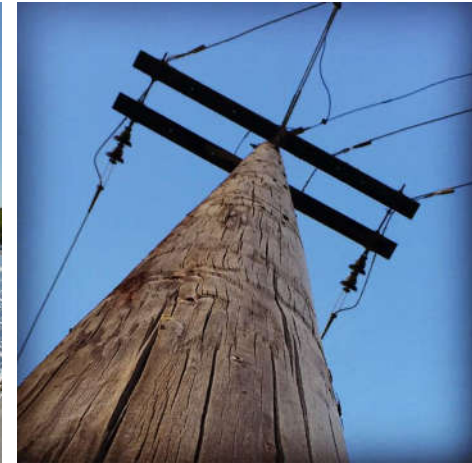


Oregon Department of **ENERGY**

Energy Facility Siting
Council Meeting

Clatskanie PUD
Community Room
495 E. Columbia River
Highway
Clatskanie

September 19-20, 2024



Opening Items:

- Call to Order
- Roll Call
- Announcements

Announcements:

- Reminder that this meeting is being held in its entirety via teleconference and webinar.
- Reminder to Council and to anyone addressing the Council to please remember to state your full name clearly, and do not use the speakerphone feature, as it will create feedback.
- You may sign up for email notices by clicking the link on the agenda or the Council webpage.
- You are also welcome to access the online mapping tool and any documents by visiting our website.



Announcements continued:

- Please silence your cell phones
- Please use the “Raise Your Hand” feature in Webex to speak during the public comment period, or press *3 to raise your hand if you are participating by telephone.
- Energy Facility Council meetings shall be conducted in a respectful and courteous manner where everyone is allowed to state their positions at the appropriate times consistent with Council rules and procedures. Willful accusatory, offensive, insulting, threatening, insolent, or slanderous comments which disrupt the Council meeting are not acceptable. Pursuant to Oregon Administrative Rule 345-011-0080, any person who engages in unacceptable conduct which disrupts the meeting may be expelled.



Agenda Item A (Action Item & Information Item)

Consent Calendar

- August 22-23 Council Meeting Minutes
- Council Secretary Report

September 19, 2024



Compliance Update: Incidents vs. Non-Compliance

Notification of Incidents (OAR 345-026-0170): Within 72 hours of occurrence, a certificate holder must report to the Department the following:

- Attempt by anyone to interfere with facility operation
- Significant natural or human-caused event (fire, explosion, spill)
- Fatal Injury

Issues of Non-Compliance (345-029-0010)

- Condition or circumstances that may violate the terms and conditions of a site certificate

Agenda Item B (Action Item)

Review of Mitigation Plan Amendments

Ash Woods, Compliance Officer, Oregon Department of Energy

September 19, 2024



Habitat Mitigation Plan Overview

- When impacts to wildlife habitat occur because of an EFSC-jurisdictional facility, a certificate holder must meet the goals of the Fish and Wildlife Habitat standard which implements the ODFW's Fish and Wildlife Habitat Mitigation.
- Habitat Mitigation Plans (HMPs) describe how a certificate holder will meet the mitigation obligation for the facility.
- To allow for adaptive management of mitigation sites, HMPs typically include a clause that allows for the HMP to be amended.
- Review and approval of amendments is delegated by Council to the Department.



Amendment Proposal Overview

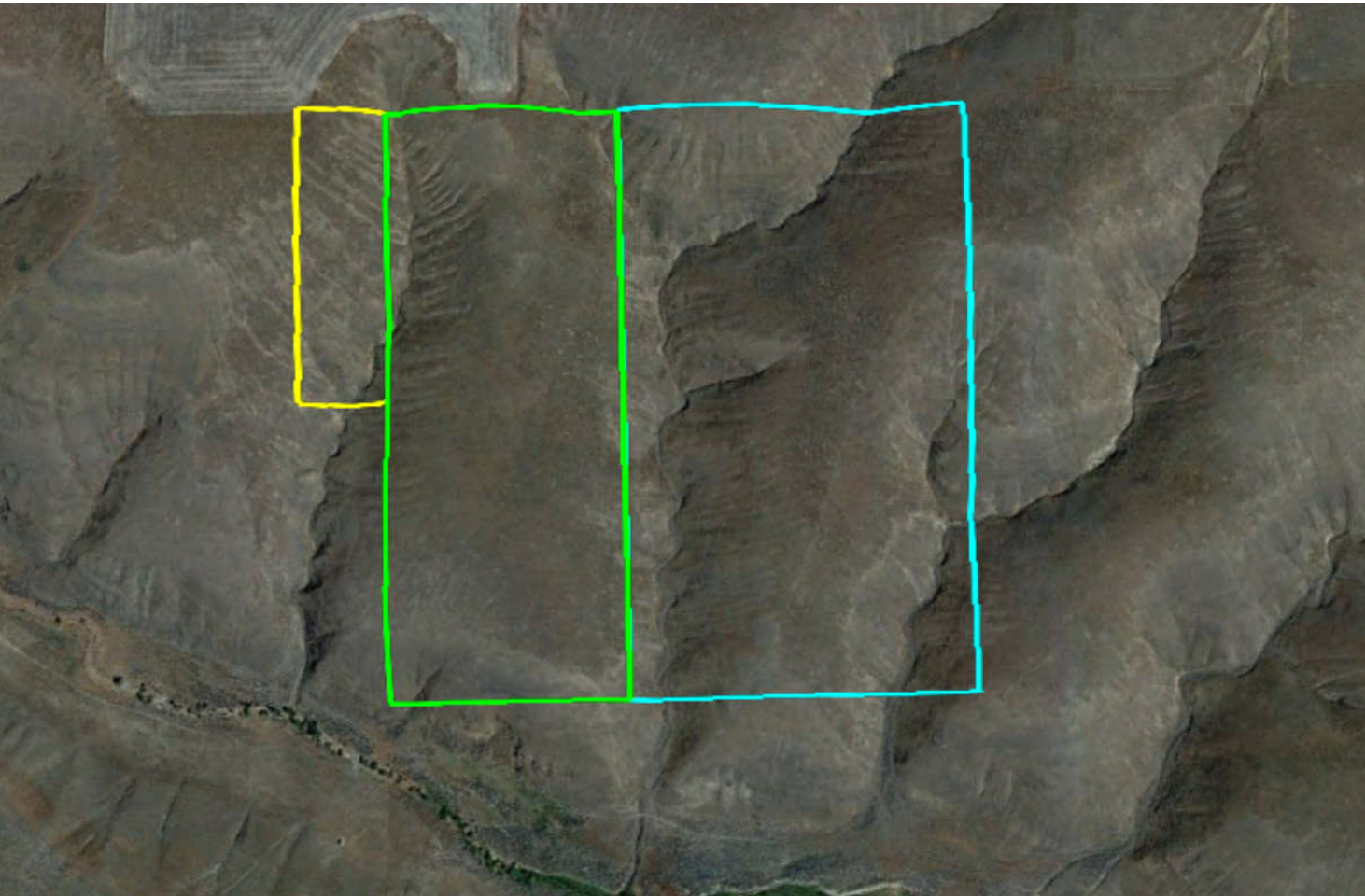
- The certificate holder (Avangrid) has requested amendments to three HMPs:
 - Golden Hills (Condition PRE-FW-01);
 - Leaning Juniper IIA (Condition 89)/Leaning Juniper IIB (Condition 89); and
 - Montague Wind Power Facility (Condition 93).
- The amendment request intends to facilitate routine monitoring and adaptive management of ecological conditions at the mitigation properties, which are directly adjacent to one another.
- Department recommendations are based on continuous consultation with and concurrence from ODFW.



Vicinity Map of Habitat Mitigation Areas



Map of Habitat Mitigation Areas



Golden Hills Wind HMA

Montague Wind HMA

Leaning Juniper IIA and IIB Wind HMA

Changes to All Three HMPs

Issue 1

The HMP stipulates a Fire Management Plan be prepared for the HMA. The certificate holder requests to instead incorporate fire management practices into the HMP.

Recommendation/Proposed Change

Remove reference to Fire Management Plan and replace with fire control management practices.

Issue 2

- The HMPs each have a different monitoring schedule despite being adjacent properties.
- The current monitoring schedule would reduce monitoring frequency to once every five years upon completion of an initial 10-year annual monitoring phase.

Recommendation/Proposed Change

Update monitoring schedule to a semi-annual (every other year) frequency for all facilities.



Golden Hills Wind HMP Amendment



Issue

The HMA has demonstrated natural sagebrush regeneration after removal of grazing, which satisfies the intended outcome of the original proposed enhancement action of 0.62 acres of supplemental sagebrush planting. Certificate Holder has requested the requirement to perform sagebrush planting be removed from the HMP.

Recommendation/Proposed Change

Remove sagebrush planting enhancement action. Add language to the HMP requiring coordination with ODFW and ODOE to implement a corrective action of either annual grass treatment or supplemental planting if the site shows a decline in sagebrush density in the future. Status of sagebrush community over time is documented in monitoring reports prepared by the Certificate Holder.

Leaning Juniper IIA and IIB HMP Amendment



Issue

The HMP includes avian surveys to be conducted every 5 years. ODFW and ODOE agree that avian use surveys have limited benefit for the purposes of habitat enhancement, and therefore should not be an ongoing requirement.

Recommendation/Proposed Change

Remove HMA avian survey language in Leaning Juniper HMP.

Montague Wind HMP Amendment



Issue

An artificial raptor nest structure was proposed as an enhancement action in the original HMP. However, based on lack of success in the region with these structures, ODFW has provided design recommendations which should be incorporated into the HMP as an amendment.

Recommendation/Proposed Change
Add a detailed, literature-based plan for design and installation of an artificial raptor nest structure.

Council Options

**Option 1 -
Recommended**

**Approve the
amendments as
recommended by staff**

Option 2

**Approve the
amendments with
changes**

Option 3

Deny the amendments

Three separate votes will be held; one for each respective Habitat Mitigation Plan amendment.



