quantity. Impacts of invasive species on Oregon's fish and wildlife resources are one of the seven most pressing conservation issues identified in the Oregon Conservation Strategy (ODFW 2016).
Oregon White Oak Planting	Provide acorns and foliage for forage by mule deer and other wildlife (ODFW 2016).
Fence Removal	Remove unused boundary and internal fencing to promote big game movement through the Tygh Ridge Ranch HMA (ODFW 2016).

4.2 Facility Habitat Mitigation Area

In addition to the Tygh Ridge Ranch HMA, the Applicant identified 1,655 acres within the Facility boundary to designate as mitigation areas (Figure 2). The Facility HMA, which borders Buck Hollow and Hauser Canyons, is designated as Mule Deer Winter Range, and extends into a PWCA Region. Designating mitigation areas within the Facility boundary will support wildlife movement in adjacent canyons. Habitat in the Facility HMA is predominantly shrub-steppe with patches of eastside grasslands. Additional mitigation areas will be identified within the Facility boundary in a like manner if additional mitigation is needed based on final Facility design.

4.2.1 Facility Habitat Enhancement Actions

The Applicant or a third party will implement the following habitat enhancement actions within the Facility HMA to improve wildlife habitat.

1. Shrub Planting. The Applicant will plant sagebrush and/or bitterbrush shrubs, as recommended by ODFW, on slopes above Buck Hollow and Hauser Canyons within the Facility HMA. The Applicant will complete initial shrub planting within 1 year after beginning construction of the Facility. The Applicant will obtain shrubs from a qualified nursery and will identify specific planting areas after consultation with ODFW, subject to final approval by ODOE. The Applicant will mark planted shrub clusters at the time of planting for later monitoring purposes and will keep a record of the number of shrubs planted.
2. Weed Control. The Applicant will implement a weed control program to locate and treat noxious weed infestations and invasive annual grasses within the Facility HMA. Weeds may be controlled through mechanical or chemical treatment. The Applicant will notify the

landowner and ODOE of specific chemicals to be used and when treatment will occur. When necessary to protect desirable plants, spot-spraying may be used instead of broadcast spraying. The Applicant will continue weed control monitoring, as needed, for the life of the Facility.

3. Fire Control. The Applicant will implement a fire control plan (Appendix A) for wildfire minimization when Facility staff are working within the Facility HMA. The fire control plan includes appropriate fire prevention measures and a protocol for fire response if a fire were to occur when Facility staff were present at the Facility HMA. If any part of the Facility HMA is damaged by future wildfire, the Applicant will assess the extent of the damage and implement appropriate actions to restore habitat quality in the damaged area.

4.3 Other Mitigation Options

The Applicant has not eliminated the possibility for alternative mitigation options (i.e., using another potential HMA or payment-to-provide) should additional suitable options be identified, subject to ODFW consultation and ODOE approval. If the above HMAs are not able to be secured prior to construction, the Applicant will pursue other options for mitigation. Other mitigation options may include securing an alternate HMA location or payment to an ODFW mitigation bank or other third party to protect land that is in-kind and in-proximity to habitats impacted by the Facility. If ODFW implements a payment-to-provide program to mitigate habitat impacts related to energy facilities, the Applicant could use the payment-to-provide mitigation option with the approval of ODOE and ODFW.

Regardless of the final mitigation option selected, the applicant will be required to submit proof of the acquisition of the HMA through conservation easement, or other legal instrument, that commits the land to HMA purposes for the life of the facility.

5.0 Monitoring

The Applicant will develop a monitoring and reporting protocol in coordination with ODFW and subject to ODOE review and approval. The monitoring objectives and intervals will be developed in consultation with ODOE and ODFW and could include an assessment of the following. Monitoring of the HMA will be required for the life of the Facility and monitoring will be conducted by qualified biologists and monitoring reports will be submitted to the Department annually with the annual operations report and will include:

- Quantification of habitat types and ODFW habitat categories present at the HMA;
- Description of the amount and quality of vegetation at the HMA;
- Description of the year-to-date climate data;
- Success of weed control measures through monitoring of infestation extents and recommend remedial action, if needed;

- Success of shrub plantings quantitatively through belt monitoring transects as well as qualitatively through an overall assessment of the treated area;
- Documentation of fence removal;
- Wildlife observed and notes on special status species (wildlife and plants) encountered onsite during routine monitoring;
- Observations of wintering mule deer will be recorded as observed from a distance (so disturbance is kept at a minimum); and
- Record any wildfire that occurs within the HMA and any remedial actions taken to restore habitat quality in the damaged area, if applicable.

6.0 Success Criteria

Mitigation of permanent and temporary habitat impacts of the Facility may be considered successful if the Applicant protects and enhances sufficient habitat to meet the ODFW goals of no net loss of habitat quantity or quality and a net benefit in habitat quantity or quality for impacts to Category 2 habitat or provides commensurate funding for a third party to perform enhancement and monitoring. The Applicant must ensure protection of the required quantity and quality of habitat within the HMA for the life of the Facility, including providing commensurate funding for ODFW or a third party to do so.

The Applicant must protect a sufficient quantity of habitat to meet HMA requirements based on the final design configuration of the Facility. The Applicant will determine the actual HMA requirements for each phase of the Facility, subject to ODFW review and ODOE approval, before beginning construction. The Applicant, ODFW, or a third party may demonstrate improvement of habitat quality based on habitat categorization surveys and evidence of indicators such as survival of planted shrubs, natural recruitment of sagebrush, and successful weed control. The mitigation goal for Category 2 habitat is “no net loss” and “net benefit.” Accordingly, mitigation for temporary impacts on Category 2 habitat needs to demonstrate a net benefit in quality or quantity. Mitigation will be an equal or greater amount of acreage than what is impacted by the Facility for areas with longer recovery periods (i.e., shrub-steppe). Most of the Category 2 habitat impacted by the Facility was preliminarily identified as Category 3, 4, and 5 habitat based on vegetative characteristics such as presence of non-native species and was designated as Category 2 habitat because it falls within ODFW-designated Mule Deer Winter Range. Category 4 planted grasslands and Category 5 habitats will be mitigated at a lower ratio than other Category 2, 3, and 4 habitats within the Facility. If the Applicant cannot demonstrate that the HMA is trending toward habitat quality goals described above within five years after initial shrub plantings, then the Applicant will propose remedial action. ODOE may require supplemental planting or other corrective measures.

7.0 Amendment of the HMP

This HMP may be amended from time to time by agreement of the certificate holder and the Oregon Energy Facility Siting Council (EFSC), or ODOE, acting within its delegated authority of EFSC under ORS 469.402. Such amendments may be made without amendment of the site certificate. EFSC authorizes ODOE to agree to amendments to this HMP. ODOE shall notify EFSC of all amendments, and EFSC retains the authority to approve, reject, or modify any amendment of this HMP agreed to by ODOE.

8.0 References

Oregon Department of Fish and Wildlife (ODFW). 2011. Oregon Mule Deer Initiative. January 7, 2011. https://www.dfw.state.or.us/resources/hunting/big_game/mule_deer/docs/Mule_Deer_Mgmt_Plan_Final.pdf. Accessed October 2023.

ODFW. 2013. ODFW Winter Range for Eastern Oregon. GIS dataset. https://nrimp.dfw.state.or.us/DataClearinghouse/default.aspx?p=202&XMLname=885.xml. Accessed October 2023.

ODFW. 2016. Oregon Conservation Strategy. Oregon Department of Fish and Wildlife, Salem, Oregon. https://oregonconservationstrategy.org/. Accessed October 2023.

ODFW. 2020. Oregon Mule Deer Initiative 5 Year Summary 2015 – 2019. https://www.dfw.state.or.us/resources/hunting/big_game/mule_deer/docs/Oregon%20Mule%20Deer%20Initiative%2015-19%20July%202021.pdf. Accessed October 2023.

Figures

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Appendix A. Draft Habitat Mitigation Area Fire Control Plan

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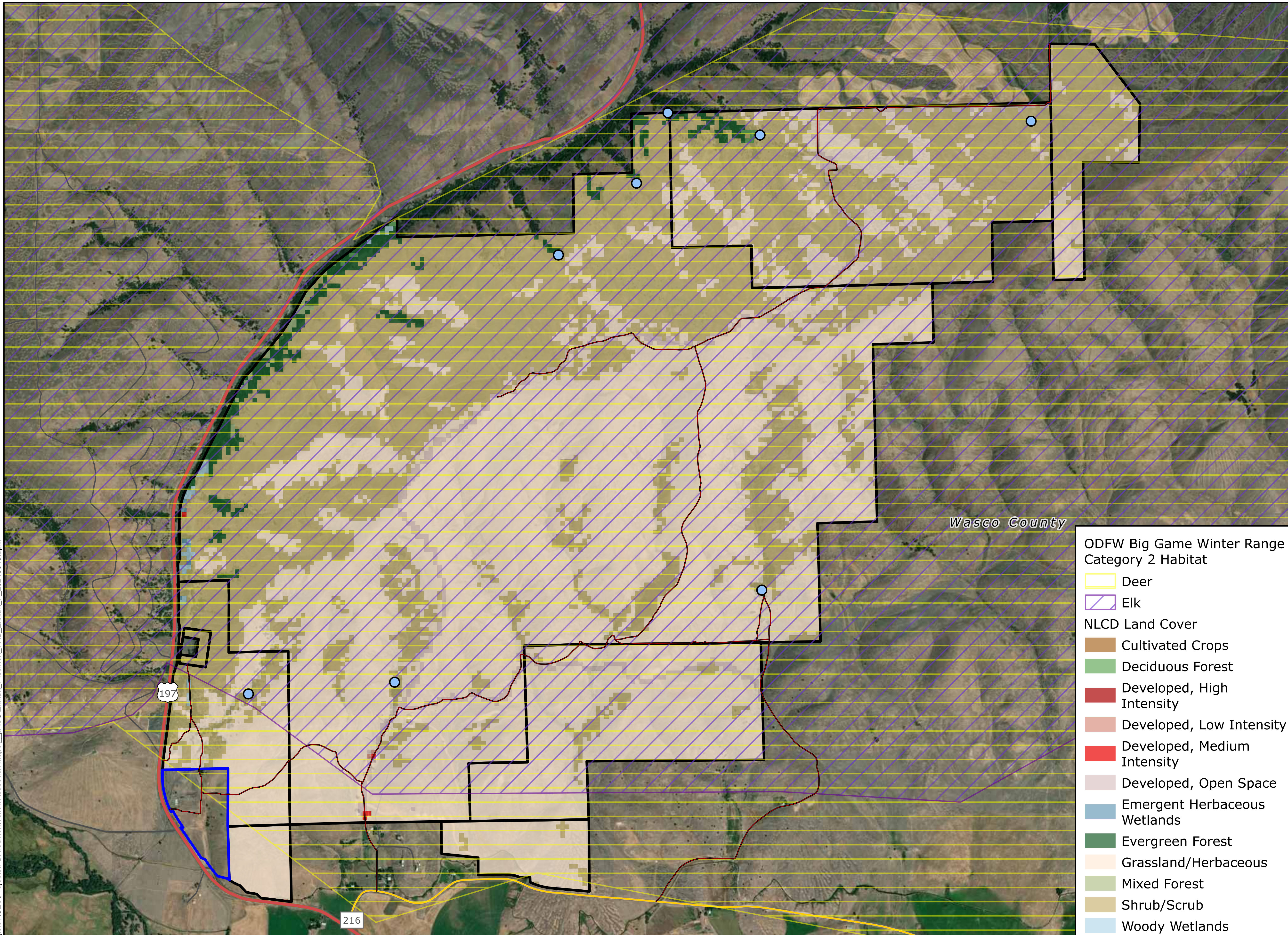
Yellow Rosebush Energy Center

