



Oregon

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To: Energy Facility Siting Council

From: Sarah Esterson, Senior Policy Advisor

Date: September 4, 2026

Subject: Agenda Item D (Action Item): Yellow Rosebush Energy Center – Continued Review of the Proposed Contested Case Order (PCCO), PCCO Exceptions and Responses; Material Change Hearing; and, Possible Adoption of Proposed Order and PCCO as the Final Order for the September 18, 2026 EFSC Meeting

Attachments: Attachment 1: (draft) Proposed Order, As Amended

Attachment 1a: Department's Proposed Order Changes (as presented at the August 21, 2026 meeting)

Attachment 2: (draft) Consolidated Ruling on Motions for Summary Determination and Proposed Contested Case Order, As Amended

Attachment 3: Petitioner Alexanderson's Exceptions

Attachment 4: Applicant's Responses to Exceptions

Attachment 5: Department's Responses to Exceptions

Background/Summary

The Application for Site Certificate for the proposed 800 megawatt (MW) Yellow Rosebush Energy Center (proposed facility) is in the final phase of the Energy Facility Siting Council's (EFSC) 7-phase siting process.

At the August 21, 2026 meeting, EFSC reviewed the outcomes of two preceding phases, the Proposed Order and Contested Case phases.¹ The Council completed review of the Department's October 1, 2025 Proposed Order on the Application for Site Certificate (ASC) (as provided in the August 20-21, 2026 Agenda Item I, Staff Report Attachment 1); and initiated its review of the Hearing Officer's June 12, 2026 PCCO (as provided in the August 20-21, 2026

¹ OAR 345-015-0480 establishes a process whereby the Council must review the Proposed Contested Case Order (PCCO); exceptions and responses to the PCCO; the Proposed Order on the ASC; and, then must take action to issue a final order, either adopting, modifying or rejecting the PCCO and Proposed Order on the ASC.

September 18, 2026 EFSC Meeting

Agenda Item I, Staff Report Attachment 2), exceptions to the PCCO (Staff Report Attachment 3), and responses to those exceptions (Staff Report Attachments 4 and 5).

As a result of the exceptions hearing, Council voted to adopt changes the Department recommended to the Proposed Order addressing whether the proposed Tygh Ridge Ranch Habitat Mitigation Area is “in proximity” to the proposed facility, rather than consider evidence not already in the record (i.e., documentation submitted by the Department in its Response to Mr. Alexanderson’s exceptions and submitted by Mr. Alexanderson in his Reply brief) or reopen the record to take additional evidence itself or remand the contested case to the hearing officer to take more evidence on the “in-proximity” issue. Those changes relate to Mr. Alexanderson’s Exceptions 1.3, 1.5, 2, 8 and 9. Due to time constraints, Council continued its review of the exceptions to the PCCO and responses thereto to the September 18, 2026 meeting.

Agenda Item Overview

1. Continuation of Council’s August 21, 2026 Review of PCCO Exceptions and Responses – Council will continue review of Mr. Alexanderson’s exceptions to the PCCO, and the applicant and Department’s responses to exceptions.
2. Material Change Hearing ORS 469.370(7)) – Council will conduct a material change hearing on the changes to the Proposed Order that the Department recommended and Council approved at its August 21 meeting (see Attachment 1 and 1a). These changes relate to Mr. Alexanderson’s Exceptions 1.3, 1.5, 2, 8 and 9. If Council approves any other material changes to the Proposed Order at the September meeting as a result of its continued review of Mr. Alexanderson’s exceptions, it may incorporate these changes into the planned material change hearing or it may schedule another material change hearing to take place at a future meeting.
3. Possible Final Order Issuance – Unless Council decides another material change hearing is required at a future meeting, the Council will decide whether to adopt, modify or reject the Proposed Order and the PCCO; and will issue a Final Order on the ASC, either approving or rejecting the ASC based upon the standards adopted under ORS 469.501 and any additional statutes, rules or local ordinances determined to be applicable to the facility by the project order, as amended. (ORS 469.370(7) and ORS 469.370(9)).

Council’s Review of the PCCO and Exceptions Hearing

At the August 21, 2026 meeting, the Council received an overview of the contested case proceeding by Oregon Department of Justice Senior Assistant Attorney General Jesse Ratcliffe (serving as legal counsel to EFSC for purposes of reviewing the PCCO and exceptions). The Council then began a hearing on exceptions and responses to exceptions related to the Hearing Officer’s PCCO, allowing each party 15 minutes to make oral presentations regarding the exceptions.