Council Deliberation



Agenda Item C (Information Portion)

Mist Underground Natural Gas Storage Facility Request for Amendment 13 Public Hearing on Draft Proposed Order

Kathleen Sloan, Senior Siting Analyst, Oregon Department of Energy

September 19, 2024

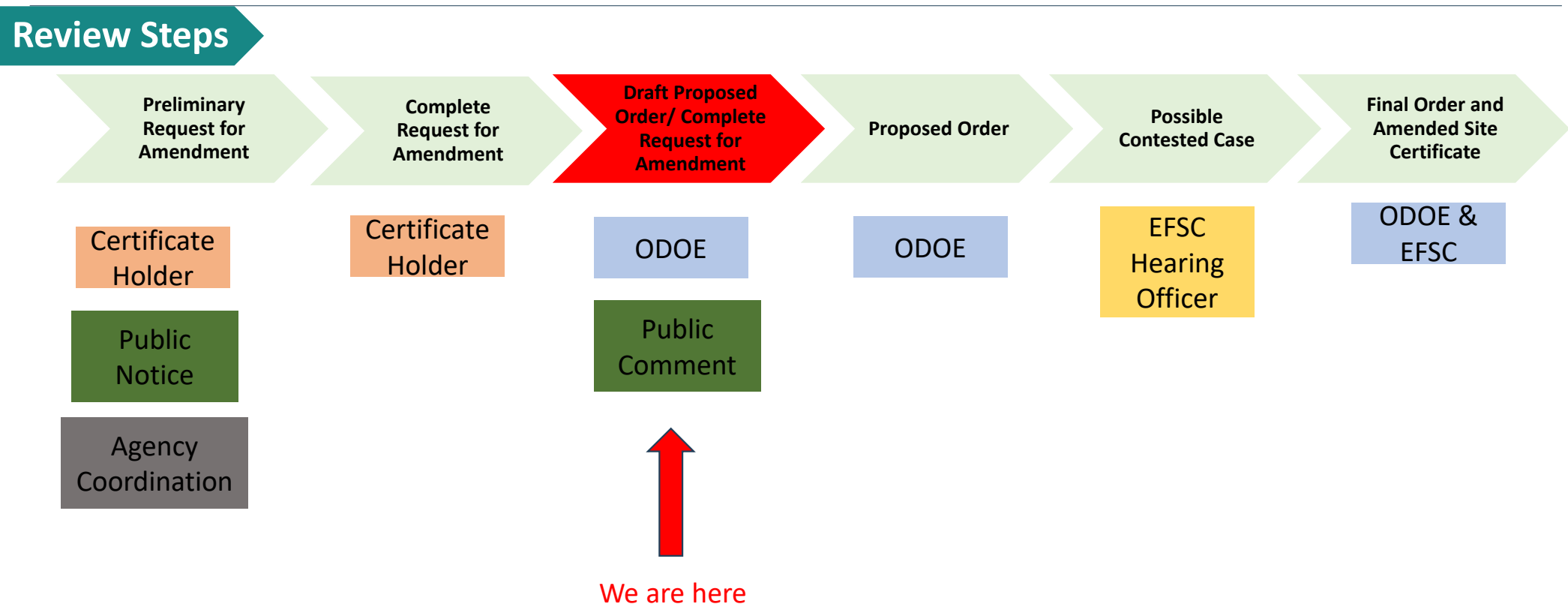


Mist Facility Request for Amendment 13

Agenda Item Overview

1. Facility Overview: Department overview of the siting process, approved facility components and location, the amendment request, and Draft Proposed Order.
2. Hearing Overview: EFSC Chair will provide overview of hearing process.
3. Public Hearing: Public, Council and Applicant Comments/Testimony

Mist Facility Request for Amendment 13



Mist Facility Request for Amendment 13

Approved Mist Facility

- EFSC Site Certificate issued on June 19, 1981 and has been amended 12 times. The approved facility includes naturally occurring underground natural gas storage reservoirs, which NWN has retrofitted to allow pipeline quality natural gas injection and underground storage during off-peak periods and withdrawal when market demand exceeds available supplies from other sources.
- Related or supporting surface facilities currently include compressors, pipelines, control equipment, dehydration and auxiliary systems, most of which are located at NWN's Miller Station.
- Other related surface facilities include gathering lines and facilities for maintenance and operations staff.



Mist: Approved Facility

Certificate Holder

Northwest Natural Gas Company (NWN)

Facility Type

Natural Gas

Capacity

635 million standard cubic feet permitted daily natural gas throughput

Site Boundary

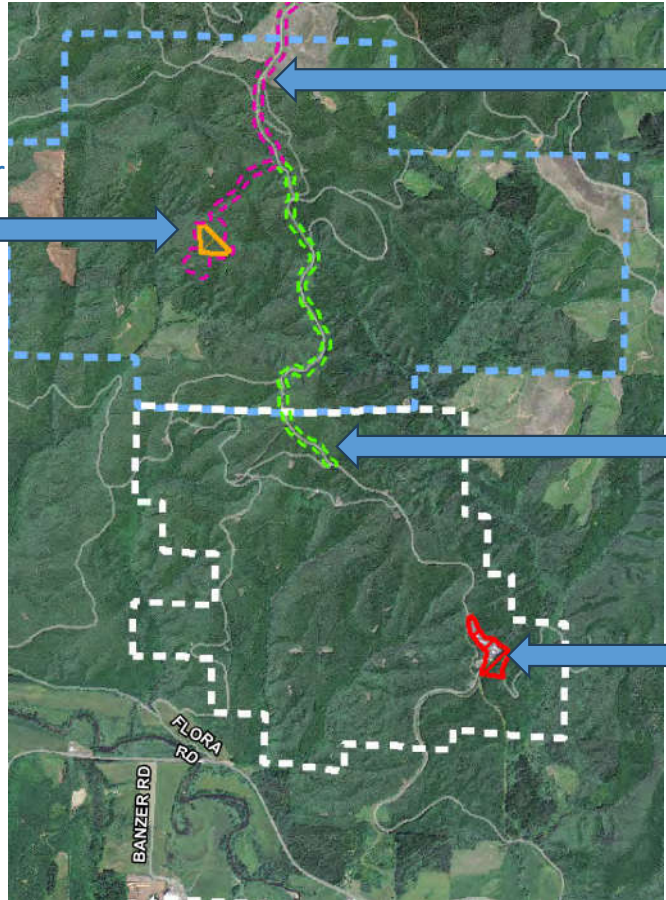
5,472 acres private land in Columbia County, near the town of Mist, Oregon.

North Mist Compressor Station (NMCS)

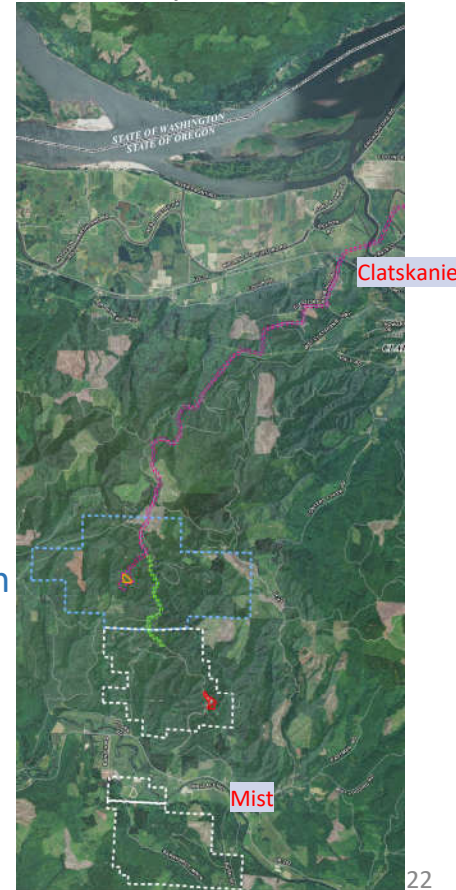
Gas Pipeline

Powerline

Miller Station



Facility Overview



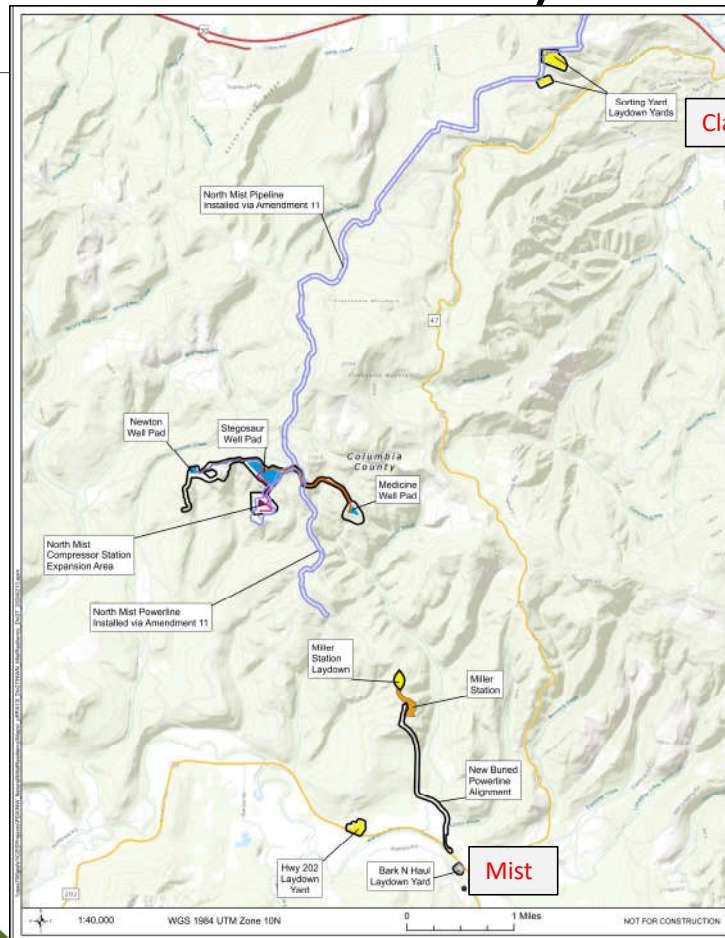
Mist Facility Request for Amendment 13

RFA13 Proposed Changes

RFA13 changes will increase allowable throughput of natural gas from 635 MMscfd to 835 MMscfd.