Figure 1
Tygh Ridge Ranch Mitigation Area

WASCO COUNTY, OR

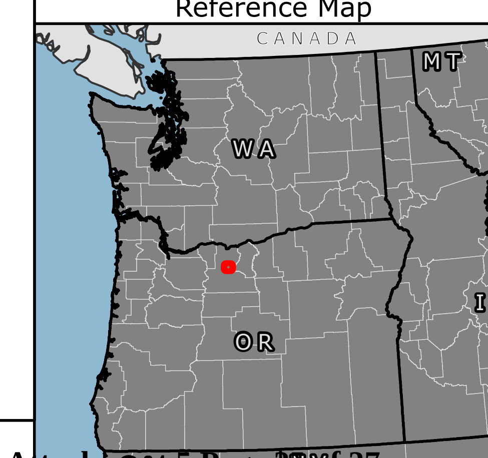


- Tygh Ridge Ranch Mitigation Area
- US Highway
- State Highway
- Local Roads
- County Boundary
- Spring (Location is Approximate)
- Existing Site Access Road (Location is Approximate)
- Potential Mitigation Activity Staging Area*

The potential mitigation activity staging area is not included in the Tygh Ridge Ranch Habitat Mitigation Area.

TETRA TECH SAVION A RENEWABLE ENERGY COMPANY

Reference Map



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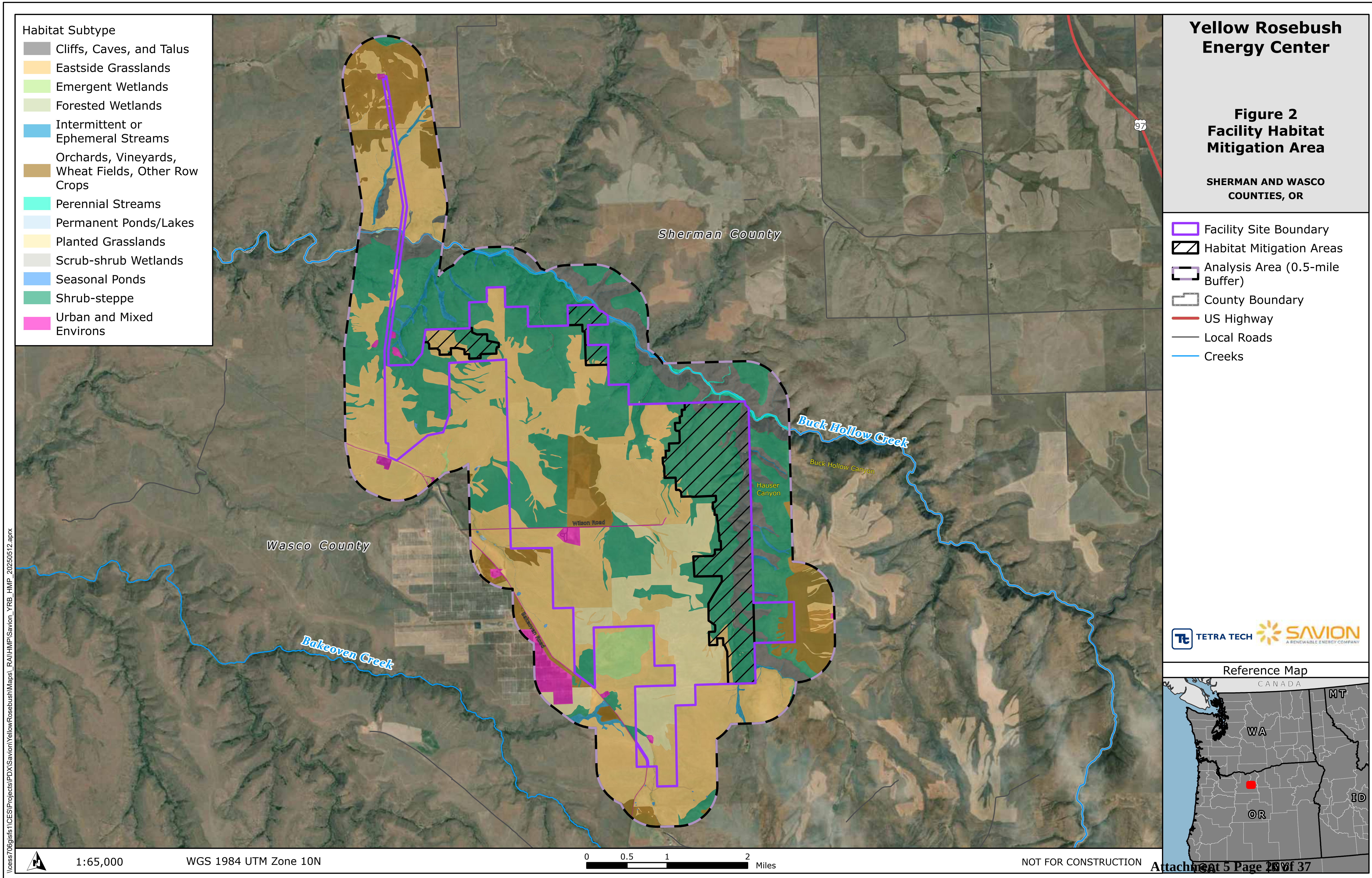

Yellow Rosebush Energy Center
Figure 2
Facility Habitat Mitigation Area
SHERMAN AND WASCO COUNTIES, OR
Habitat Subtype
Cliffs, Caves, and Talus
Eastside Grasslands
Emergent Wetlands
Forested Wetlands
Intermittent or Ephemeral Streams
Orchards, Vineyards, Wheat Fields, Other Row Crops
Perennial Streams
Permanent Ponds/Lakes
Planted Grasslands
Scrub-shrub Wetlands
Seasonal Ponds
Shrub-steppe
Urban and Mixed Environs
Facility Site Boundary
Habitat Mitigation Areas
Analysis Area (0.5-mile Buffer)
County Boundary
US Highway
Local Roads
Creeks
Sherman County
Wasco County
Buck Hollow Creek
Buck Hollow Canyon
Hauser Canyon
Wilson Road
Bakeoven Road
Bakeoven Creek
97
TETRA TECH
SAVION
A RENEWABLE ENERGY COMPANY
Reference Map
CANADA
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OR
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WGS 1984 UTM Zone 10N
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Draft Habitat Mitigation Area Fire Control Plan

Yellow Rosebush Energy Center
August 2025

~~ODOE edits for DPO in redline/track changes~~

Prepared for
Yellow Rosebush Energy Center, LLC

Prepared by

TETRA TECH

Table of Contents

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1.0 Introduction

The Yellow Rosebush Energy Center, LLC (Applicant) identified parcels at Tygh Ridge Ranch available for establishing conservation easements in-proximity to the Yellow Rosebush Energy Center (Facility) in partial fulfillment of mitigation requirements for the Facility. This Fire Control Plan (FCP) was developed to identify appropriate fire prevention measures and a protocol for fire response if a fire were to occur when Facility staff are present at the Tygh Ridge Ranch Habitat Mitigation Area (HMA). If any part of the HMA is damaged by future wildfire, the Applicant will assess the extent of damage and implement appropriate actions to restore habitat quality in the damaged area. This draft plan is subject to completion and final approval by the Department prior to construction.

1.1 Enhancement Action and Monitoring Timing

The Applicant proposes to begin construction of the Facility on or after June 2027 and to begin implementation of enhancement actions described in the Habitat Mitigation Plan (HMP) after the start of Facility construction. The Applicant will complete initial shrub planting within 1 year after beginning construction of the Facility. Fence removal and Oregon white oak planting will be conducted during appropriate seasonal windows after the start of construction. The Applicant will treat and monitor noxious weeds within the HMA for the life of the Facility. Monitoring will be conducted within the HMA during the growing season (April through July) for the life of the Facility on a schedule to be determined in coordination with the Oregon Department of Fish and Wildlife.

1.2 Habitat Mitigation Area Map

This FCP includes an HMA map (Figure 1) that identifies the following:

- The location of HMA access roads with primary access points at the southern end of the HMA off Highway 216 and at the northern end of the HMA off Hulse Road; and
- The location of water sources (springs) within the HMA.

2.0 Specifications for Fire Protection Equipment

The following fire suppression equipment will be carried in vehicles conducting enhancement actions and monitoring at the HMA:

- Fire Extinguisher: Dry chemical. 2A:10BC (5 pound), properly mounted or secured;
- Hand Shovel: Round point, "D" Handle 26 to 28 inches long with blade 12 inches long and 10 inches wide; and
- Water Container: 5-gallon capacity.

Water is available from multiple springs within the HMA (Figure 1). The landowner installed water troughs at several springs throughout the HMA and maintains them for wildlife use.

All internal combustion engines must be equipped with exhaust systems, mufflers and screens, or include an appropriate spark arrester, and must be kept in good operating condition. This requirement applies to all combustion engines (including but not limited to off-road vehicles, chainsaws, and generators) which must be equipped with a spark arrester that meets U.S. Forest Service Standard 5100-1.

All power-driven machinery will be kept clean and free of excess flammable material which may create a risk of fire.

3.0 Contact Information and Emergency Response Procedures

Facility staff will report wildfire incidents to the landowner and local firefighting services in the event of a fire of any size within the HMA. In the event that a fire outside the HMA is visible to Facility staff, they will notify the local fire department.

Local fire district contact(s):

- Tygh Valley Rural Fire Protection District
  - (541) 993-4266
  - 911
- Juniper Flat Rural Fire Protection District
  - (541) 328-6388 - Eugene Walters, District Fire Chief
  - 911

Fire department response times to the site:

- The Applicant will complete this information in coordination with the above listed fire responders prior to construction.

Applicant primary contacts:

- Jeffrey Watson, Development Manager
  - Savion, LLC, 422 Admiral Blvd, Kansas City, MO 64106
  - jwatson@savionenergy.com
  - (410) 349-7679

- Christopher Powers, Senior Director, Permitting & Environmental
  - Savion, LLC, 422 Admiral Blvd, Kansas City, MO 64106
  - cpowers@savionenergy.com
  - (760) 522-7563

Contact 911 in the event of:

- A fire or emergency on-site that cannot be addressed by Facility staff and requires the assistance of fire or emergency medical personnel;
- A fire ignition within the HMA that cannot be immediately extinguished;
- Any fire off-site that does not have emergency responders on-site.