The sole issue evaluated in the contested case proceeding was:

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.

* * *

The subparts of the issue as evaluated by the parties and Hearing Officer are presented in Table 2 of the August 2026 Staff Report prepared for Agenda Item I. Mr. Alexanderson filed 14 exceptions, many of which contain overlapping themes/arguments, as presented in the list below and in Table 1 below:

- Exceptions related to whether the draft habitat mitigation plan satisfies the mitigation goals for habitat quantity and quality (Exceptions 1.1, 1.4, 12, 13)
- Exception related to whether Category 2 "avoidance" requires an alternative site analysis (Exceptions 1.2, 1.11, 3, 4, 5)
- Exceptions related to whether the proposed habitat mitigation area satisfies the in proximity definition (Exceptions 1.3, 1.5, 2, 8, 9) (Note that these exceptions are related to the changes proposed by the Department, to be included in the Proposed Order, **subject of the material change hearing**)
- Exceptions related to whether indirect impacts of fencing have been adequately considered (Exceptions 1.6, 1.7, 1.8, 6, 7, 14)
- Exceptions related to procedural issues (motion for summary determination, burden of proof) (Exceptions 1.9, 1.10, 10, 11)

Table 1: Summary of Exceptions

Legend	
Color	Description
	Related to whether the draft habitat mitigation plan satisfies the mitigation goals for habitat quantity and quality (1.1, 1.4, 12 ¹ , 13) ¹ Regarding Mr. Alexanderson’s Exception 12, the Department agrees that the OAR 635-415-0025(2)(b)(B) mitigation goal for Category 2 habitat “no net loss of either habitat quantity of quality and to provide a net benefit of habitat quantity or quality” means <i>both</i> habitat quantity and quality must be preserved. The Department recommends Council not adopt Section 3.2.2 of the PCCO, which lacked clarity as to the meaning of that rule, and supplement the analysis of the Fish and Wildlife standard in Council’s Final Order. See changes presented in Attachment 1, the draft Final Order, p. 203 and Attachment 2, draft Amended PCCO (p.42), of this staff report.
	Related to whether Category 2 “avoidance” requires an alternative site analysis (1.2, 1.11, 3, 4, 5)
	Related to whether the proposed habitat mitigation area satisfies the in proximity definition. (1.3, 1.5, 2, 8, 9) ² ² The Department proposed changes to the Proposed Order in response to issues raised; changes are the subject of the material change hearing
	Related to whether indirect impacts of fencing have been adequately considered (1.6, 1.7, 1.8, 6, 7, 14)
	Procedural issues (motion for summary determination, burden of proof (1.9, 1.10, 10, 11)) ³ ³ The Department agrees with Mr. Alexanderson’s Exception 11 and recommends that the Council amend the PCCO to omit the Hearing Officer’s reference to “rebuttable presumption”. See changes presented in Attachment 2, draft Amended PCCO (p. 5), of this staff report.

Exception No. and Statement	Related to:
Exception 1: The [PCCO] asks the Council to dismantle the long standing and carefully crafted rules against BGWR damage and destruction by:	
1.1 Eliminating “quantity” of habitat from the no-net-loss equation, allowing net closure,	Exception 1.4, 12, 13
1.2 Holding that the developer’s choice of site is untestable, leaving the Council to “micro-siting” the arrangement of facilities,	Exception 1.11, 3, 4, 5
1.3 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,	Exception 1.5, 2, 8, 9
1.4 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,	Exception 1.1, 12, 13
1.5 Redefining “in-proximity” (meaning close) as anywhere on the Columbia Plateau stretching from Mt. Hood to Pendleton,	Exception 1.3, 2, 8, 9
1.6 Disregarding previously approved abutting fences leaving a public highway as the only way for animals to go through the combined projects,	Exception 1.7, 1.8, 6, 7, 14
1.7 Dismissing the common sense increased risk of vehicle collisions	Exception 1.6, 1.8, 6, 7, 14
1.8 Requiring no compensatory mitigation for deleterious effects of the fence occurring outside the fence,	Exception 1.6, 1.7, 6, 7, 14
1.9 Holding that a Proposed Order is presumed correct and complete and that Intervenor must provide evidence on standards the applicant must satisfy,	Exception 1.10, 10, 11
1.10 Deciding fact disputes on summary determination as if a hearing had already been held,	Exception 1.9, 10, 11
1.11 Holding that a substation picked by a developer justifies obliteration of BGWR at the site, no alternatives need be considered.	Exception 1.2, 3, 4, 5
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.	Exception 1.3, 1.5, 8, 9
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.	Exception 1.2, 1.11, 4, 5
Exception 4: The [PCCO] limits the role of the Council to “micro-siting” design issues such as where equipment should be placed within the site boundary. 3.2.1 p 39. This abdicates the Council’s statutory siting authority.	Exception 1.2, 1.11, 3, 5
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.	Exception 1.2, 1.11, 3, 4
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	Exception 1.6, 1.7, 1.8, 7, 14