Facility Component	Approved Facility	RFA13 Requested Changes
Storage Site Boundary	5,472 acres	No Change in Site Boundary
Daily throughput	635 MMscfd	Increase 200 MMscfd
Installed compression equipment	19,150 BHP	28,700 BHP
Developed storage reservoirs	Bruer, Flora, Calvin Creek, and Adams (existing)	Develop Crater (approved) and add (new), Medicine, Newton and Stegosaur
Electrical feeds	3.1 miles	1.6 miles, replaced
Transmission pipelines	~ 15 miles	Up to an additional 2.6 miles
Temporary laydown/staging areas	N/A	Add 4 new areas - 31 acres

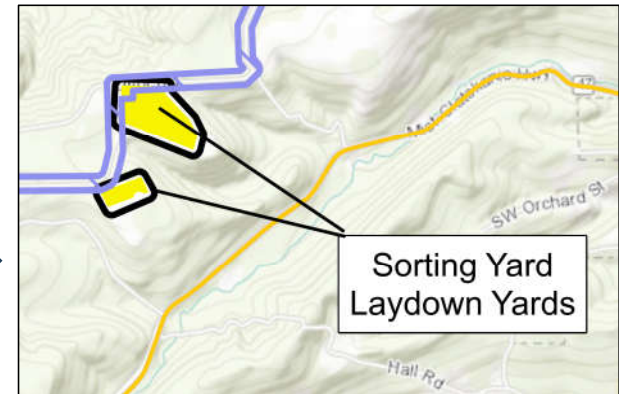
Mist Facility Request for Amendment 13



Clatskanie

← Facility Overview with RFA13 Changes

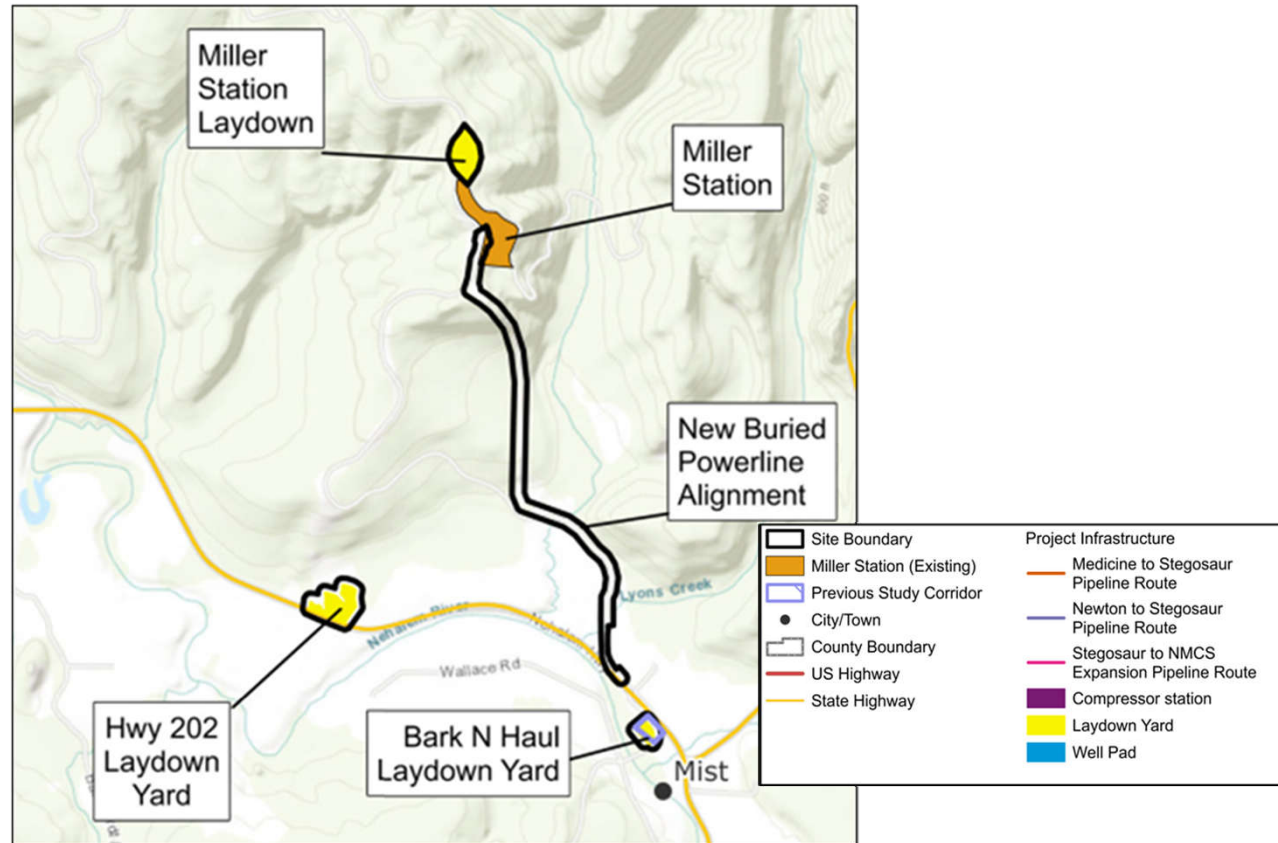
Temporary Laydown Areas →



Mist Facility Request for Amendment 13

RFA13 Proposed Changes to Miller Station

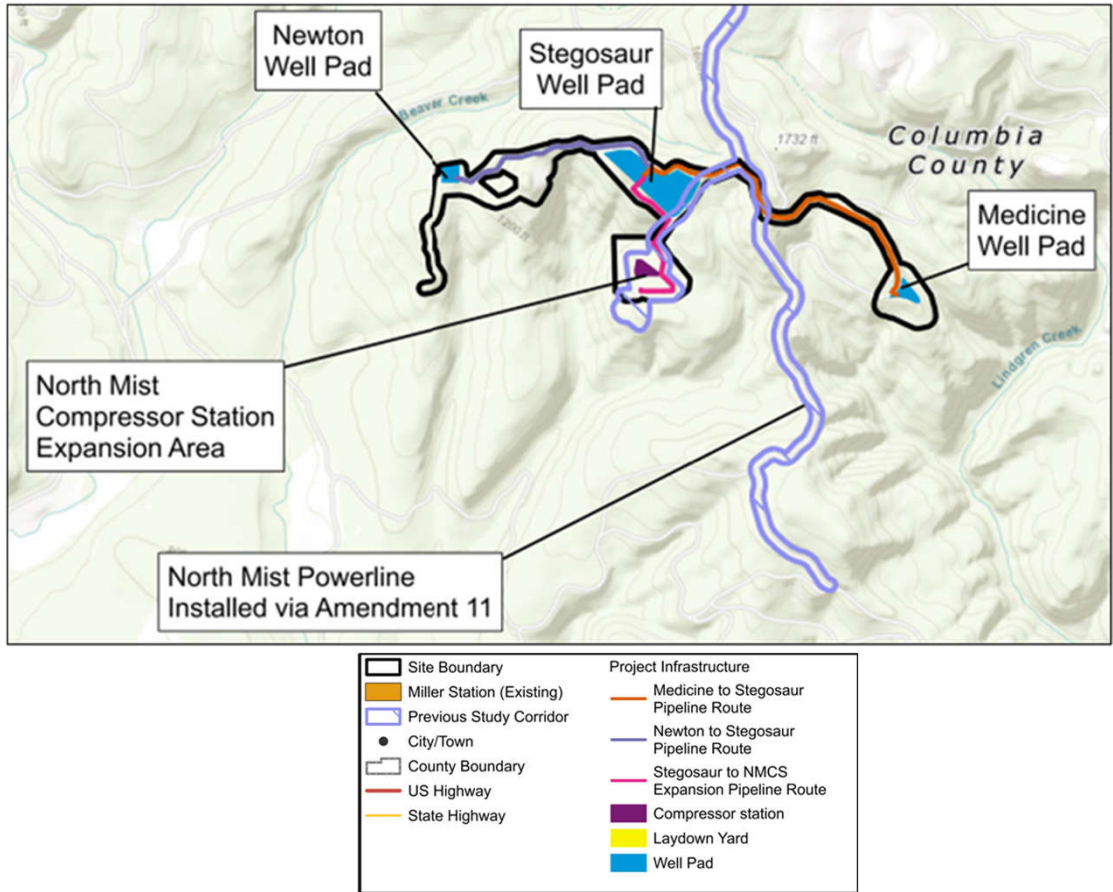
- Replace two existing (end of life) natural-gas fired turbines;
- Replace 1.6 miles of existing (end of life) underground distribution powerline from Highway 202 to Miller Station; and,
- Increase the fenced boundary of Miller Station by adding approximately 7.52 acres adjacent to the existing station to use as a laydown area and permanent storage yard.



Mist Facility Request for Amendment 13

RFA13 Proposed Changes to North Mist Compressor Station (NMCS)

- Install approximately 2.6 miles of underground gas transmission pipelines to connect 3 new storage reservoirs to the NMCS;
- Add three reciprocating gas fired compressors;
- Add two dehydration trains, new air compressor, inlet and outlet coalescing filters, two new back-up power generators, fuel gas heater, skidded fuel gas regulators, and a power transformer;
- Add four new buildings: an O&M control building, a Power Distribution Center, compressor building, dehydration regeneration building, and associated equipment.



Mist Facility Request for Amendment 13

Scope of Council's Review

- In**
- Everything proposed in Amendment 13

- Out**
- Anything previously approved under the original site certificate or the 12 amendments
 - Wells - Storage or Injection Withdrawal Wells either Enerfin or of NW Natural (DOGAMI)
 - Well Heads (DOGAMI)
 - Fracking

Mist Facility Request for Amendment 13

Draft Proposed Order

Council Standards with no recommended new or amended conditions

In the DPO, the Department recommends that the changes proposed in RFA13 would not necessitate new or amended site certificate conditions for the following applicable standards/requirements:

- **Protected Areas** (See DPO, Section III.F, pp: 84-98)
- **Threatened and Endangered Species** (See DPO, Section III.I, pp: 114-122)
- **Scenic Resources** (See DPO, Section III.J, pp: 122-130)
- **Recreational Opportunities** (See DPO, Section III.L, pp: 133-148)
- **Need Standard for Non-generating Facility** (See DPO, Section IV.A, pp: 176-177)
- **Public Health and Safety Standards for Surface Facilities Related to Underground Gas Storage Reservoirs** (See DPO, Section IV.B, pp: 177-178)
- **Siting Standards for Transmission Lines** (See DPO, Section IV.C, pp: 178-179)
- **Noise Control Regulations** (See DPO, Section V.A, pp: 187-193)
- **Water Rights** (See DPO, Section V.C, p: 203)

Mist Facility Request for Amendment 13 Draft Proposed Order

Council Standards with new recommended conditions

In the DPO, the Department recommends that the changes proposed in RFA13 would require new site certificate conditions for the following applicable standards/requirements, but those new conditions are generally standardized requirements for facilities:

- **General Standard of Review** (See DPO, Section III.A, pp: 22-27)
- **Organizational Expertise** (See DPO, Section III.B, pp: 27-31)
- **Structural Standard** (See DPO, Section III.C, pp :31-45)
- **Land Use Standard** (See DPO Section III.E, pp: 55-84)
- **Retirement and Financial Assurance Standard** (DPO Section III.G, pp. 98-103)
- **Historic, Cultural and Archaeological Resources** (See DPO, Section III.K, pp: 130-133)

The following slides will cover a selection of standards with recommended new conditions that are intended to address RFA13-specific impacts.

Mist Facility Request for Amendment 13 Draft Proposed Order

Soil Protection Standard (DPO Section III.D, pp. 45-55)

Key findings:

- Construction will include trenching, excavating, horizontal directional drilling (HDD), vegetation removal, grading and levelling work and the use of heavy equipment, laydown areas, and access roads.
- The use of HDD to bypass Lindgren and Lyons Creeks for the powerline replacement requires an approved HDD Inadvertent Return Response Plan.
- Construction is estimated to have 65.1 acres of temporary impacts and 27.7 acres of permanent impacts.

Recommended Soil Protection Conditions 3 and 4 - require the submittal of, and adherence to, a final HDD Inadvertent Return and Response Plan during the use of HDD for construction.