4.0 Use of Vehicles and Power Driven Machinery at HMA

The following best management practices (BMPs) will be used to minimize fire risk from vehicle travel, equipment use, and fueling activities that will be implemented at the HMA during enhancement actions and monitoring:

- The movement of vehicles will be planned and managed to minimize fire risk.
- Facility staff and contractors, in coordination with the landowner, will be responsible for identifying paths for all off-road vehicle travel. All off-road vehicle travel will be required to stay on the identified paths, and no off-road vehicle travel will be permitted while working alone.
- Parking will occur on non-combustible surfaces. If Facility staff or contractors must park in dry vegetation, they will wet down vegetation under the vehicle and maintain a fire watch for 10 minutes after parking to monitor for potential ignition.
- Traveling off-road or parking in vegetated areas will be restricted during fire season as designated in this FCP.
- Fuel containers, if used, shall remain in the vehicle or equipment trailer, parked at a designated location alongside a county right-of-way. No fuel containers shall be in vehicles that exit the right-of-way.
- All power-driven machinery will be kept free of excess flammable material which may create a risk of fire.
- In the event of a stuck vehicle, workers will be instructed to shut off the engine and periodically inspect the area adjacent to the exhaust system for evidence of ignition of vegetation. Stuck vehicles will be pulled out rather than “rocked” free and the area will be inspected again after the vehicle has been moved.

5.0 Fire Precaution Levels and Restrictions During Fire Season

Definitions:

Non-Fire Season - Approximately October - May

Fire Season - Approximately June-September, formally designated by the Oregon Department of Forestry (ODF). Under ORS 478.960 (4), a Fire Chief can establish Fire Season within a Fire District when ODF, under ORS 477.505, declares Fire Season. This begins seasonal restrictions for the public and industry.

Fire Weather Watch - A fire weather watch is issued when there is a high potential for the development of a red flag event. A watch is issued 18 to 96 hours in advance of the expected onset of the criteria. The intent of a fire weather watch is to alert forecast users at least a day in advance for the purposes of resource allocation and fire fighter safety. A watch means critical fire weather conditions are possible but not imminent or occurring.

Red Flag Weather Warning - A red flag warning is used to warn of impending or occurring red flag conditions. Its issuance denotes a high degree of confidence that weather and fuel conditions consistent with local red flag event criteria will occur in 48 hours or less. Specific Red Flag criteria differ for each situation and district in Oregon. Be extremely careful with open flames and other activities that emit sparks.

Hot Work - Any cutting, grinding, welding, or other activity that creates spark or open flame.

Fire Watch Service -

Fire watch shall:

- Be physically capable and experienced to operate firefighting equipment.
- Have facilities for transportation and communications to summon assistance.
- Observe portions of the HMA where equipment activity occurred during the day.

Upon discovery of a fire, fire watch personnel must: First report the fire, summon any necessary firefighting assistance, describe intended fire suppression activities; then, after determining a safety zone and an escape route that will not be cut off if the fire increases or changes direction, immediately proceed to control and extinguish the fire, consistent with firefighting training and safety.

6.0 Fire-Prevention Measures and Restrictions Associated with Fire Season

HMA activities for Facility staff are impacted by Fire Restrictions during Fire Season as designed below:

Non-Fire Season

- All hot work (any cutting, welding, or other activity that creates spark or open flame) must be conducted on roads or on non-combustible surfaces.
- No smoking within the HMA.

Fire Season

- Before the start of each daily shift a designated individual will check the fire danger posting by the National Weather Service for any Red Flag Warnings for that day.
- All hot work must be conducted on roads or on non-combustible surfaces.
- Vehicles will be equipped with fire protection equipment as described in Section 2.0.
- Following the completion of hot work, Facility staff or contractors must maintain a fire watch for 60 minutes to monitor for potential ignition.
- Fire watch shall be on duty during any breaks and for one hour after all power-driven machinery used by the operator has been shut down for the day.
- No smoking within the HMA.

Fire Weather Watch

- No hot work permitted.
- Driving and parking will only occur on permitted access roads.
- No smoking within the HMA.

Red Flag Weather Warning

- No hot work permitted.
- On-site personnel must be aware of Red Flag Warning.
- Driving and parking will only occur on permitted access roads.
- No smoking within the HMA.

Table 1: Fire Prevention Measures During Fire Season Summary

Requirement	Non-Fire Season	Fire Season	Fire Weather Watch	Red Flag Warning
Fire weather advisory	Not required	Check for fire weather advisory daily before work begins.	Check for fire weather advisory daily before work begins.	Check for fire weather advisory daily before work begins. On-site personnel must be aware of Red Flag Warning.
On-site water source	N/A	As specified in Section 2.0	As specified in Section 2.0	As specified in Section 2.0
Hot work	Only permitted on roads or on non-combustible surfaces.	Only permitted on roads or on non-combustible surfaces; fire watch required for 60 minutes after completion	Not Permitted	Not Permitted
Fire Watch Service	Not required	During breaks and for 60 minutes after all power-driven machinery has been shut down for the day.	During breaks and for 60 minutes after all power-driven machinery has been shut down for the day.	During breaks and for 60 minutes after all power-driven machinery has been shut down for the day.
Driving and Parking	As described in Section 4.0.	As described in Section 4.0.	Only permitted on roads or on non-combustible surfaces and Section 4.0.	Only permitted on roads or on non-combustible surfaces and Section 4.0.
Smoking	Not permitted	Not permitted	Not permitted	Not permitted

7.0 Vegetation Management

According to mitigation requirements described in the HMP, vegetation within the HMA will be maintained for wildlife use for the life of the Facility. Fire suppression efforts would be tailored to habitat subtypes within the HMA, such as allowing grass fires to burn as long as there is not risk to people, structures, or HMA assets including planted shrubs and trees. Fire suppression efforts will be focused on existing sagebrush as well as shrub and tree plantings. If any part of the Tygh Ridge Ranch HMA is damaged by wildfire, the Applicant will assess the extent of damage and implement appropriate actions to monitor and restore habitat quality in damaged areas.

8.0 Monitoring

Monitoring of management actions taken on the HMA under this plan will be conducted to measure effectiveness. Final monitoring protocols will be determined with ODOE approval with the final approval of the HMP.

9.0 Reporting

The applicant will report on any actions taken per this plan during each reporting year in the operational annual report submitted to the Department for the HMP. Any incidents will be reported to the Department as required by site certificate.

10.0 Plan Amendment~~s~~

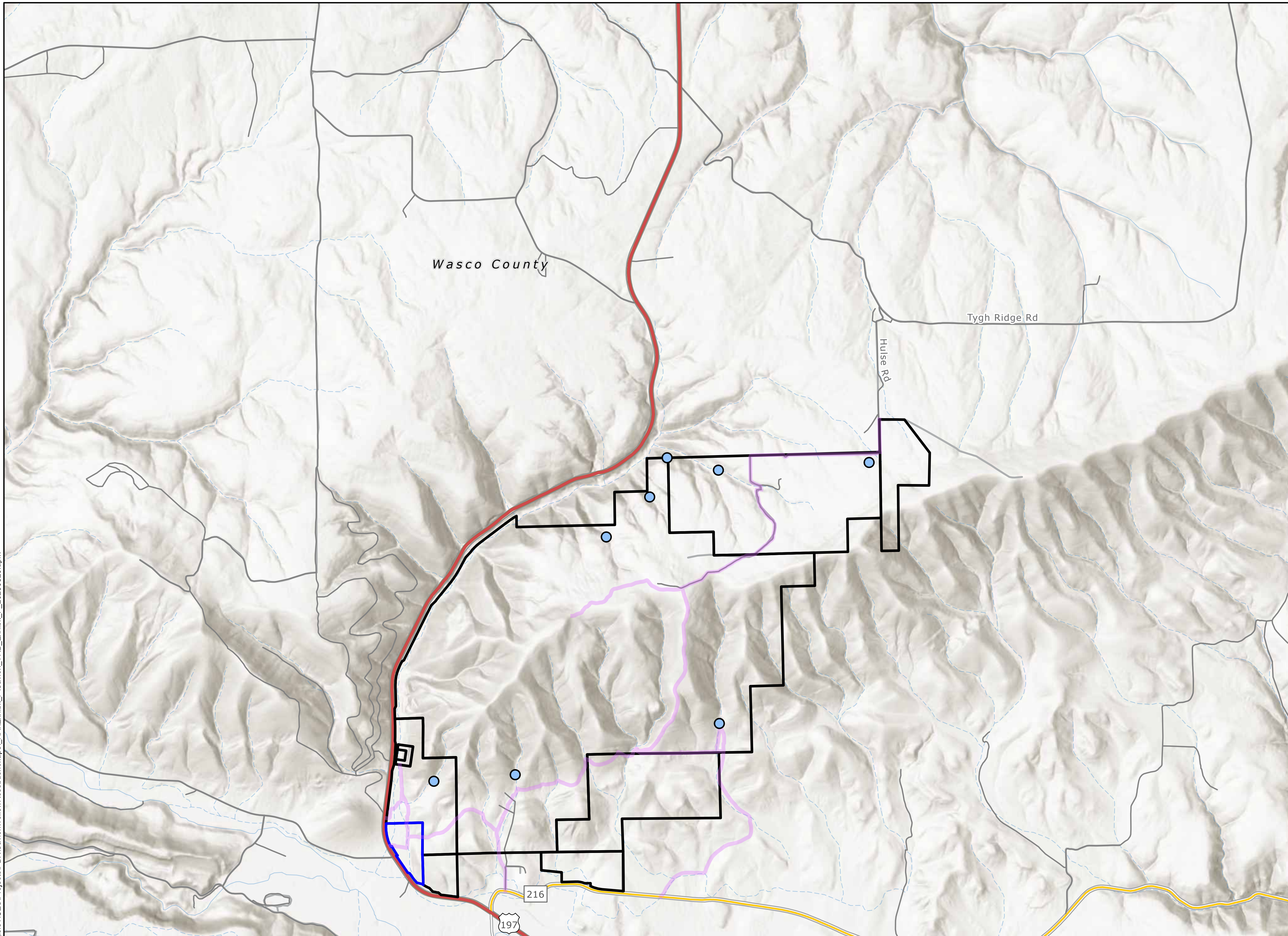
This Plan may be amended by agreement of the Applicant and the Oregon Energy Facility Siting Council (EFSC) or Oregon Department of Energy (ODOE), acting within its delegated authority of EFSC under ORS 469.402. Such amendments may be made without amendment of the Site Certificate or HMP. EFSC authorizes ODOE to agree to amendments to this Plan. ODOE shall notify EFSC of all amendments, and EFSC retains the authority to approve, reject, or modify any amendment of this Plan agreed to by ODOE.