Table 1: Summary of Exceptions

Legend	
Color	Description
	Related to whether the draft habitat mitigation plan satisfies the mitigation goals for habitat quantity and quality (1.1, 1.4, 12 ¹ , 13) ¹ Regarding Mr. Alexanderson’s Exception 12, the Department agrees that the OAR 635-415-0025(2)(b)(B) mitigation goal for Category 2 habitat “no net loss of either habitat quantity or quality and to provide a net benefit of habitat quantity or quality” means <i>both</i> habitat quantity and quality must be preserved. The Department recommends Council not adopt Section 3.2.2 of the PCCO, which lacked clarity as to the meaning of that rule, and supplement the analysis of the Fish and Wildlife standard in Council’s Final Order. See changes presented in Attachment 1, the draft Final Order, p. 203 and Attachment 2, draft Amended PCCO (p.42), of this staff report.
	Related to whether Category 2 “avoidance” requires an alternative site analysis (1.2, 1.11, 3, 4, 5)
	Related to whether the proposed habitat mitigation area satisfies the in proximity definition. (1.3, 1.5, 2, 8, 9) ² ² The Department proposed changes to the Proposed Order in response to issues raised; changes are the subject of the material change hearing
	Related to whether indirect impacts of fencing have been adequately considered (1.6, 1.7, 1.8, 6, 7, 14)
	Procedural issues (motion for summary determination, burden of proof (1.9, 1.10, 10, 11) ³ ³ The Department agrees with Mr. Alexanderson’s Exception 11 and recommends that the Council amend the PCCO to omit the Hearing Officer’s reference to “rebuttable presumption”. See changes presented in Attachment 2, draft Amended PCCO (p. 5), of this staff report.

Exception No. and Statement	Related to:
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.	
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.	Exception 1.6, 1.7, 1.8, 6, 14
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. . .	Exception 1.3, 1.5, 2, 9
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.	Exception 1.3, 1.5, 8, 9
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.	Exception 1.9, 1.10, 11
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.	Exception 1.9, 1.10, 10
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.”	Exception 1.1, 1.4, 13
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.	Exception 1.1, 1.4, 12
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 unavailability, 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.	Exception 1.6, 1.7, 1.8, 6, 7

Mr. Alexanderson's exception filing is provided as Attachment 3 to this Staff Report. The applicant and Department responses to the above exceptions are provided in Attachments 4 and 5 to this Staff Report.

In its response to Mr. Alexanderson's exceptions 1.3, 1.5, 2, 8 and 9, the Department included publicly available information including a map and technical paper supporting the review of whether the applicant's proposed habitat mitigation area (HMA) is "in-proximity" to the facility site. Mr. Alexanderson requested leave to file a reply brief, given that the information had not been previously provided on the record. On August 13, 2026, Chair Condon issued a provisional order granting Mr. Alexanderson's request.

Three actions were taken at the August 21, 2026 meeting:

1. Review of Additional Evidence Submitted in the Department's Response to Exceptions and Mr. Alexanderson's Reply Brief – At the August 21, 2026, Council ratified the provisional order, allowing Mr. Alexanderson to file his reply briefs.

Council's Legal Counsel, Jesse Ratcliffe, explained the current process step, which is limited to the Council's review of the PCCO, exception and response to those exceptions. The record is closed. Therefore, the Council needed to decide whether to: 1) make its decision based on information in the record, acknowledging the ability at this phase to establish information or evidentiary requirements through conditions, mitigation plans, or modifications to conditions and mitigation plans; 2) initiate an allowable process whereby the Council re-opens the record for filing of direct evidence and a cross-examination hearing; or 3) remand the PCCO to the Hearing Officer to initiate a contested case proceeding, to re-open the record. Council voted on Option 1, to make its decision based on information in the record, and the proposed amended condition language proposed by the Department during the exceptions hearing, subject to a future material change hearing. Thus, while the Council ratified the provisional order granting Mr. Alexanderson leave to file his reply briefs, they agreed not to rely on or consider the new information provided by the Department in its exception response and by Mr. Alexanderson in his reply briefs.