Mist Facility Request for Amendment 13 Draft Proposed Order

Fish and Wildlife Habitat Standard (DPO Section III.H, pp: 103-114)

Key findings:

- RFA13 changes would result in approximately 63.7 acres of temporary disturbance and up to 27.7 acres of permanent habitat impacts to Category 3, 4 and 6 habitat types.
- RFA13 changes will result in approximately 26.90 acres of permanent impacts to Category 3 habitat requiring a 1:1 mitigation ratio.
- Certificate holder proposes to mitigate permanent impacts through a Habitat Mitigation Plan to be implemented at an approved Habitat Mitigation Area.
- Temporary impacts to habitat will be restored upon construction completion. Requires a plan.

Recommended Fish and Wildlife Conditions 1 and 2 – require final approved Restoration of Temporary Impacts Plan similar to draft in DPO Attachment P-1.

Recommended Fish and Wildlife Conditions 3 and 4 – require final, approved Habitat Mitigation Area and an approved Habitat Mitigation Plan similar to draft in DPO Attachment P-3.

Mist Facility Request for Amendment 13 Draft Proposed Order

Public Services Standard (DPO Section III.M, pp: 148-155)

Key findings:

- For construction: approximately 2 million gallons of water over a 5-year period.
- Water would be obtained from a third-party with an existing water right including Knappa Water Association and Mist Birkenfeld Fire Department.
- For operations: 72,000 gallons of potable water would be used annually obtained from a local municipal water source or an existing well at Miller Station.
- Up to 112 workers during peak construction and 12 new, fulltime workers for operations.
- Columbia County Sheriff's Office is the primary law enforcement agency.
- Clatskanie Rural Fire Protection District (RFPD) and Mist-Birkenfeld RFPD service areas.

Recommended Public Services Condition 1 – requires the certificate holder to obtain water from permitted source.

Recommended Public Services Condition 2 – requires an agreement with the Clatskanie RFPD to pay proportionate share of the costs to upgrade pump system at Flemming Pond.

Mist Facility Request for Amendment 13 Draft Proposed Order

Wildfire Prevention and Risk Mitigation Standard (DPO Section III.N, pp: 155-174)

Key findings:

- Overall wildfire risk is moderate to high within the RFA13 site boundary and analysis area.
- Analysis area is primarily forested lands managed for timber harvest. Areas that have higher wildfire risk are the areas where there is existing infrastructure such as the operational facility, roads, residences, agricultural equipment, and community areas.
- Clatskanie Rural Fire Protection District (RFPD) and Mist-Birkenfeld RFPD
- Oregon Department of Forestry (ODF), per Industrial Fire Precaution Level (IFPL) and Fire Season Requirements apply in active timber managed forested lands within analysis area.

Recommended Wildfire Prevention and Risk Mitigation Conditions 1 and 2 - require Wildfire Mitigation Plans for RFA13 Construction and Operations phases to include applicable ODF requirements, including use of ODF inspection forms, or comparable form as approved by the Department. (See DPO Attachments V-1 and V-2)

Mist Facility Request for Amendment 13 Draft Proposed Order

Waste Minimization Standard (DPO Section III.O, pp: 174-176)

Key findings:

- Recyclable materials from construction will be recycled per the NWN Waste Management Plan, including scrap and materials from the removal of equipment to be replaced during RFA13 construction.
- Construction activities are estimated to generate 4,281 cubic yards of non-recyclable waste. Non-recyclable construction-related waste to be disposed of at Coffin Butte Landfill in Corvallis, Oregon.
- Solid waste and recyclable materials generated during operations will be recycled and disposed of per the NWN Waste Management Plan.

Recommended Waste Minimization Condition 1 – requires the adherence to the NWN Waste Minimization and Recycling Plan during all phases (See DPO Attachment W).

Mist Facility Request for Amendment 13 Draft Proposed Order

Standard for Non-generating Energy Facility (that emits carbon) (Section IV.D, pp: 179-183)

Key findings:

- RFA13 changes include construction and operation of 3 new natural-gas fired compressors at the North Mist Compressor Station (NMCS) and replacement of 2 existing turbines at Miller Station.
- CO2 Offset Amount: (Est. CO2) minus (Allowable CO2) = (Required CO2 Reduction 30 yrs)
- NMCS: (713,155 tons – 347,980 tons = 365,175 tons CO2 for 30 years)
- Miller Station: (707,162 tons – 324,781 tons = 382,381 tons CO2 for 30 years)

Recommended Carbon Dioxide Emissions Condition 1: Requires proof of final equipment design and final estimated emissions report to the Department, including specifics for the engine-driven compressors and turbines used to calculate total emissions and offset amounts required for RFA13.

Mist Facility Request for Amendment 13 Draft Proposed Order

Means of Compliance for Nongenerating Energy Facilities (Section IV.E, pp: 183-187)

Key findings:

- The monetary path payment required to offset excess emissions, based on a 30-year operational lifetime of the proposed NMCS, is estimated at \$61,987.
- NWN has elected to comply by providing the required monetary payment to The Climate Trust.

Recommended Carbon Dioxide Emissions Condition 2: Requires written proof of monetary path payment calculations, and before beginning construction of compressors at Miller Station or NMCS, and payment in full to The Climate Trust.

Recommended Carbon Dioxide Emissions Condition 3: Requires annual reporting to calculate the actual excess carbon dioxide emissions during each annual carbon dioxide reporting period and subtract those emissions from the offset credit account annually.

Mist Facility Request for Amendment 13 Draft Proposed Order

OTHER APPLICABLE REGULATORY REQUIREMENTS: Removal Fill (Section V.B, pp: 193-203)

Key Findings:

- 19 wetlands and nine other water features were delineated in the RFA13 analysis area
- Based upon the wetland delineation and the RFA13 facility design will have potential impacts to wetlands, requiring either a removal-fill permit or a General Authorization for temporary Impacts from Department of State Lands (DSL).
- Certificate holder proposes RFA13 impacts will be temporary impacts and plans to apply for a General Authorization permit from DSL for RFA13 impacts.

Recommended Removal Fill Law Condition 1 – requires adherence to HDD Restoration of Temporary Impacts Plan to minimize and avoid impacts to wetlands and waters of state.

Recommended Removal Fill Law Conditions 2 and 3 – require the certificate holder to obtain and adhere to either a General Authorization or Removal Fill permit for construction.

Mist Facility Request for Amendment 13 Draft Proposed Order

Staff Recommendation in Draft Proposed Order on Request for Amendment 13

The Oregon Department of Energy recommends that the Energy Facility Siting Council (Council) find that Northwest Natural Gas Company demonstrates that the preponderance of evidence on the record supports the conclusion that the facility, with the proposed Request for Amendment 13 changes, complies with the applicable laws and Council standards that protect a resource or interest that could be affected by the proposed changes.

Public Participation at DPO Phase – Type A

- **Threshold for a contested case for a Type A Amendment:**

- Council must find that the request raises a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards.

- **Council Options on Requests for a Contested Case:**

- Hold a contested case –properly raised issue(s) could affect the Council's determination
- Remand Proposed Order to Department - properly raised issue(s) could be addressed through new findings and/or conditions
- Deny – request does not include properly raised issue(s)

- **Contested Case Youtube Video** - A ten-minute video describing the Type A Amendment Contested Case threshold is available, and the link was included in the Public Notice.

Agenda Item C (Hearing Portion)

Mist Underground Natural Gas Storage Facility Request for Amendment 13 Public Hearing on Draft Proposed Order

Presiding Officer – Kent Howe, Chair, EFSC

September 19, 2024



Mist Facility Request for Amendment 13 Draft Proposed Order – Public Hearing

Consideration of Issues that Justify a Contested Case

A person who intends to raise any issue that may be the basis for a contested case must raise an issue:

- that is within the jurisdiction of the Council;
- in person at the hearing or in a written comment submitted to the Department of Energy before the close of the public hearing;
- with sufficient specificity to afford the Council, the Department of Energy and the certificate holder an adequate opportunity to respond, including a statement of facts that support the person's position on the issue.



Mist Facility Request for Amendment 13 Draft Proposed Order – Public Hearing

Order of Oral Testimony and Comments for this Public Hearing

1. Certificate Holder (testimony or additions to record)
 - Members of Council may ask clarifying questions.
2. Members of the Public (will be called on in the following order):
 - Oral in-person testimony
 - Oral testimony via WebEx
 - Oral testimony via phone
3. Members of Council
4. Certificate Holder's Responses to Comments (optional)



Mist Facility Request for Amendment 13 Draft Proposed Order – Public Hearing

Testimony

Prior to Testifying, state the following:

- Full name with spelling
- Name of organization or group if you are representing one
- Physical mail or email address if you wish to receive notice of the Proposed Order which includes a description of how to submit a request for contested case

Please Note: If you do not wish to provide your mailing or email address in this format, you may email it to the Department at kathleen.sloan@energy.oregon.gov or call (971) 701-4913 and provide the information, including spelling, in a voicemail.



Mist Facility Request for Amendment 13 Draft Proposed Order – Public Hearing

Certificate Holder

The certificate holder may provide/present on anything in the Draft Proposed Order and/or may submit additional information/evidence to supplement the record.

Presiding Officer or Council Members may ask clarifying questions.

Mist Underground Natural Gas Storage Resiliency Project

September 19, 2024



About NW Natural

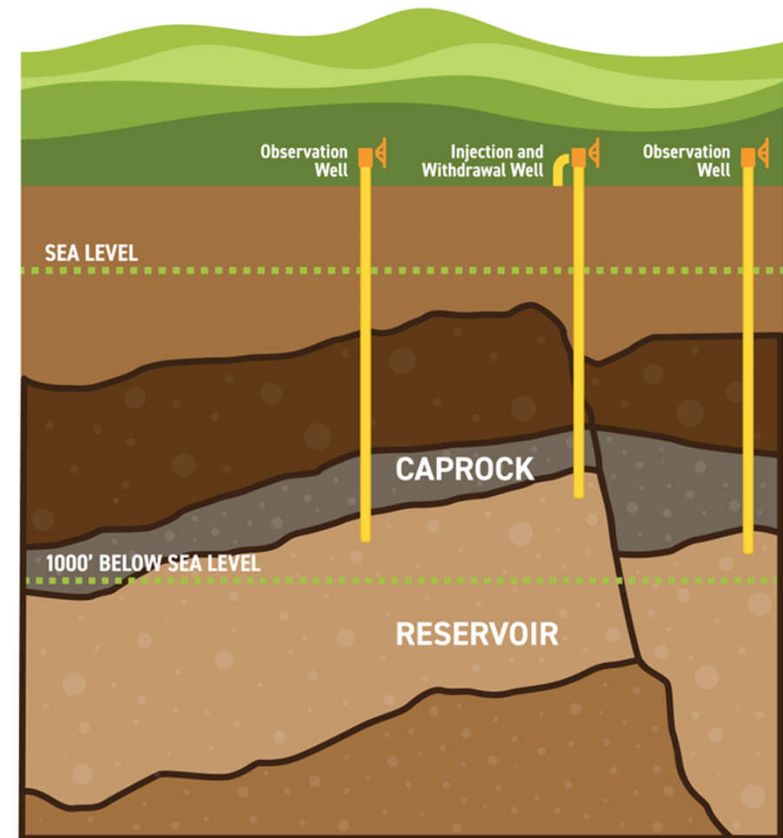
- Largest independent natural gas utility in the Pacific Northwest, founded in 1859
- Serves about 2 million people in Oregon and Southwest Washington
- Nearly 1,200 employees
- Regulated by Oregon Public Utility Commission (OPUC) and Washington Utilities and Transportation Commission (UTC), in addition to multiple other local, state and federal agencies