Figure

Yellow Rosebush Energy Center

Figure 1
Tygh Ridge Ranch Habitat Mitigation Area Access Roads and Springs

WASCO COUNTY, OR

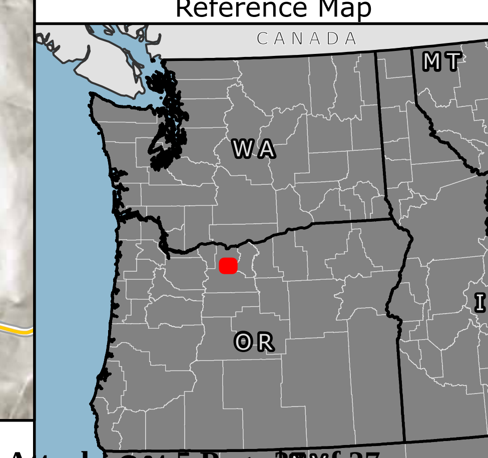


- Tygh Ridge Ranch Mitigation Area
- Existing Site Access Road (Location is Approximate)
- Spring (Location is Approximate)
- Potential Mitigation Activity Staging Area*
- US Highway
- State Highway
- Local Roads
- County Boundary

The potential mitigation activity staging area is not included in the Tygh Ridge Ranch Habitat Mitigation Area.

TETRA TECH SAVION A RENEWABLE ENERGY COMPANY

Reference Map



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0 0.5 1 2 Miles

NOT FOR CONSTRUCTION

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Attachment 6

Delineating Mule Deer Herd Ranges in Oregon:

Internal Technical report of Methods and Results

Oregon Department of Fish and Wildlife

4034 Fairview Industrial Dr SE

Salem, Oregon

January 2023

INTRODUCTION AND NEED

Oregon Department of Fish and Wildlife (ODFW) currently surveys, models, and sets management objectives for mule deer populations at the scale of individual Wildlife Management Units (WMU). ODFW has long recognized that in many cases the WMU based management scale does not meet with the year-round needs of a mule deer herd (Cupples and Jackson 2014). This leads to data being collected on either portions of herds or on combined herds. Deer are often counted on winter ranges in one WMU but are not present in that WMU during the hunting season, resulting in a lack of population-level relationships between seasonally collected data sets (harvest, buck ratio, spring population), which prohibits development of reliable population estimates. The south-central mule deer study conducted from 2005–2011 highlighted the challenges of mule deer population management at a WMU scale: 46% of mule deer were in a different WMU during the rifle season than during winter when data are often collected by the agency. Given these results, ODFW initiated further collaring efforts from 2014 to 2019 throughout eastern Oregon to better understand and delineate the geographic boundaries of mule deer populations.

This technical report describes the methods, results, and implications of efforts to identify mule deer herd ranges in Oregon. Through delineation of biologically meaningful population boundaries (hereafter, herd ranges) ODFW will be able to collect population data at the appropriate scale, provide more reliable population estimates, and improve harvest management of populations. This will improve our ability to proactively meet harvest management goals and advocate for habitat conservation and restoration projects which will benefit mule deer populations.

Initial Project Approach

Focused herd delineation efforts were initiated in winter 2014-2015 using hypothesized herd ranges. Using local knowledge, known winter range distribution of animals, information from previous monitoring efforts if available, and in some cases a best guess of the boundary, District Biologists mapped hypothesized boundaries of herd areas (Figure 1). Collar distribution was then based on existing population estimates and associated deer densities on winter ranges. Following the development of the methodology described below collaring then continued across the entire distribution of mule deer in eastern Oregon from 2014 through 2019.

ODFW initially contracted with Dr. Ryan Long at University of Idaho to develop an analytic process to identify spatially explicit herd ranges. Desired goals of the process were:

1. Herd range boundaries are objectively determined and are naïve to sociopolitical boundaries and perceived barriers.
2. Herds are defined based on movements of mule deer with some minimum probability of interacting either directly or indirectly, particularly on winter range (Mauritzen et al. 2002, Conner and Miller 2004).
3. Herd groupings are maintained on both winter and summer ranges.

The resulting data analysis methodology (Bethke et al. 1996, Mauritzen et al. 2002, Conner and Miller 2004) involved the following multi-step process:

1. Generate winter and summer seasonal ranges (95% kernel density) for each animal with sufficient data (≥35 locations per season).
2. Calculate seasonal range centroids for each animal.
3. Generate a weighted 95% ‘winter range’ contour using winter range centroids from all animals.

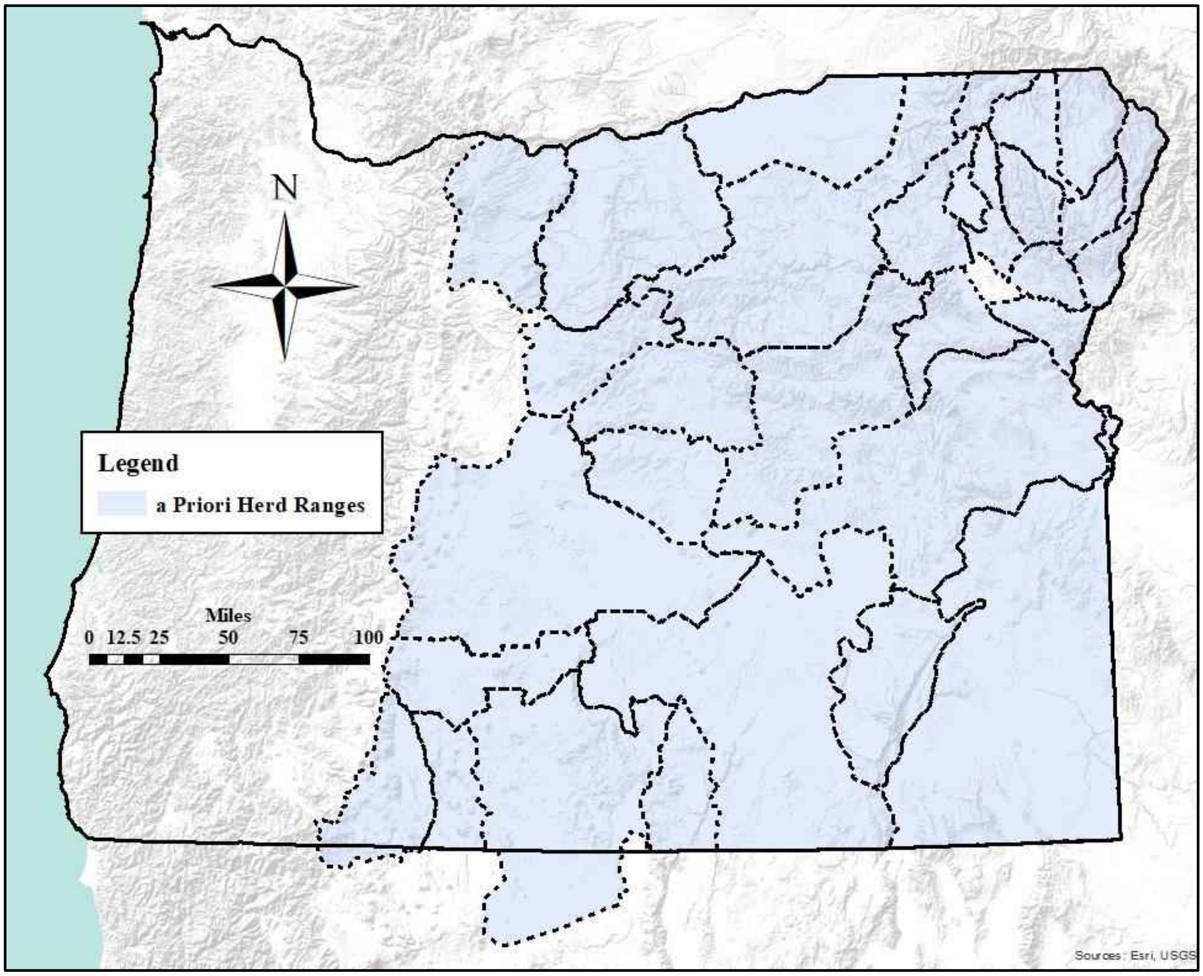


Figure 1. Hypothesized (*a priori*) mule deer herd ranges in Oregon.

4. Determine herd ranges where contiguous contours, or logically grouped contours, represent a herd. Small polygon outliers are grouped with a larger herd range.
5. Assign each individual animal to a herd range based on location of the centroid within herd range contours.
6. Recalculate winter range contours for each herd range grouping and validate herd ranges using volume of intercept analysis.
7. Generate weighted 95% 'summer range' contours for all deer from each winter herd range using summer centroids of animals from each herd.
8. Validate summer and winter herd range using volume of intercept analysis.
9. Draw herd range boundaries based on summer and winter range kernels.

This process was developed using data from animals collared in the central Blue Mountains and northeast Oregon during winters 2014-2015 and 2015-2016. Validation occurred by retroactively analyzing data collected between 2005 and 2013 during the south central mule deer study (Cupples and Jackson 2014, Schuyler et al. 2019). This validation phase delineated preliminary herd ranges for south-central Oregon.

METHODS

Capture and Marking

We deployed global positioning system (GPS) radio-collars on adult (≥1.5 year old) female mule deer while deer were still on winter range where 1 collar represented approximately 185 deer within the hypothesized herd's winter range. Prior to each winter's capture, District staff identified specific capture areas and associated number of animals to be captured. The first year's effort focused on winter ranges in the central Blue Mountains. Subsequent years' captures moved around eastern Oregon and ultimately covered the entire distribution of mule deer in Oregon.

Deer were captured via contracted helicopter netgun, fitted with a GPS radio collar and released at the capture site. All animals captured during winters 2014-2015, 2015-2016, and 2016-2017 were fitted with "Life Cycle' style radio collars using the Globalstar satellite system. These collars attempted to record a GPS location estimate every 13 hours. Beginning in winter 2017-2018 we began transitioning to Iridium satellite-based collars that provided more flexibility in duty cycles with collars attempting to record a GPS location every 4.5 to 6.5 hours. All collars were equipped with mortality sensors that notified department staff after an animal failed to move for 4 hours. Animals that died within two weeks of capture were assumed to die from capture-related injuries or myopathy and were censored from analyses. Collars recovered from mortalities having less than 1 year on an animal were re-deployed on another animal during the next capture opportunity.

Data Scrubbing and Data Preparation

All spatial data were first assigned a unique animal identification number (ID) based on the collar's id number (CID), deployment, and year of deployment. Location data collected prior to deployment dates or after estimated mortality dates were removed from analyses. Dilution of precision (DOP) is a measure of relative precision of the location estimate. Location estimates were considered valid for our analyses when associated DOP was ≤ 10.0 representing a moderate to high level of location precision. Location estimates with DOP >10.0 were removed from inclusion in analyses. Because spatial analytic methods are most efficient when conducted using standard linear scales on both axes (x and y), analyses were conducted using meters as the base units for both the easting and northing coordinates. We transformed spatial coordinates of location estimates from latitude and longitude in the WGS 84 datum to the NAD 83 HARN Oregon Statewide Lambert (meters) projection using ArcMap 10.3.1 (Environmental Systems Research Institute [ESRI], Redlands, California, USA). We chose to use NAD 83 HARN Oregon Statewide Lambert meters over using UTM coordinates which are also based in meters to avoid issues of animals using both UTM zones that occur in Oregon.