2. Department's Proposed Modified Findings and Condition Language – During the hearing, the Department confirmed that the information provided in its response to exceptions need not be considered or relied upon and offered a condition and revised findings of fact, as presented below:

Recommended Fish and Wildlife Condition 8 (PRE): Prior to construction of the facility, facility component, or phase, as applicable, the certificate holder shall finalize the Habitat Mitigation Plan, as provided in Attachment P-3 of this Order, ~~based on the~~

demonstrating that the chosen HMAs are consistent with the in-proximity definition in OAR 635-415-0005(13), as approved by the Department in consultation with ODFW and based on:

- the impacts associated with the final facility design,
- the legal agreement required under Fish and Wildlife Condition 7, and
- Mapping of the HMAs, watershed boundary and big game home range based on ODFW's available technical data.

While ODFW did not explicitly address the OAR 635-415-0005(13) definition of "In-proximity Habitat Mitigation" in its comments on the proposed facility, the fact that ODFW recommended Tygh Ridge Ranch HMA indicates it concluded that the potential HMA meets the ODFW habitat mitigation rules, including the definition of "in-proximity" habitat mitigation. Council does not rely on any of the documents submitted by ODOE or Alvin Alexanderson in their respective briefs addressing Mr. Alexanderson's exceptions to the Hearing Officer's PCCO that were not already in the record on the Department's Proposed Order.

As described above, the draft HMP is in draft format. The applicant is not bound to utilize the Tygh Ridge Ranch as an HMA and may instead choose another location or locations to conduct habitat mitigation (or make payment to a mitigation bank). The question of whether (if an HMA is selected as part of the final HMP) the HMA is "in proximity" must ultimately be determined when the applicant finalizes the HMP and submits it to ODOE and ODFW for review, based on ODFW's interpretation of OAR 635-415-0005(13). To ensure compliance with the in-proximity requirement, pursuant to ORS 469.402, Council adopts the following condition, requiring that, prior to construction, the applicant document that the HMAs (including Tygh Ridge Ranch, if chosen) meet the definition of "in-proximity" in OAR 635-415-0005(13).

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 either 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.

Further, the proposed facility will not result in a net loss of BGWR Category 2 habitat; the proposed HMP will provide a net benefit for habitat quality through enhancement and uplift actions described in the HMP (including through planting shrubs and Oregon White Oak, controlling weeds, and removing fences and conducting long term monitoring).

3. Material Change Hearing – The Council determined that the Department's proposed changes to recommended Fish and Wildlife Condition 8 and associated recommended findings constituted a material change, warranting an opportunity by the parties to review and provide comments during a future material change hearing.

Review and Decision on Exceptions

The Council will review each exception, organized by common or overlapping topical areas, as presented in Table 1 and listed below. For the exceptions unrelated to the material change hearing, the Council will make a decision whether to modify or reject related portions of the PCCO. Following the material change hearing, the Council will make a decision on those remaining exceptions (Exceptions 1.3, 1.5, 2, 8, and 9).

Exceptions 1.1, 1.4, 12, 13

- Exceptions related to whether the draft habitat mitigation plan satisfies the mitigation goals for habitat quantity and quality
- As presented in its response to exceptions (Staff Report Attachment 5) and oral argument during the August 21, 2026 exceptions hearing, the Department agrees with Mr. Alexanderson's Exception 12 and recommends that the Council amend the PCCO related to the findings on habitat quantity and quality. See changes presented in Attachment 2, draft Amended PCCO (p.42), of this staff report.

Exceptions 1.2, 1.11, 3, 4, 5

- Exception related to whether Category 2 "avoidance" requires an alternative site analysis

Exceptions 1.6, 1.7, 1.8, 6, 7, 14

- Exceptions related to whether indirect impacts of fencing have been adequately considered

Exceptions 1.9, 1.10, 10, 11

- Exceptions related to procedural issues (motion for summary determination, burden of proof)
- As presented in its response to exceptions (Staff Report Attachment 5) and oral argument during the August 21, 2026 exceptions hearing, the Department agrees with Mr. Alexanderson's Exception 11 and recommends that the Council amend the PCCO, omitting reference to "rebuttable presumption". See changes presented in Attachment 2, draft Amended PCCO (p. 5), of this staff report.