Mist Storage Site utilizes existing natural gas reservoirs



- Ideally located within NW Natural's service territory, allowing for efficient gas delivery with less pipelines
- Geological conditions include sandstone zones of reservoir quality that are used to store gas
- Oregon Department of Geology and Mineral Industries (DOGAMI) permits well construction and gas injection through ORS 520 and OAR 632-010
- Pipeline and Hazardous Materials Safety Administration (PHMSA) regulates underground gas storage through 49 CFR 192.12 and 49 CFR 192.7

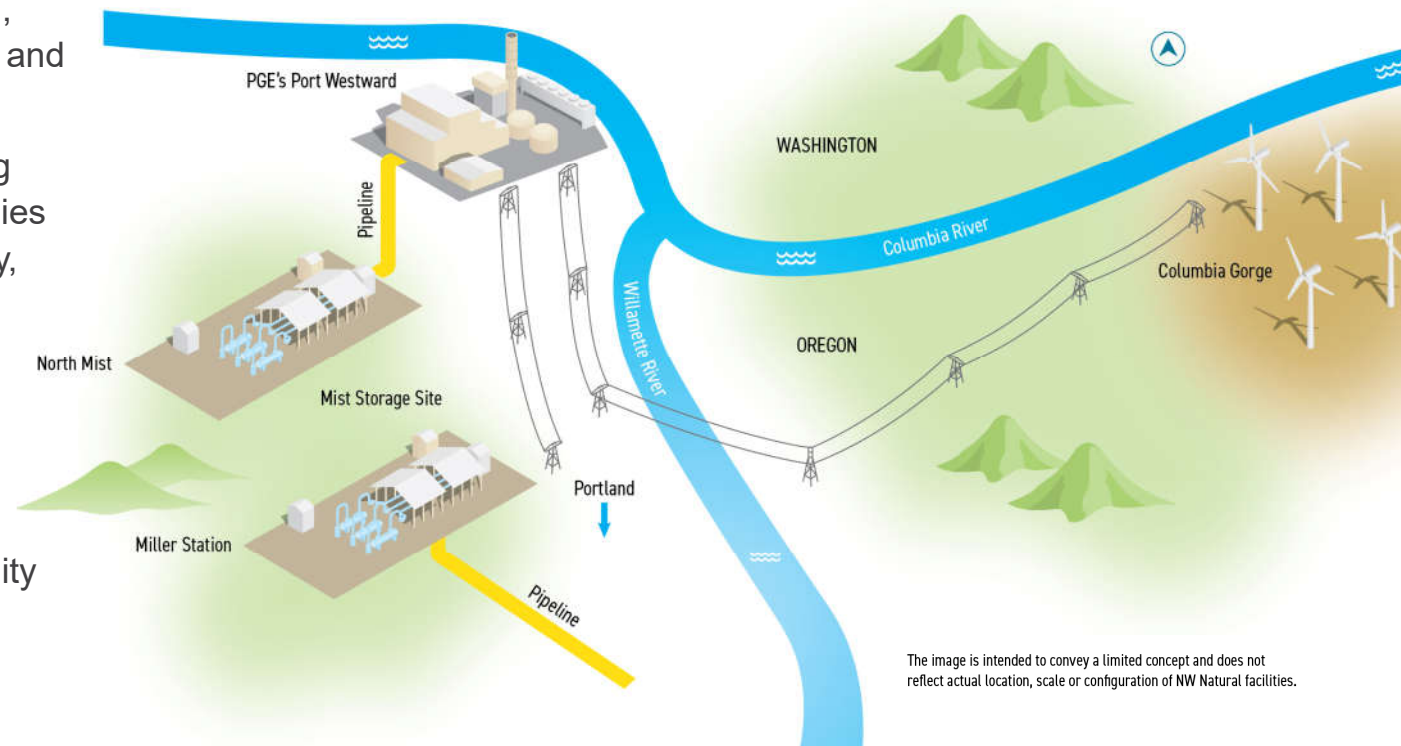


The image is intended to convey a limited concept and does not reflect actual location, scale or configuration of NW Natural facilities.

Mist is an underground Natural Gas Storage Facility

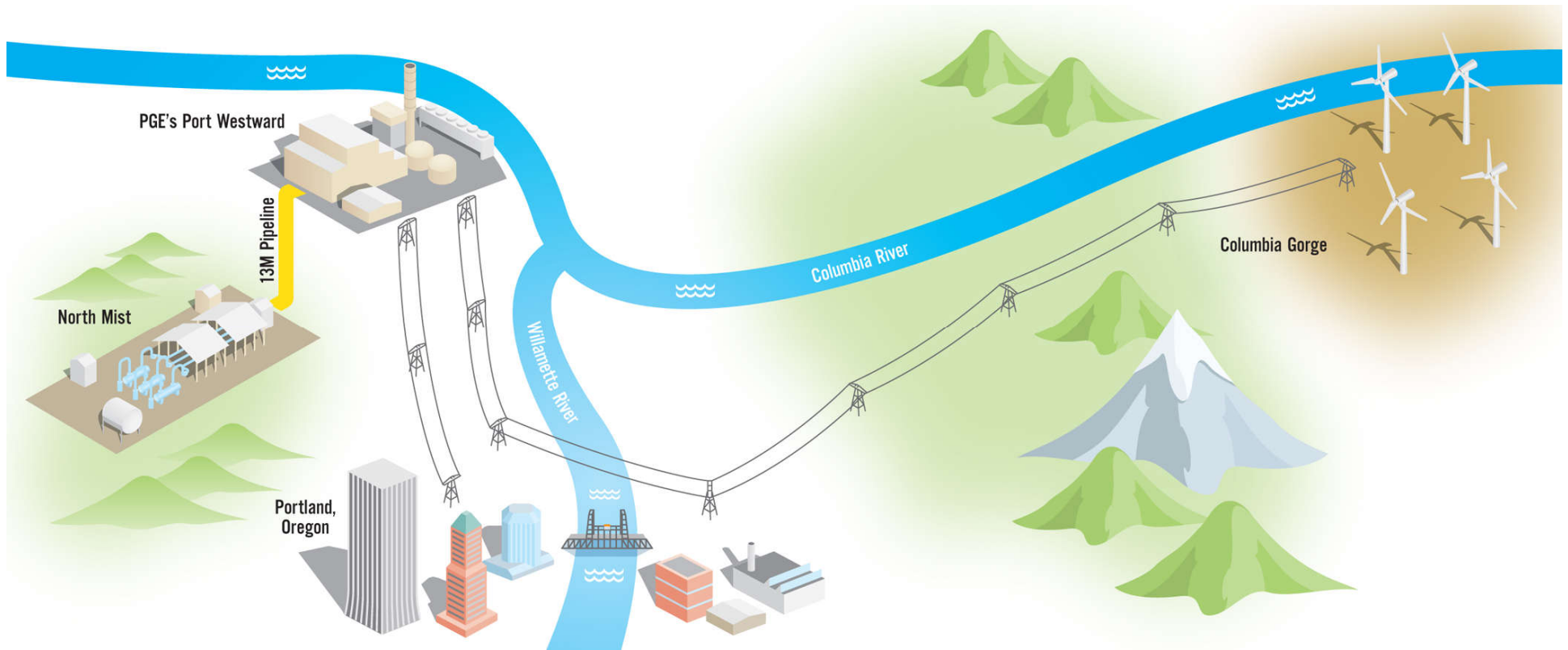


- Consists of underground natural gas storage reservoirs, associated piping, compressor stations, and operations and maintenance facilities
- Provides efficient means of balancing relatively constant pipeline gas supplies with widely fluctuating seasonal, daily, and hourly market requirements
- Current Capacity:
 - 8 Storage Reservoirs in Operation
 - 21.6 Billion Cubic Feet (BCF) Working Gas Capacity
 - 635 MMscfd Max. Daily Deliverability
 - Equivalent to about 6 million MWh of energy



The image is intended to convey a limited concept and does not reflect actual location, scale or configuration of NW Natural facilities.

North Mist Project is part of the Approved Mist Facilities



Commenced service - May 24, 2019

Storage Capacity - 4 BCF

Mist Storage has two compressor stations, one serving core customers and one PGE



Miller Station

- 17.5 BCF working capacity
- 515 million cubic feet per day (MMSCFD) max withdraw rate
- 15,400 total compression hp
- 7 reservoir pools



North Mist

- 4.1 BCF working capacity
- 120 MMSCFD max withdraw rate
- 3,750 total compression hp
- 1 reservoir pool

Miller Station's two turbine compressors are due for replacement



- Compressors are over 20 years old with more than 40,000 hours
- 30,000 hours is the typical end-of-life of the main turbine compressor driver