Because of variation in migratory dates among animals due to differing influences of movement strategies (resident or migratory), geography, and weather, we identified seasonal periods (winter, spring, summer, fall) for each individual animal. We first determined the movement strategy of each animal. When the widest spread of the location data measured by the length of the central axis was greater than 10 miles (16 km) an animal was considered migratory. Animals with a central axis of less than 10 miles (16 km) were considered residents. Seasons were defined by evaluating movements of migratory animals using net squared displacement (NSD). NSD was calculated as the square of the straight-line distance (meters) between the first location and the subsequent locations for the movement path of an animal (Bunnefeld et al. 2011, Singh et al. 2016). Plotting NSD sequentially allows for visual identification of significant movements and non-migratory behavior.

We visually inspected NSD plots of each migratory animal to assign start and stop dates for each season annually (Figure 2). Location estimates were then assigned to seasons based on when the location estimate was acquired relative to the animal's specific seasonal start and stop dates. We assigned seasons to non-migratory animal locations (Figure 3) based on the average start and stop dates of seasons within a year for migratory animals. NSD calculations, plots, and season assignment was conducted using a spreadsheet template (Microsoft Corporation, 2018, Microsoft Excel).

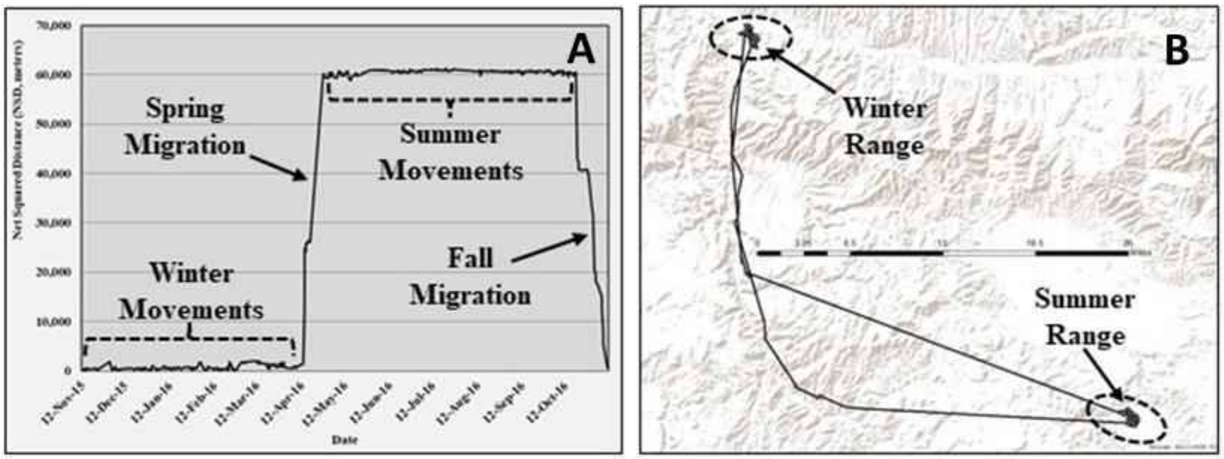


Figure 2. Example of A) net squared displacement (NSD) values and B) movement trajectory for one year (winter 2015-2016 through fall 2016) of a migratory mule deer (animal 37075-01-15). NSD values and movements show distinct seasonal ranges with an approximate 26 km migration.

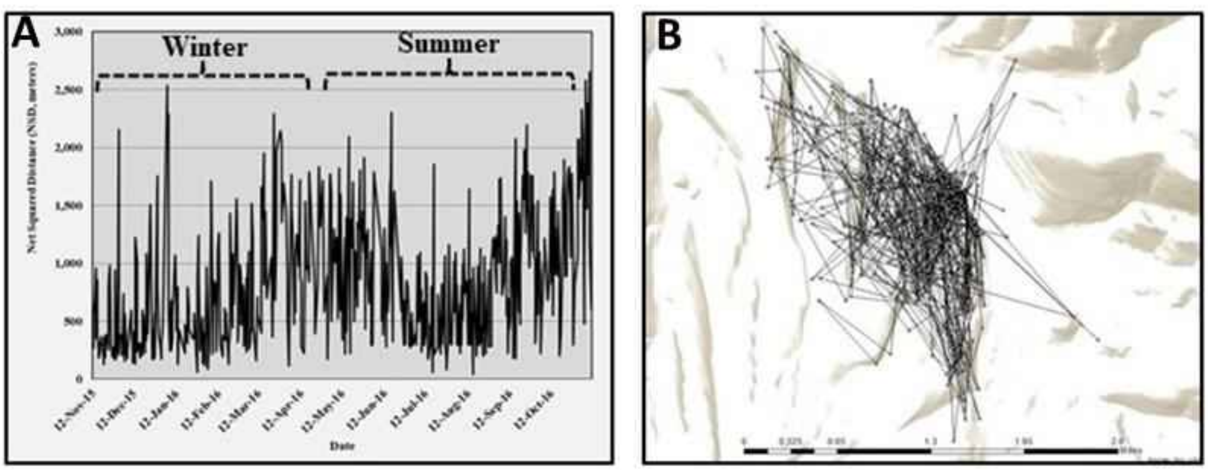


Figure 3. Example of A) net squared displacement (NSD) values and B) movement trajectory for one year (winter 2015-2016 through fall 2016) of a non-migratory mule deer (animal 36988-01-15). No distinct pattern of movement is apparent indicating the animal does not migrate and is a year-round resident on its range.

Analysis

Animals having 35 or more valid locations annually in both winter and summer seasons were included in analyses. We determined both winter and summer 95% home range isopleth (i.e., the area an animal is expected to spend 95% of its time), geometric centroid (x, y) of the home range, and area (km^2) of the home range for each animal year (Figure 4) using Geospatial Modelling Environment Version 7.4.0 (GME, http://spatialecology.com).

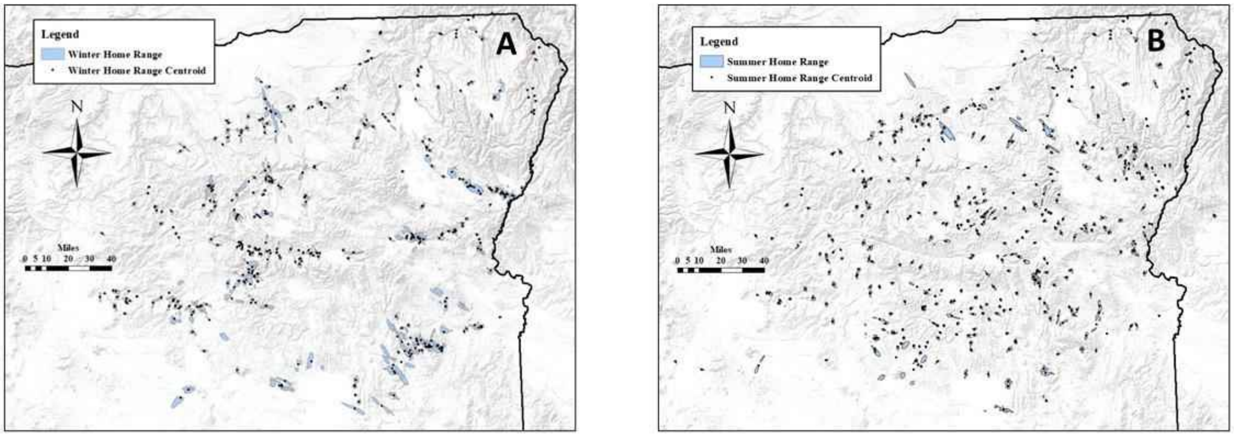


Figure 4. Example distribution of 95% kernel density home ranges and associated home range centroids for 465 mule deer monitored from winter 2015-2016 through fall 2017 for and B) summer.

Because collars were not deployed across the entire mule deer range at the same time, draft herd ranges were initially developed based on annual analyses. Final herd ranges were developed using information from all animals pooled across all animal years. Deer were grouped into populations by calculating the utilization distribution (UD) of all winter home range centroids. We generated the UD using a smoothed cross validation bandwidth and a 100 m cell size. We then calculated the 95% probability contour (i.e., the area containing 95% of the individual deer centroids) from the resulting raster file (Figure 5). We used the *adehabitatHR* package (Calegne 2011) in program R (version 4.2.1) to generate utilization distributions and 95% contours.

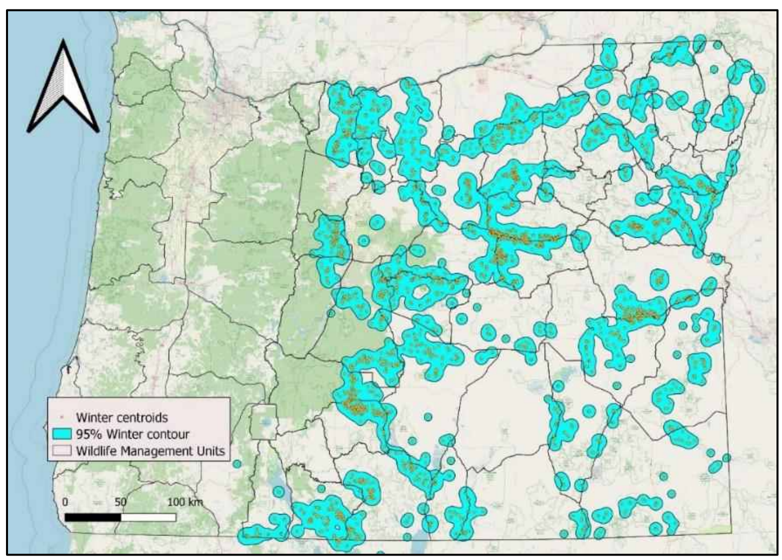


Figure 5. Home range centroids and 95% winter probability contours for 1,454 mule deer collared in eastern Oregon from 2005-2019.

Herds were defined based on visual evaluation of the polygons in the 95% winter contour. Very large polygons were reduced by separating the polygon at constricted portions of the polygon (Figure 6A). Small outlier polygons were merged with neighboring larger polygons to form one herd (Figure 6B). Once herds were identified by the 95% contour, animals with centroids within a herd polygon were assigned to that herd, and utilization distributions and 95% contours were re-calculated at the herd level. Relative discreetness of the newly defined herds was validated using a volume of interception analysis (VOI) with herd assignment as the ID variable. Adjacent small herds or individual animals on the periphery between adjacent herds having too much overlap were joined or reassigned to minimize overlap and the VOI analysis was repeated until we attained <5% VOI across assigned winter herd ranges (Appendix A, Table A-1).