Material Change Hearing

Council will provide an opportunity to the parties to comment on the changes proposed by the Department in response to Mr. Alexanderson's Exceptions 1.3, 1.5, 2, 8 and 9 (whether the proposed habitat mitigation area satisfies the in proximity definition). The changes are proposed to be included in the Proposed Order. These changes are presented in red-line in Attachment 1 (Proposed Order, As Amended, Section IV.H. and Attachment 1a of this Staff Report).

Council may determine the amount of time to be provided to each party.

Possible Final Order Issuance

At the August 21, 2026 meeting, Council reviewed the Proposed Order on the ASC, including recommended findings of fact, analysis and conclusions of law for the following standards:²

- General Standard of Review (OAR 345-022-0000) - Proposed Order Sec . IV.A p: 44-54
- Organizational Expertise (OAR 345-022-0010) - Proposed Order Sec. IV.B p: 54-62

² Council was provided a staff report for Agenda Item I for the August 20-21, 2026 meeting on August 14 to support their review of the Proposed Order, which is herein incorporated by reference.

- Structural Standard (OAR 345-022-0020) - Proposed Order Sec IV.C p: 62-71
- Soil Protection (OAR 345-022-0022) – Proposed Order Sec. IV.D p:72-85
- Land Use (OAR 345-022-0030) – Proposed Order Sec IV.E p:85-173
- Protected Areas (OAR 345-022-0040) – Proposed Order Sec IV.F p:173-174
- Retirement and Financial Assurance (OAR 345-022-0050) – Proposed Order Sec IV.G p:174-184
- Threatened and Endangered Species (OAR 345-022-0070) - Sec IV.I p: 203-205
- Scenic Resources (OAR 345-022-0080) – Proposed Order Sec IV.J p: 205-209
- Historic, Cultural and Archaeological Resources (OAR 345-022-0090) – Proposed Order Sec IV.K p:209-225
- Recreation (OAR 345-022-0100) – Proposed Order Sec IV.L p: 225-227
- Public Services (OAR 345-022-0110) – Proposed Order Sec IV.M p: 227-243
- Wildfire Prevention and Risk Mitigation (OAR 345-022-0115) – Proposed Order Sec IV.N p:243-258
- Waste Minimization (OAR 345-022-0120) – Proposed Order Sec IV.O p: 258-262
- Siting Standards for Transmission Lines (OAR 345-024-0090) – Proposed Order Sec IV.P p: 262-266
- Noise Control Regulations (OAR 340-035-0035) – Proposed Order Sec IV.Q p: 266-274
- Removal-Fill Law (ORS chapter 196 and OAR Chapter 141) – Proposed Order Sec IV.R p: 275-277
- Water Rights (OAR Chapter 690) – Proposed Order Sec IV.S. p: 277-279

During their review of the Proposed Order, Council requested that recommended findings presented in Section IV.G.1, Retirement and Financial Assurance, be revised for accuracy based on the information provided in the Retirement and Financial Assurance Exhibit of the ASC. The requested changes are presented in underline/strikethrough below:

Section IV.G.1.3 Ability of the Applicant to Obtain a Bond or Letter of Credit

“In an August 29, 2024 letter, the Director of Citi Bank (Citi), ~~describes~~ identifies a Decommissioning Cost currently projected to be approximately U.S. \$46,000,000. The letter continues stating that Citi would be highly interested in making the credit available to the Company in connection with the proposed facility. that ~~The letter continues by describing that upon request~~ submission of an application from the applicant’s parent company Shell USA, Inc, Citi Bank would issue a letter of credit during 2027 with a tenure of approximately 40 year(s), in an amount equal to the amount required to restore the proposed energy facility site to a useful, non-hazardous condition.³ While the letter does not provide a binding commitment from the bank, it indicates that the bank would be ~~comfortable~~ interested with potentially providing a letter of credit in the amount of approximately \$46 million dollars to the applicant. Citi Bank N. A. is a Council-approved financial institution which the Council has previously approved to provide letters of credit.”

Based on straw poll, Council concurred that the changes presented above should be reflected in the Final Order on the ASC.

³ YRBAPPDoc1-14 ASC Exhibit M. Financial Capability 2025-09-05, Attachment M-2.

The Council will take a straw poll on whether to adopt, modify or reject the Proposed Order.

The Council will then decide whether to issue a Final Order on the ASC, either approving or rejecting the ASC based upon the standards adopted under ORS 469.501 and any additional statutes, rules or local ordinances determined to be applicable to the facility by the project order, as amended. (ORS 469.370(7) and ORS 469.370(9)).