GC500-Installed late 90's



GC600-Installed early 2000's

Two studies were conducted to determine the best path to reliable operations



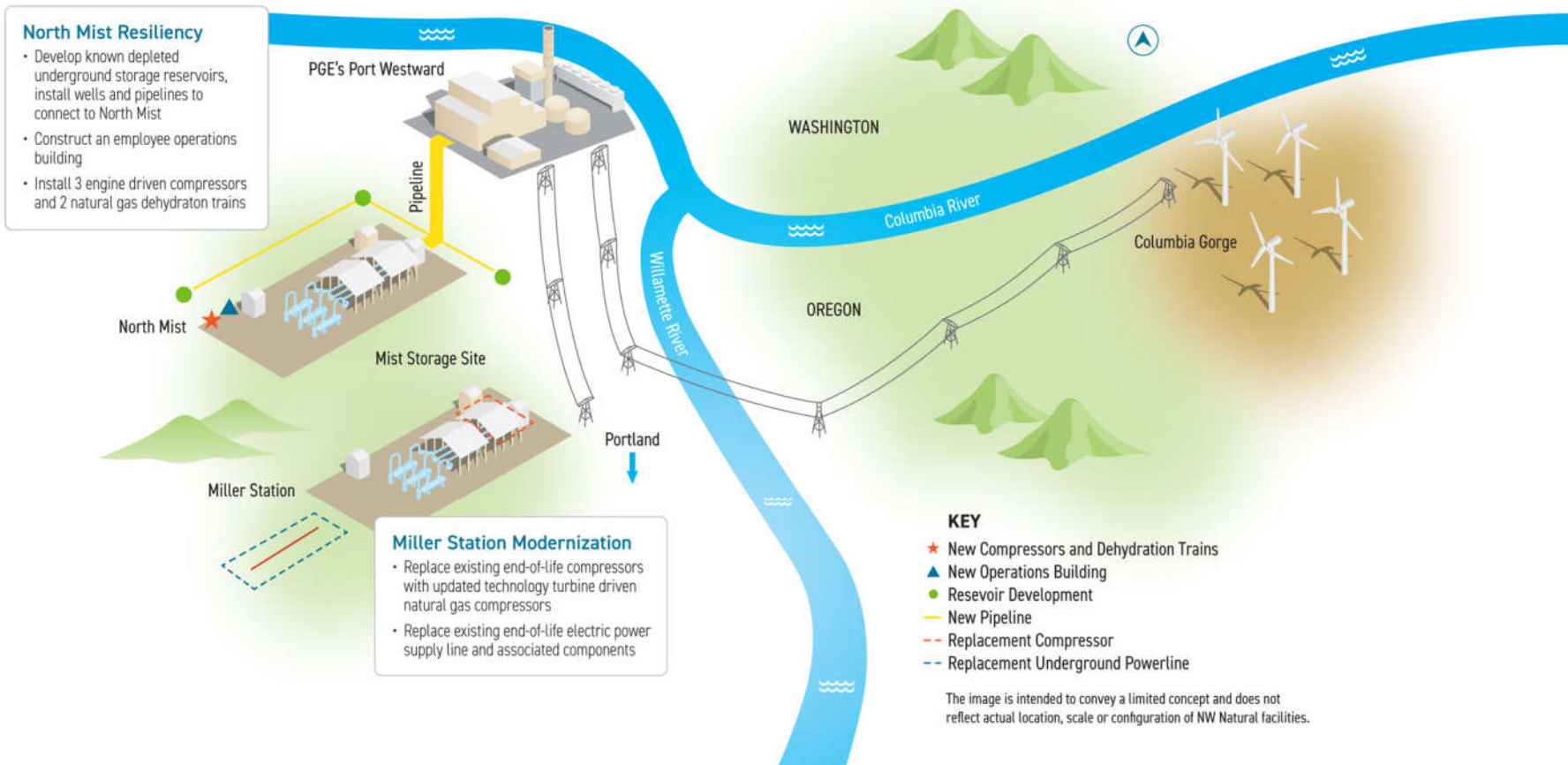
AECOM STUDY 2020

- Analyzed the operating profile of the facility for optimal compressor configurations
- Implemented recommended actions:
 - Rebuild reciprocating compressors and upgrade supporting equipment
 - Overhaul turbines, identify root cause of failures and resolve them

BURNS & MCDONNELL STUDY 2020

- Updated analysis of turbine failures and options with more years of operational experience of the equipment at its end-of-life status
- Recommended replacement of the turbines with industrial turbine-based equipment

Mist Resiliency Project



Thank You

Mist Facility Request for Amendment 13 Draft Proposed Order – Public Hearing

Written Comments

Written comments on the Request for Amendment 13 and/or the Draft Proposed Order and may be submitted until the close of this Hearing. Written comments may be submitted prior to the close of this hearing:

- Via online siting comment portal: <https://odoe.powerappsportals.us/en-US/SitingPublicComment/>
- Via email: kathleen.sloan@energy.oregon.gov
- Hand delivery to one of the staff members or by mail to: Oregon Department of Energy; 550 Capitol St. NE; Salem, OR, 97301



Mist Facility Request for Amendment 13 Draft Proposed Order – Public Hearing

Public Testimony

Members of the public may comment on the Draft Proposed Order and/or the RFA13.

7 Minute Time Limits

Presiding Officer or Council Members may ask clarifying questions.

How to Raise Your Hand in Webex:

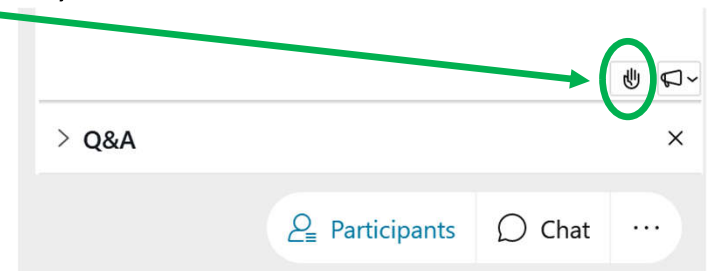
Webinar Participants

The bottom right of the main window is a set of icons:

Click on “Participants”

The bottom right of the participant window is a hand icon, click on the hand:

Clicking on it again will lower your hand.



Phone Participants

Press *3 on your telephone keypad to raise your hand.

Press *3 again on your telephone keypad to lower your hand.

Mist Facility Request for Amendment 13 Draft Proposed Order – Public Hearing

Request for 30-day Extension to Comment Deadline

A written comment was received on August 28, 2024 from Audrey Leonard, Staff Attorney with Columbia Riverkeeper.

Columbia Riverkeeper requested a 30-day comment deadline extension to comment on the Draft Proposed Order.



Council Options for Motion on 30-day Comment Deadline Extension Request

Option 1

**Approve the Request
for good cause**

Option 2

Deny the Request

Council Deliberation



Mist Facility Request for Amendment 13 Draft Proposed Order – Public Hearing

Council

Council may comment about any concerns they have related to the Draft Proposed Order and/or the RFA13.



Mist Facility Request for Amendment 13 Draft Proposed Order – Public Hearing

Certificate Holder's Responses to Comments

The certificate holder may respond to any comments by:

- Providing oral responses
- Submitting additional information/evidence to supplement the record
- Requesting that the Presiding Officer extend the record to submit additional information/evidence to supplement the record

Public Hearing Closed

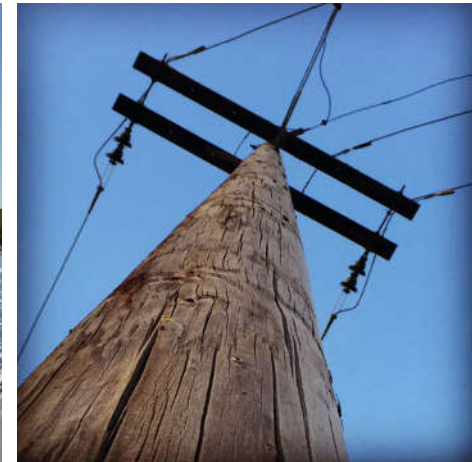


Oregon Department of **ENERGY**

Energy Facility Siting
Council Meeting

Clatskanie PUD
Community Room
495 E. Columbia River
Highway
Clatskanie

September 19-20, 2024



Agenda Item D (Action Item)

Wagon Trail Solar Project Council Review/Decision of Proposed Order on Application for Site Certificate

**Chase McVeigh-Walker, Senior Siting Analyst,
Oregon Department of Energy**

September 20, 2024



Wagon Trail Solar Project: Council Review of Proposed Order/Final Decision

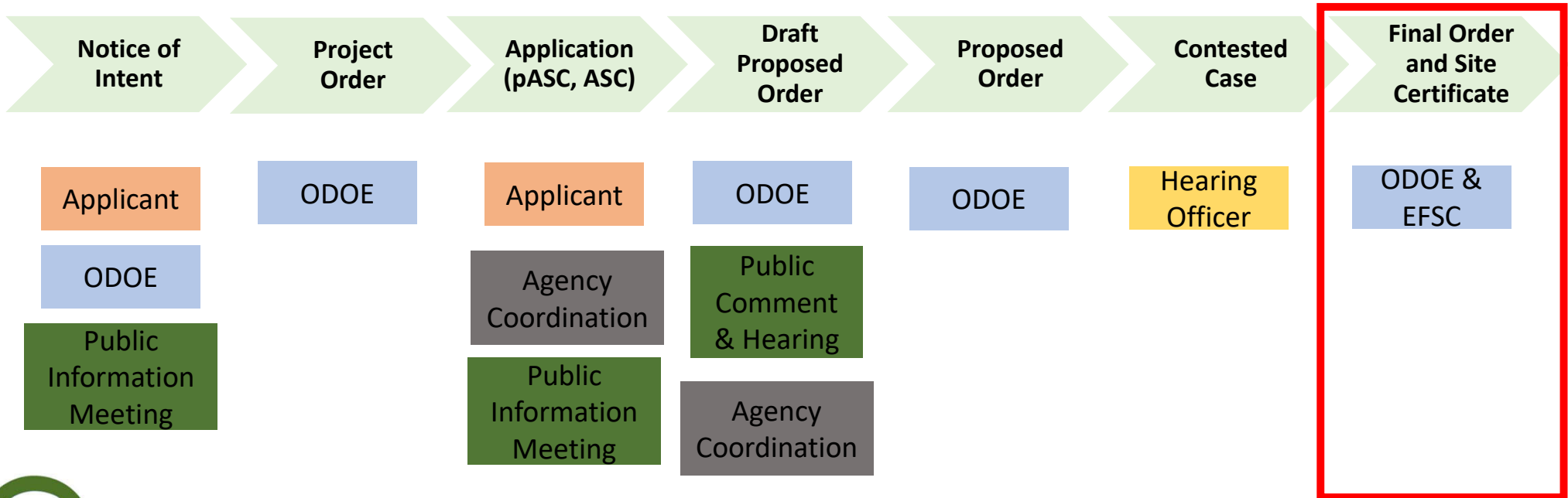
Presentation Overview

- Procedural history
- Overview of proposed facility, location, and applicant
- Review of Proposed Order on ASC: focus on changes made following EFSC's DPO review, including DPO comments and applicant responses
- Material Change Hearing: to be conducted if there are Council directed substantive changes to conditions



Energy Facility Siting Process

Application for Site Certificate (ASC)