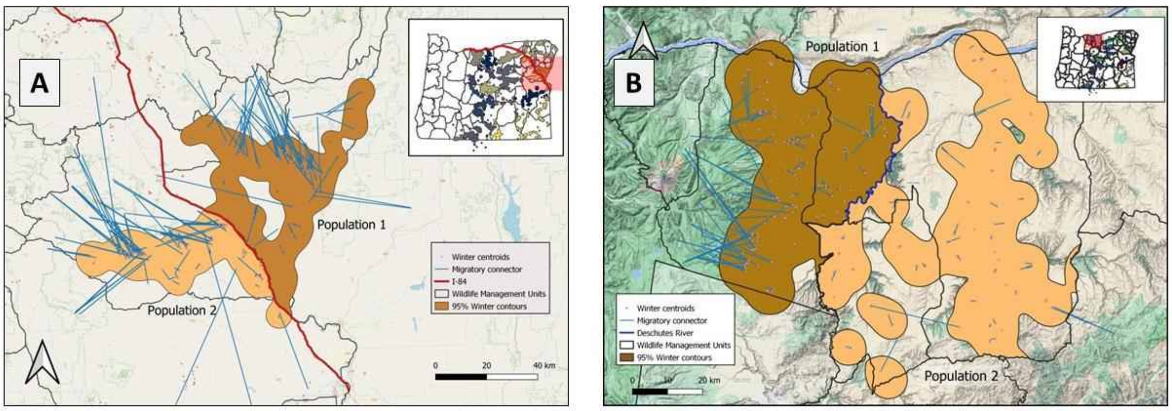


Figure 6. (A) Example of a larger 95% winter contour being reduced as Interstate 84 acted as a near complete barrier to mule deer movements. (B) Example of a larger 95% winter contour being reduced along the Deschutes River and smaller outlier polygons being added to larger ones (Population 2). Results shown from 1,454 mule deer collared in eastern Oregon from 2005-2019. Note some outlier polygons have been removed for clarity from main figure.

After animals were assigned to herds in a manner minimizing overlap, each animal's corresponding summer centroid was assigned to a herd based on that animal's winter herd assignment. For example, animals assigned to Herd 1 during winter were assigned to Herd 1 for summer analyses. Since our objective was to determine relatively distinct herd ranges that encompass winter and summer ranges, and to understand how animals interacted across WMUs, we also generated a migratory connector depicting the general direction of mule deer movements from winter range to summer range (Figure 7). We used migratory connectors to further refine assignment of deer to a population. Animals were assigned this way to determine if herd defined from winter analysis maintained a relatively high-level of separation or integrity during summer after migrations occurred. UDs and 95% probability contours were then calculated for each herd using summer home range centroids. VOI analysis was again used to evaluate amount of overlap among herd ranges. Because no two herds realistically have a 100% impermeable boundary line between their herd ranges, VOI overlap between summer UDs of 20% as an acceptable minimum interaction between herds. Two herds, Murderers Creek and Juniper-Silvies, interacted at a slightly higher level (VOI = 23%). Herd assignments were adjusted as needed to reach acceptable levels of overlap (Appendix, A Table A-2).

Once VOI reached acceptable levels of overlap, draft herd range boundaries were developed. We attempted to follow existing WMU boundaries where possible, however, when overlap precluded this, we strove to follow recognizable features on the landscape (e.g., roads, highways, streams, or other waterways, etc.) to minimize potential movement of mule deer

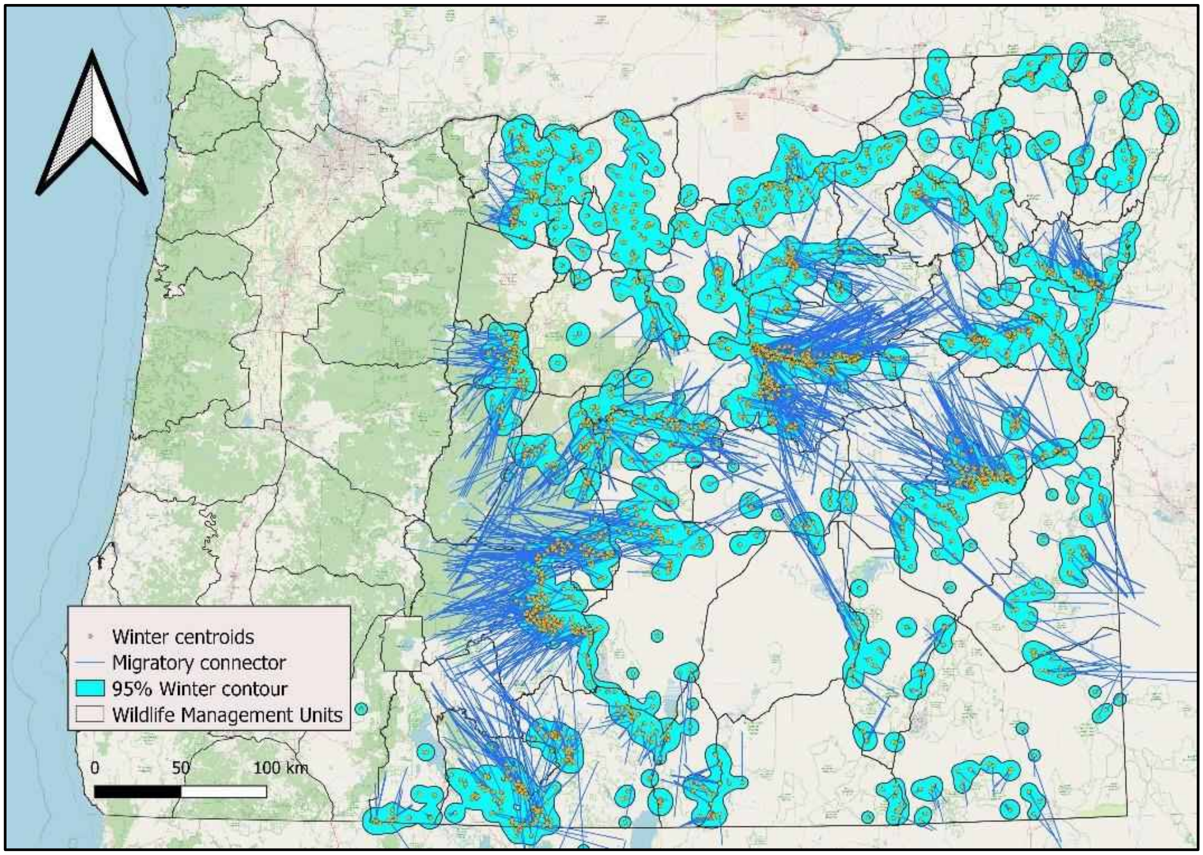


Figure 7. Home range centroids, 95% winter probability contours, and migratory connectors for 1,454 mule deer collared in eastern Oregon from 2005-2019.

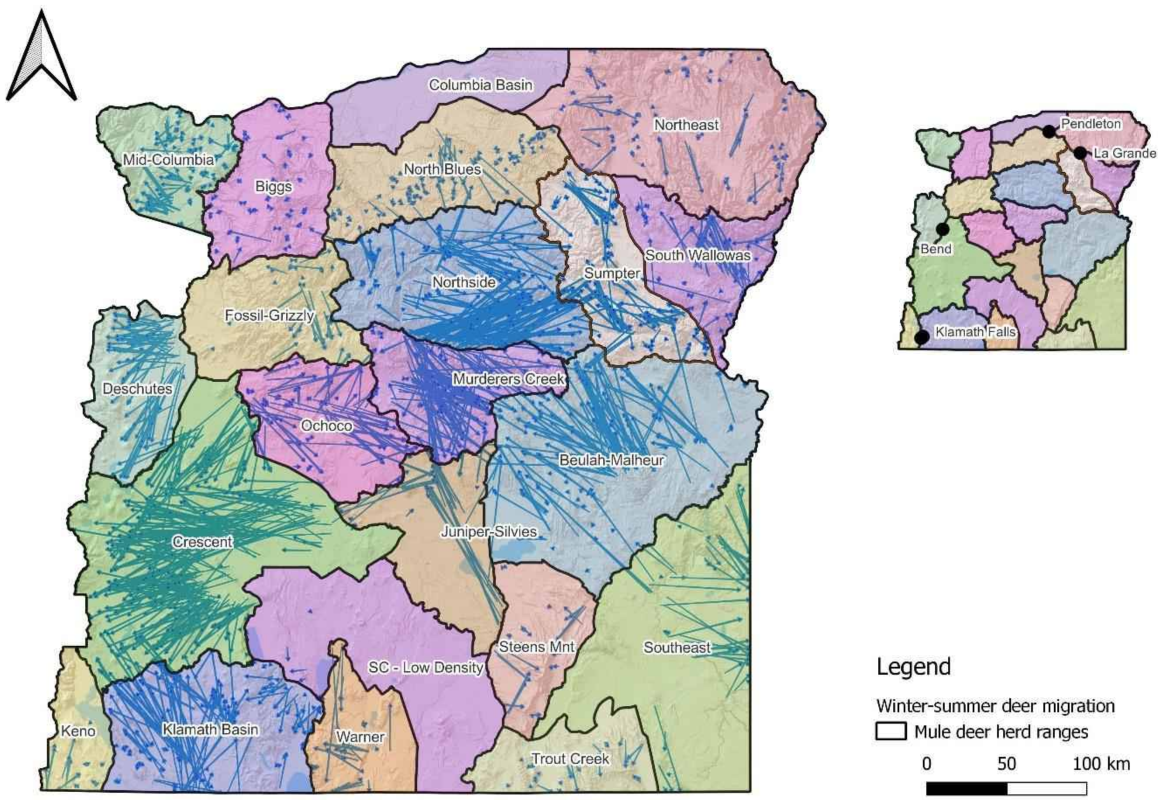
across boundaries and to assure relatively distinct areas for data collection purposes. Draft boundaries were then provided to district biologist for review. We met with districts where herd range boundaries overlapped for review and revision. Districts provided both broad and fine-scale assessments of herd ranges, and we worked collaborative with them to refine borders. Thus, final herd boundaries incorporated local knowledge of the area's geography and logistics for management. Each final herd range was assigned a name representative of the general area it encompasses (Figure 8).

DISCUSSION AND EXPECTED OUTCOMES

The process outlined in this document used movement data from mule deer throughout eastern Oregon to define geographic boundaries of relatively distinct mule deer herds in Oregon. These herd ranges identify groups of deer that are likely to experience similar environmental factors throughout the year. Relative conditions on winter (e.g., snow depth) and summer range (e.g., drought conditions) should be similar for all deer within the herd range. While individual deer within the population may have varying levels of habitat quality within their home range, the broad scale environmental conditions experienced by that herd should result in similar rates of survival and recruitment by the overall herd. Defining mule deer populations based on observed animal movements will allow ODFW to collect data, estimate populations, and

Figure 8. Twenty-two draft herd ranges developed from 1,454 mule deer collared in eastern Oregon from 2005-2019.

implement management on a more meaningful biological scale. Biological data previously collected at smaller WMU scales often included multiple populations or only a portion of populations, and did not synchronize well with other management practices such as allocation of



harvest. ODFW will use these herd ranges in the future as the scale for data collection, population estimation and modeling, and overall management of mule deer populations.

The benefits of managing mule deer at the herd range scale include:

1. Biological data collection is conducted for the population
2. Dynamics of the entire population is estimated and monitored rather than small portions of the population
3. Data are comparable across all mule deer populations in Oregon
4. Provide a framework for population estimation within similar environmental conditions
5. Better aligns harvest management with population data collection processes

Using extensive data on mule deer movements, we were able to define biologically meaningful boundaries on mule deer populations in Oregon. This effort should not be viewed as a one-time effort. ODFW will continue to monitor Oregon's mule deer populations with GPS collars to assess survival and movements, and changes may be made to herd ranges as additional information is obtained. In some cases, these efforts may be used to increase available data in certain areas where initial collaring efforts were less than observed elsewhere (e.g., the Northeast herd range; Appendix A-3) and herd range boundaries may be modified as additional data are collected. In other areas, changing environmental conditions may result in changes in mule deer behavior and movement which may necessitate future changes to herd range boundaries. Finally, as we continue to collect data and model mule deer populations, ODFW may identify spatial patterns in mule deer survival or recruitment that do not align well with herd range boundaries. In these cases, ODFW may also modify herd range boundaries to account for this additional information.

This analysis also provided a great deal of information regarding seasonal range delineation, animal movement strategies, and connectivity among herd ranges and WMUs. This information is summarized in Appendix A.

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APPENDIX A

Table A-1. Volume of intercept results of the winter home range utilization distribution for 1,454 radio-collared mule deer during winter 2005-2019 in eastern Oregon. Note: some columns removed where no overlap occurred.

	Deschutes	Fossil-Grizzly	Juniper-Silvies	S. Wallowas	Klamath Basin	SC-Low Density	Mid-Columbia	Murderers Creek	North Blues	Northeast	Northside	Ochoco	Southeast	Steens Mtn	Sumpter	Trout Creek	Warner
Beulah-Malheur	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Biggs	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Crescent	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Deschutes	100%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Fossil-Grizzly		100%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Juniper-Silvies			100%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
S. Wallowas				100%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	1%	0%	0%
Keno					0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Klamath Basin					100%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
SC-Low Density						100%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	2%
Mid-Columbia							100%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Murderers Creek								100%	0%	0%	3%	0%	0%	0%	0%	0%	0%
North Blues									100%	0%	0%	0%	0%	0%	0%	0%	0%
Northeast										100%	0%	0%	0%	0%	1%	0%	0%
Northside											100%	0%	0%	0%	0%	0%	0%
Ochoco												100%	0%	0%	0%	0%	0%
Southeast													100%	0%	0%	0%	0%
Steens Mtn														100%	0%	0%	0%
Sumpter															100%	0%	0%
Trout Creek																100%	0%
Warner																	100%

Table A-2. Volume of intercept results of the summer home range utilization distribution for 1,454 radio-collared mule deer during summer 2005-2019 in eastern Oregon. Note: some columns removed where no overlap occurred.

	Deschutes	Fossil-Grizzly	Juniper-Silvies	S. Wallowas	Klamath Basin	SC-Low Density	Mid-Columbia	Murderers Creek	North Blues	Northeast	Northside	Ochoco	Southeast	Steens Mtn	Sumpter	Trout Creek	Warner
Beulah-Malheur	0%	0%	9%	3%	0%	0%	0%	19%	0%	0%	6%	1%	11%	1%	14%	0%	0%
Biggs	0%	10%	0%	0%	0%	0%	10%	0%	5%	0%	2%	0%	0%	0%	0%	0%	0%
Crescent	9%	1%	1%	0%	16%	2%	0%	1%	0%	0%	0%	14%	0%	0%	0%	0%	0%
Deschutes	100%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	2%	0%	0%	0%	0%	0%
Fossil-Grizzly		100%	0%	0%	0%	0%	0%	3%	2%	0%	4%	12%	0%	0%	0%	0%	0%
Juniper-Silvies			100%	0%	0%	0%	0%	23%	0%	0%	1%	17%	2%	0%	0%	0%	0%
S. Wallowas				100%	0%	0%	0%	0%	0%	8%	1%	0%	0%	0%	19%	0%	0%
Keno					7%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Klamath Basin					100%	14%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	7%
SC-Low Density						100%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	10%
Mid-Columbia							100%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Murderers Creek								100%	0%	0%	19%	17%	2%	0%	6%	0%	0%
North Blues									100%	3%	11%	0%	0%	0%	3%	0%	0%
Northeast										100%	0%	0%	0%	0%	6%	0%	0%
Northside											100%	2%	0%	0%	17%	0%	0%
Ochoco												100%	1%	0%	0%	0%	0%
Southeast													100%	1%	0%	3%	0%
Steens Mtn														100%	0%	2%	0%
Sumpter															100%	0%	0%
Trout Creek																100%	0%
Warner																	100%

Figure A-1. Twenty-two final draft Herd Ranges juxtapositioned over eastern Oregon Wildlife Management Units (WMUs). Herd ranges developed from 1,454 radio-collared mule deer during winters 2005-2019 in eastern Oregon.

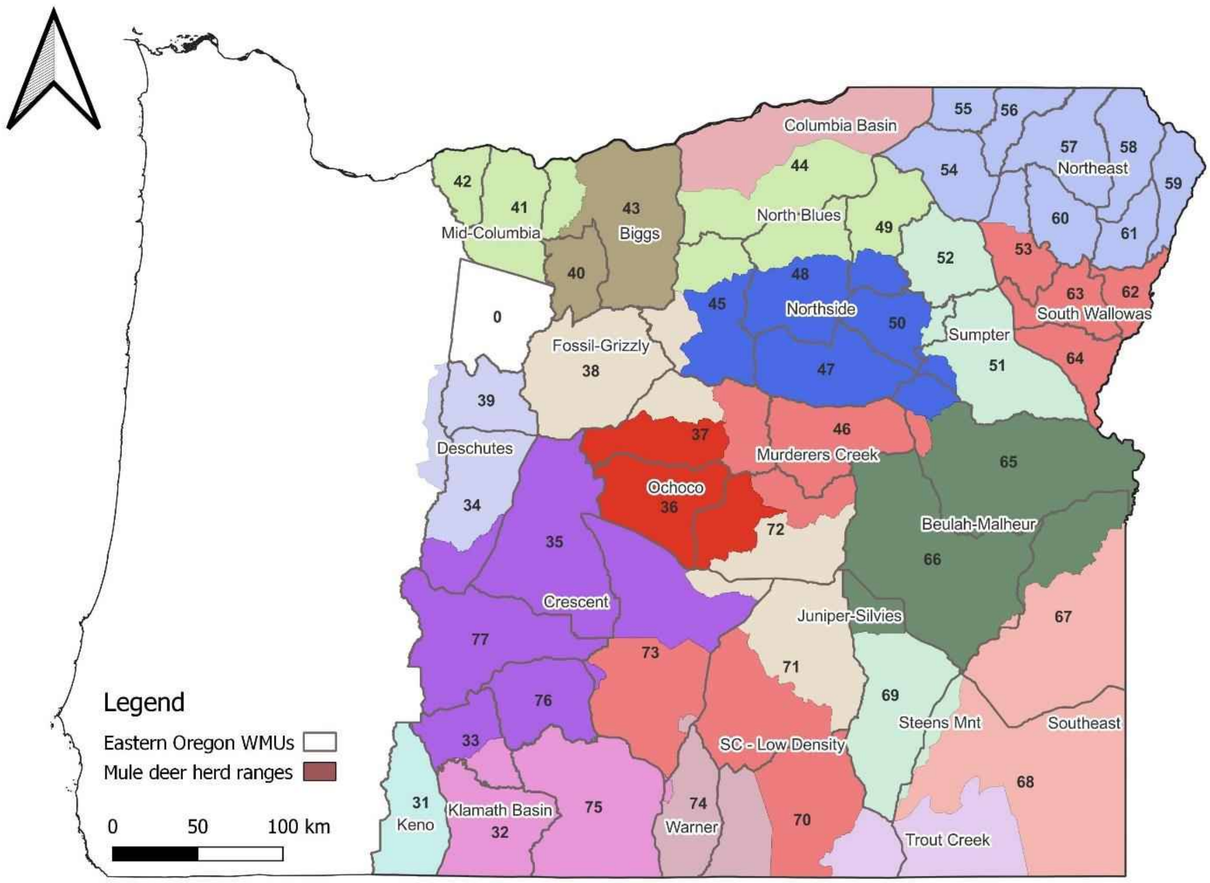

Table A-3. Herd range area and %public land, number of deer collared, and number of deer years used to define mule deer herd ranges. Data from mule deer collared during the south central mule deer study 2005–2011 and throughout eastern Oregon from 2015-2019.

Herd range	Herd range area (km^2)	% Public land	# Deer-years	% Migratory[1]
Beulah-Malheur	13,707	0.62	139	65%
Biggs	4,785	0.13	54	7%
Columbia Basin	3,821	0.09		
Crescent	14,431	0.74	276	87%
Deschutes	4,009	0.78	78	94%
Fossil-Grizzly	4,998	0.35	31	48%
Juniper-Silvies	5,212	0.8	24	67%
Keno	1,970	0.41	17	35%
Klamath Basin	7,169	0.49	135	56%
Mid-Columbia	3,452	0.43	78	32%
Murderers Creek	4,673	0.66	102	74%
North Blues	6,196	0.08	110	16%
Northeast	11,037	0.52	97	20%
Northside	8,444	0.5	168	71%
Ochoco	4,910	0.54	83	63%
SC Low Density	8,672	0.87	5	20%
South Wallowas	4,512	0.49	68	49%
Southeast	12,214	0.88	50	76%
Steens Mtn	3,731	0.7	19	37%
Sumpter	5,237	0.52	90	52%
Trout Creek	3,504	0.91	31	29%
Warner	3,235	0.77	30	53%
Range-wide Total	139,917		1,685	58%[2]

[1] Calculated as (# animal years where animals migrated)/(total # animal years).
[2] Average of herd migration proportions.

Table A-4. Seasonal home range parameters for migratory animals by herd range. Data from mule deer collared during the south central mule deer study 2005–2011 and throughout eastern Oregon from 2015-2020.