Wagon Trail Solar Project: Project Overview

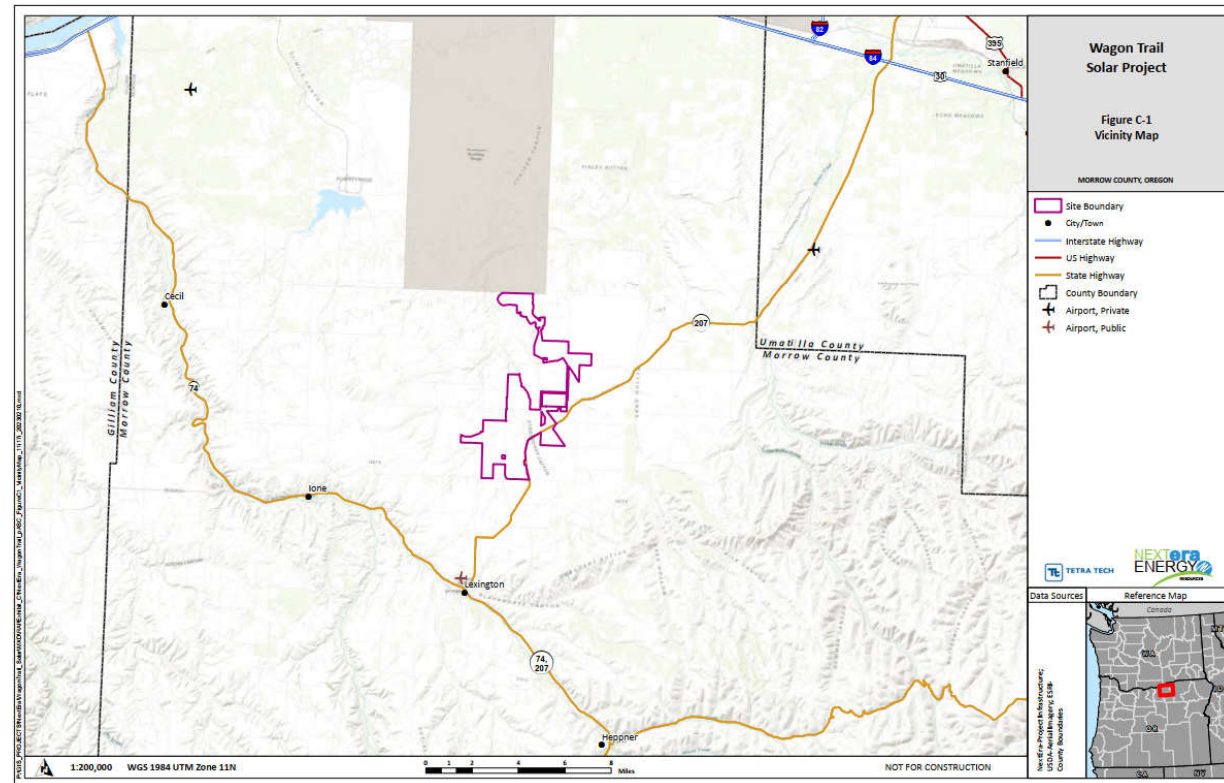
Applicant: Wagon Trail Energy Center, LLC

Proposed Facility: (up to) 500 megawatts (MW) of solar photovoltaic energy generation components.

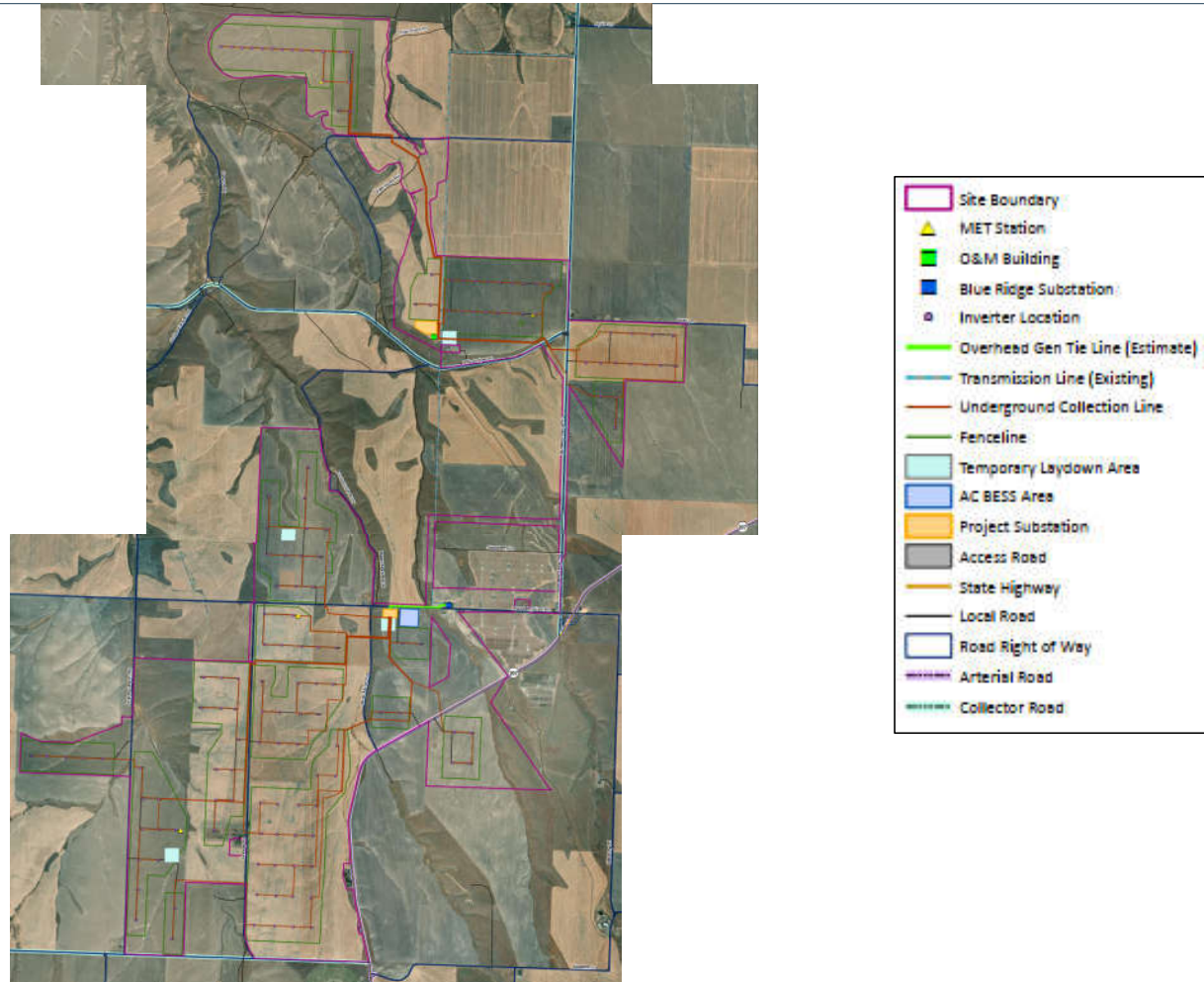
Location/Site Boundary: 7,450 acres in Morrow County

Related or Supporting facilities include:

- 500 MW lithium-ion energy storage system
- (2) collector substations
- a 34.5 kilovolt (kV) collection system
- Operation and Maintenance (O&M) Building
- 0.6 miles of 230 kV transmission line
- Etc.



Wagon Trail Solar Project: Project Overview



Wagon Trail Solar Project: Council Review of Proposed Order/Final Decision

DPO Comments

- **5 oral comments at hearing:**
 - 4 public comments
 - 1 Reviewing Agency (Morrow Co.)
- **2 written comments:**
 - 1 public comment
 - 1 Reviewing Agency (Morrow Co.)
- **Applicant responses**

Issues Raised

- Vegetation Management/Soil Stabilization
- Goal 3 exception
 - Justification
 - Mitigation
- Applicant's Organizational Expertise

Wagon Trail Solar Project: Council Review of Proposed Order/Final Decision

Council Standards with no substantive changes from DPO to Proposed Order (the Department does not plan to provide an overview in this presentation):

- **General Standard of Review** (Section IV.A., p.14-23)
- **Organizational Expertise** (Section IV.B., p. 23-31)
- **Structural Standard** (Section IV.C., p. 31-38)
- **Protected Areas** (Section IV.F., p. 116-132)
- **Retirement and Financial Assurance** (Section IV.G., p. 132-143)
- **Fish and Wildlife Habitat** (Section IV.H., p. 144-155)
- **Threatened and Endangered Species** (Section IV.I., p. 155-166)
- **Scenic Resources** (Section IV.J., p. 166-170)
- **Historic, Cultural, and Archeological Resources** (Section IV.K., p. 170-177)
- **Recreation** (Section IV.L., p. 178-186)
- **Public Services** (Section IV.M., p. 186-204)
- **Wildfire Prevention and Risk Mitigation** (Section IV.N., p. 205-225)
- **Waste Minimization** (Section IV.O., p. 225-230)
- **Siting Standards for Transmission Lines** (Section IV.P., p. 231-237)
- **Removal-Fill** (Section IV.R.2., p. 237-255)
- **Water Rights** (Section IV.R.3., p. 255-259)



Wagon Trail Solar Project: Council Review of Proposed Order/Final Decision

Section IV.D. Soil Protection: OAR 345-022-0022 (Pages 38-46)

- The applicant's evaluation of potential adverse impacts to soils, considered the entire area of the solar array (approximately 3,641 acres) to be permanently disturbed. Including the O&M building, substation areas, and battery storage areas, the total area of disturbance increased to 3,684.9 acres.
- The DPO recommends conditions that would require the Finalizing of an Erosion and Sediment Control Plan (ESCP), a Reclamation and Revegetation Plan, Construction and Operations Spill Prevention Control and Countermeasure Plan (SPCC)



Wagon Trail Solar Project: Council Review of Proposed Order/Final Decision

Comments Related to Soil Protection Standard

- Public Comments raised concerns with the long-term vegetation management for areas within the fence line of the Solar Array.
- Upon review, the Department recommends additional measures for long term site stabilization and vegetative management, developed in consultation with Oregon Department of Agriculture. These measures include:
 - Quantifying disturbance levels based on final design/layout
 - Development of a Fugitive Dust Control Plan (prior to construction)
 - Additional consultation for the development of revegetation methods
 - Soil compaction testing (pre and post construction)
 - Long term monitoring at temporary and permanent impact areas



Wagon Trail Solar Project: Council Review of Proposed Order/Final Decision

Section IV.E. Land Use: OAR 345-022-0030 (Pages 46-116)

- The proposed site boundary consists of 7,450 acres of private land, located entirely within Morrow County's Exclusive Farm Use (EFU) zone.
- The Applicant elected to obtain a Council determination of compliance under ORS 469.504(1)(b), and requested Council take an exception to the statewide policy embodied in Goal 3 for Agricultural Lands.



Wagon Trail Solar Project: Council Review of Proposed Order/Final Decision

Section IV.E. Land Use: OAR 345-022-0030 (Pages 49-116)

- In the DPO, the Department considered the following “Reasons” as appropriate for consideration for the proposed facility Goal 3 exception:
 - locationally dependent
 - minimal impacts to agriculture
 - agricultural related economic benefit
 - minimal impacts to other environmental resources
- In the DPO, the Department rejects the applicant’s argument that the proposed facility responds to important state and county goals and priorities, as a reason justifying a Goal 3 exception.



Wagon Trail Solar Project: Council Review of Proposed Order/Final Decision

Comments Related to Land Use Standard

- The SAG and EFSC raised questions about the difference between the mitigation approach proposed by the applicant and the applicant of the Sunstone Solar Project.
 - *Both projects relied upon an Agricultural Economic Analysis Report by EcoNorthwest*
- Upon review, the Department recommends Council find that there are no unsupported discrepancies between the mitigation approach of the Wagon Trail Solar Project and the Sunstone Solar Project.
- Additionally, the Department recommends Council amend the condition language for Land Use Conditions 14 and 15, to ensure that the mitigation funds represented in the ASC are remitted prior to construction.