	# of animal		Winter Home Range Area (km^2)			Summer Home Range Area (km^2)			Distance Between Centroids (km)		
Herd Range	**Collars**	**Years**	**Minimum**	**Mean**	**Maximum**	**Minimum**	**Mean**	**Maximum**	**Minimum**	**Mean**	**Maximum**
Beulah-Malheur	90	134	1.06	**9.57**	66.46	0.85	**4.27**	18.51	16.1	**49.6**	91.1
Biggs	4	5	1.91	**4.42**	7.97	1.65	**2.52**	5.20	10.1	**17.5**	26.1
Crescent	239	399	0.16	**17.15**	170.40	0.01	**5.03**	69.20	12.7	**56.1**	128.3
Deschutes	73	118	0.37	**4.24**	23.14	0.44	**3.08**	21.11	14.7	**36.0**	72.0
Fossil-Grizzly	15	28	1.28	**4.29**	11.38	1.26	**3.06**	7.10	10.7	**23.9**	37.9
Juniper-Silvies	16	28	5.05	**15.07**	38.86	0.90	**5.40**	31.92	20.6	**53.1**	105.4
Keno	6	13	1.23	**3.44**	6.89	0.83	**6.41**	30.58	15.5	**25.1**	70.6
Klamath Basin	76	119	1.15	**8.92**	42.25	0.57	**6.16**	131.56	10.7	**38.9**	96.1
Mid-Columbia	25	44	0.73	**2.18**	13.47	0.42	**2.13**	12.04	10.7	**20.3**	34.9
Murderers Creek	75	125	0.52	**5.99**	45.60	0.69	**3.47**	37.10	11.0	**49.6**	116.0
North Blues	18	22	2.15	**9.66**	36.12	1.72	**7.53**	70.37	10.1	**20.7**	73.2
Northeast	19	32	1.12	**4.94**	38.20	0.04	**4.49**	15.93	11.8	**18.9**	32.1
Northside	120	203	0.79	**5.18**	32.13	0.03	**3.62**	32.14	11.5	**47.9**	105.5
Ochoco	52	78	1.32	**11.15**	75.59	1.37	**6.59**	38.13	11.0	**42.7**	96.2
South Central Low $\widehat{D}$	1	1	22.05	**22.05**	22.05	12.31	**12.31**	12.31	10.3	**10.3**	10.3
South Wallowas	33	53	0.72	**12.07**	107.61	0.65	**3.43**	14.01	11.7	**25.9**	55.0
Southeast	38	50	0.19	**14.49**	74.67	0.37	**4.90**	17.03	10.7	**46.2**	99.8
Steens Mnt	7	16	3.94	**16.98**	32.13	1.10	**6.05**	15.06	10.8	**22.0**	30.8
Sumpter	47	84	1.33	**6.48**	24.79	0.66	**3.79**	31.24	10.4	**27.3**	70.2
Trout Creek	9	9	5.48	**18.97**	48.73	2.64	**6.45**	13.58	10.3	**15.3**	22.2
Warner	16	31	1.31	**11.20**	46.11	2.37	**6.17**	18.70	14.1	**25.4**	86.2
Total	979	1,592									
Minimum	1	1	0.16	**2.18**	6.89	0.01	**2.13**	5.20	10.1	**10.3**	10.3
Average	47	76	2.57	**9.93**	45.93	1.47	**5.09**	30.61	12.2	**32.0**	69.5
Maximum	239	399	22.05	**22.05**	170.40	12.31	**12.31**	131.56	20.6	**56.1**	128.3

Table A-5. Seasonal home range parameters for non-migratory animals by herd range. Data from mule deer collared during the south central mule deer study 2005–2011 and throughout eastern Oregon from 2015-2020.

	# of animal		Winter Home Range Area (km^2)			Summer Home Range Area (km^2)			Distance Between Centroids (km)		
Herd Range	**Collars**	**Years**	**Minimum**	**Mean**	**Maximum**	**Minimum**	**Mean**	**Maximum**	**Minimum**	**Mean**	**Maximum**
Beulah-Malheur	48	71	0.66	**11.64**	62.64	0.43	**7.41**	36.67	0.1	**2.0**	9.4
Biggs	49	86	1.12	**6.25**	21.61	0.85	**4.43**	16.04	0.0	**1.1**	8.4
Crescent	36	50	0.80	**11.10**	56.29	0.77	**6.51**	21.40	0.2	**3.3**	9.7
Deschutes	5	5	2.10	**3.16**	5.25	1.24	**3.05**	9.48	0.3	**0.7**	1.4
Fossil-Grizzly	15	26	1.33	**5.79**	24.03	1.70	**3.66**	8.46	0.1	**0.7**	4.0
Juniper-Silvies	8	15	3.20	**17.95**	38.14	1.15	**11.13**	25.72	0.5	**2.2**	6.3
Keno	11	19	1.58	**4.61**	8.08	1.79	**5.15**	12.43	0.2	**1.5**	4.7
Klamath Basin	54	103	1.27	**6.99**	60.23	0.30	**4.50**	26.37	0.0	**1.9**	9.6
Mid-Columbia	52	108	0.66	**5.22**	29.02	0.47	**2.63**	12.32	0.0	**1.9**	12.1
Murderers Creek	27	46	0.74	**5.40**	28.87	0.62	**4.56**	28.57	0.1	**1.8**	10.8
North Blues	89	139	1.30	**7.38**	30.00	0.52	**5.25**	49.02	0.1	**1.7**	12.8
Northeast	78	126	0.19	**3.01**	22.43	0.35	**2.50**	13.29	0.0	**0.9**	7.7
Northside	48	92	1.05	**5.78**	23.58	0.52	**4.10**	22.21	0.0	**1.4**	8.8
Ochoco	31	57	2.19	**10.04**	62.30	1.34	**5.88**	31.58	0.1	**1.9**	9.8
South Central Low $\widehat{D}$	2	2	12.31	**18.02**	23.72	8.10	**13.17**	18.24	1.3	**1.3**	1.4
South Wallowas	35	56	1.04	**6.97**	24.08	0.74	**3.11**	13.72	0.1	**2.7**	11.6
Southeast	10	12	3.54	**9.85**	18.32	1.13	**6.19**	14.22	0.7	**2.5**	5.8
Steens Mnt	12	26	3.09	**19.33**	42.82	0.44	**8.45**	24.52	0.2	**3.1**	8.9
Sumpter	43	79	1.13	**8.84**	46.70	0.00	**4.99**	39.46	0.1	**3.2**	9.6
Trout Creek	21	21	4.05	**17.53**	38.60	2.62	**6.46**	11.46	0.5	**3.7**	11.8
Warner	14	27	1.02	**16.30**	116.35	1.45	**8.85**	21.99	0.1	**2.5**	15.6
Total	688	1,166									
Minimum	2	2	0.19	**3.01**	5.25	0.00	**2.50**	8.46	0.0	**0.7**	1.4
Average	33	56	2.11	**9.58**	37.29	1.26	**5.81**	21.77	0.2	**2.0**	8.6
Maximum	89	139	12.31	**19.33**	116.35	8.10	**13.17**	49.02	1.3	**3.7**	15.6

Table A-6. Interchange among herd ranges of mule deer between winter and summer based on herd range location of seasonal home range centroids. Data from mule deer collared during the south central mule deer study 2005–2011 and throughout eastern Oregon from 2015-2020. Herds were clipped at state boundaries with Idaho, Washington, California, and Nevada.

			Herd Location of Summer Centroid																										
Herd Location of Winter Centroid	# of Animal Years	% Leaving Herd Range	Beulah-Malheur	Biggs	Crescent	Deschutes	Fossil-Grizzly	Juniper-Silvies	Keno	Klamath Basin	Mid-Columbia	Murderers Creek	North Blues	Northeast	Northside	Ochoco	South Central Low	South Wallowas	Southeast	Steens Mnt	Sumpter	Trout Creek	Warner	Rogue	Idaho	Washington	California	Nevada
Beulah-Malheur	205	5%	194					1				6									4							
Biggs	87	2%		85											2													
Crescent	355	3%			344	5		2		3						1												
Deschutes	100	1%			1	99																						
Fossil-Grizzly	55	0%					55																					
Juniper-Silvies	39	15%	2					33				4																
Keno	26	15%							22															3			1	
Klamath Basin	214	13%			25					186																	3	
Mid-Columbia	143	0%									143																	
Murderers Creek	170	24%	22					6				129			11						2							
North Blues	162	3%											157		4						1							
Northeast	145	0%												145														
Northside	288	17%					1					9	13		240						25							
Ochoco	127	24%			9		5	7				9				97												
South Central Low D	5	20%															4						1					
South Wallowas	109	7%												5				101			1				2			
Southeast	63	56%	6																28						25			4
Steens Mnt	38	0%																		38								
Sumpter	156	8%	7											1	5						143							
Trout Creek	31	6%																				29						2
Warner	57	9%															1						52				3	1
Idaho	1																	1										
Washington	2																									2		
California	19				5				1	10																	3	
Total	**2,597**		**231**	**85**	**384**	**104**	**61**	**49**	**23**	**199**	**143**	**157**	**170**	**151**	**262**	**98**	**5**	**102**	**28**	**38**	**176**	**29**	**53**	**3**	**27**	**2**	**10**	**7**
% Summer Population from other herds=			**16%**	**0%**	**10%**	**5%**	**10%**	**33%**	**4%**	**7%**	**0%**	**18%**	**8%**	**4%**	**8%**	**1%**	**20%**	**1%**	**0%**	**0%**	**19%**	**0%**	**2%**					

Table A-7. Relative movements among WMUs between winter and summer seasonal ranges for mule deer in eastern Oregon. Data from mule deer collared during the south central mule deer study 2005–2011 and throughout eastern Oregon from 2015-2020.

WMU for Winter Centroid	# of Winter Animal Years	% Summering in Different WMU	% of Summer Population from other WMUs	# WMUs contributing to Summer Population
Keno	26	15%	4%	2
Klamath Falls	69	30%	6%	3
Sprague	0	0%	100%	5
Upper Deschutes	14	0%	75%	5
Paulina	140	50%	37%	3
Maury	84	60%	15%	3
Ochoco	96	42%	33%	4
Grizzly	42	36%	0%	1
Metolius	87	43%	0%	1
Maupin	22	0%	8%	2
White River	106	8%	2%	2
Hood	0	0%	100%	1
Biggs	102	6%	0%	1
Columbia Basin	37	35%	4%	2
Fossil	61	7%	14%	4
Murderers Creek	119	45%	29%	4
Northside	158	53%	14%	3
Heppner	145	32%	12%	3
Ukiah	37	3%	25%	4
Desolation	12	17%	87%	6
Sumpter	113	14%	25%	9
Starkey	43	5%	15%	3
Catherine Creek	25	4%	11%	3
Mount Emily	24	8%	8%	3
Walla Walla	11	9%	0%	1
Wenaha	11	0%	27%	3
Sled Springs	36	19%	0%	1
Chesnimnus	3	0%	70%	3
Snake River	26	8%	0%	1
Minam	9	11%	33%	2
Imnaha	16	0%	6%	2
Pine Creek	10	30%	65%	4
Keating	46	33%	18%	4
Lookout Mtn	37	27%	0%	1
Beulah	107	22%	42%	7
Malheur River	88	25%	39%	7
Owyhee	61	67%	0%	1

Table A-7 Continued. Relative movements among WMUs between winter and summer seasonal ranges for mule deer in eastern Oregon. Data from mule deer collared during the south central mule deer study 2005–2011 and throughout eastern Oregon from 2015-2020.

WMU for Winter Centroid	# of Winter Animal Years	% Summering in Different WMU	% of Summer Population from other WMUs	# WMUs Contributing to Summer Population
Whitehorse	42	36%	18%	3
Steens Mtn	35	6%	13%	3
Beatys Butte	26	50%	19%	2
Juniper	10	100%	0%	0
Silvies	23	4%	79%	7
Wagontire	105	82%	34%	4
Warner	47	23%	27%	3
Interstate	137	17%	14%	5
Silver Lake	75	49%	39%	5
Fort Rock	52	6%	65%	5
Total/Average	2,575	24%	26%	3.2