Wagon Trail Solar Project: Council Review of Proposed Order/Final Decision

Comments Related to Land Use Standard

- Both the SAG and EFSC expressed concern with the reasons recommended by the Department to justify an exception to Goal 3 (specifically the evidence and analysis for the minimal impacts to agriculture within the subject tracts).
- Upon review, the Department recommends:
 - Council find that “minimal impacts to agriculture” is not a reason to support a goal exception



Wagon Trail Solar Project: Council Review of Proposed Order/Final Decision

Section IV.Q. Other Applicable Regulatory Requirements Under Council Jurisdiction (Pages 237-255)

- Upon review, the Department recommends Council amend the condition language for Noise Control Condition 1(C), as provided below:

Recommended Noise Control Condition 1:

...

- c. The results of the noise analysis of the final facility design performed in a manner consistent with the requirements of OAR 340-035-0035(1)(b)(B)(iii) ~~(IV) and (VI)~~. The analysis will demonstrate, by phase of development, prior to construction that the total noise generated by the facility, including the transmission line, will meet the “ambient noise degradation standard” in OAR 340-035-0035(1)(b)(B)(i) and (ii) and not exceed the “maximum allowable noise standard” in OAR 340-035-0035(1)(b)(B)(i) at the appropriate measurement point for all potentially-affected noise sensitive properties.



Council Options

Option 1 - Recommended

**Approve the Proposed
Order as Final Order**

Option 2

**Approve the Proposed
Order as Final Order
with changes**

Option 3

**Reject the Proposed
Order and issue a Final
Order, with amended
findings of facts and
conclusions of law**

Council Deliberation



Agenda Item E (Information Item)

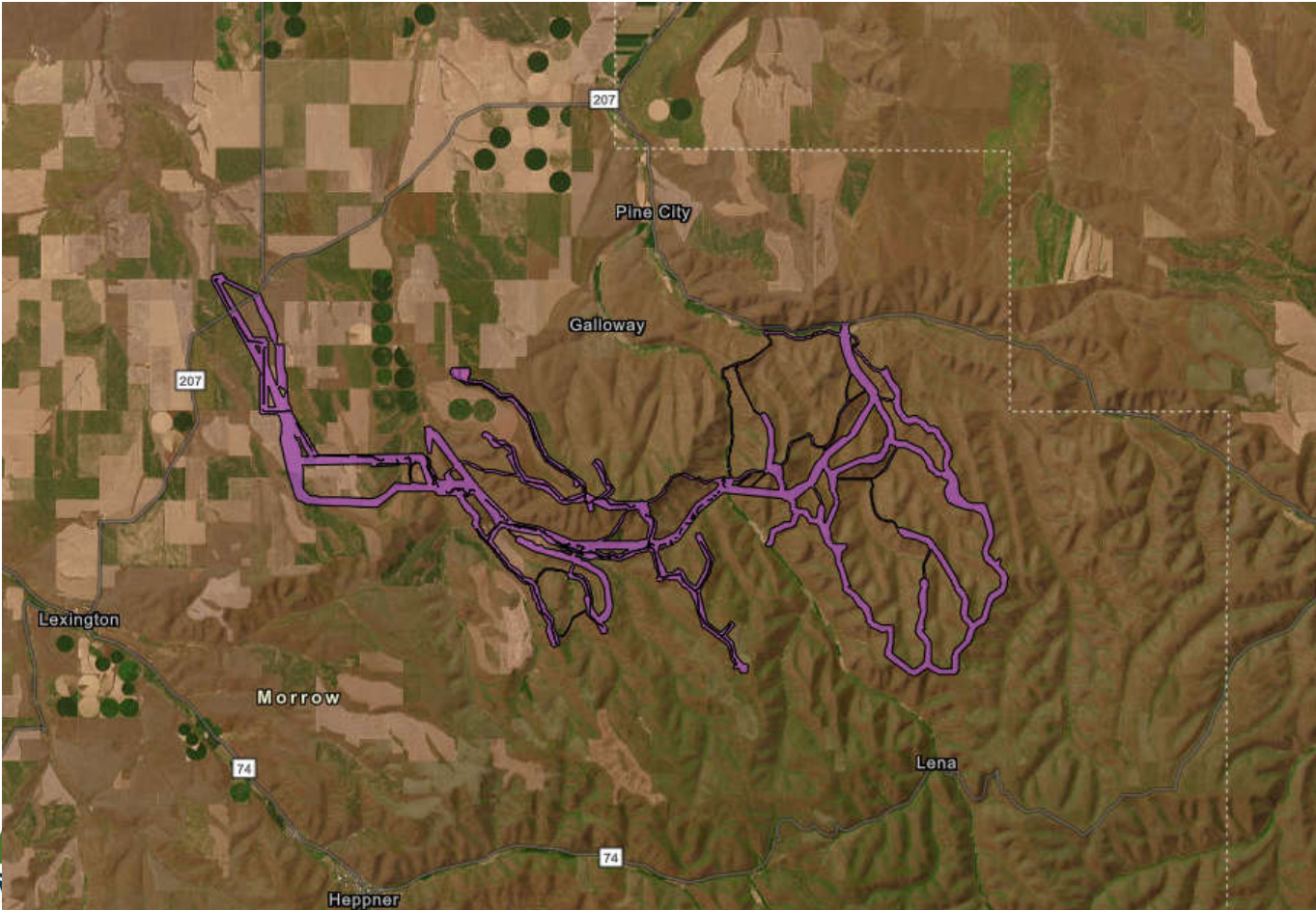
Wheatridge Renewable Energy Facility East, Construction Compliance Update

**Ash Woods, Compliance Officer, ODOE &
Ryan Hill, Senior Project Manager, NextEra**

September 20, 2024



Project Overview



- The Wheatridge Renewable Energy Facility East project is an approved and under construction 300 MW wind facility located in Morrow and Umatilla counties.
- Wheatridge East Wind, LLC is the certificate holder, and NextEra is the parent company.
- Blattner is the primary construction contractor.
- Amendment 1 issued June 4, 2024.
- Construction of a portion of the facility began on June 24, 2024.

Compliance Updates

Condition	Non-Compliance	Status
GEN-GS-03	Blattner constructed a temporary bypass road outside of the approved micrositing corridor without consulting NextEra staff or supervisor.	No further action required from ODA or ODFW. CTUIR still investigating but currently does not anticipate any concerns. Corrective action plan in place.
CON-SP-01	Installed a culverted waterbody crossing within a wetland without BMPs in place.	Restoration complete. No response from DSL. DEQ required documents submitted. Corrective action plan in place.
PRE-TE-04, PRE-FW-03, CON-FW-02, PRE-HC-02	Road grading passed the avoidance flagging placed around a rare plant population and encroached approximately 20 ft into the avoidance buffer.	No further action from ODA required. Corrective action plan in place.

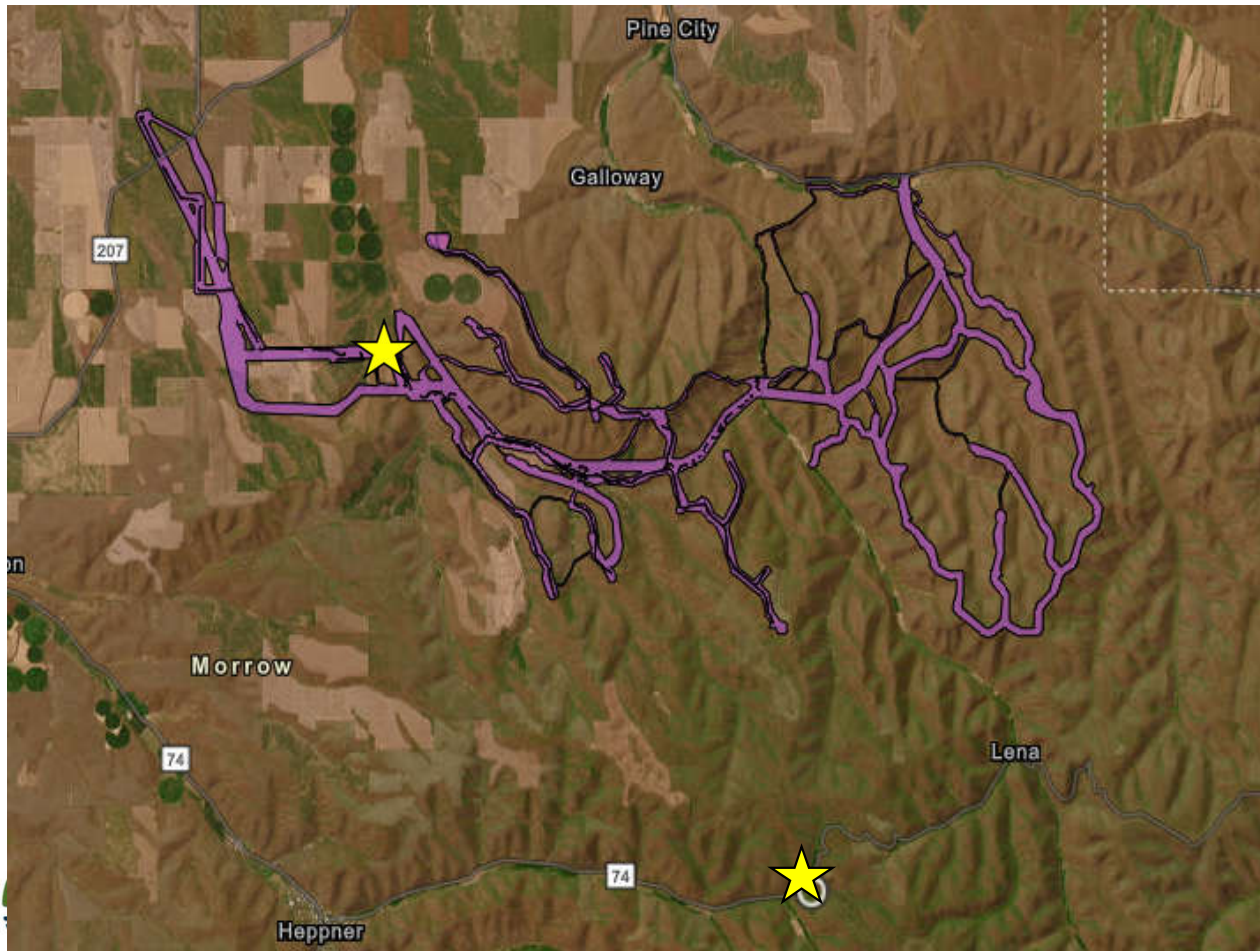
Unauthorized Water Use in Critical Groundwater Area

What is a Critical Groundwater Area?

- In general, under ORS 537.730, the Water Resources Commission may designate an area of the state a critical ground water area (CWGA) if:
 - Ground water levels in the area in question are declining or have declined excessively.
 - There is interference between wells within the area.
- The Butter Creek CWGA is a basalt groundwater reservoir in Umatilla and Morrow counties designated in 1986 to stabilize water levels.
- OAR 690-507-0630 sets forth general requirements for the Butter Creek CGWA.
 - use of water shall be limited to the sustainable annual yield
 - water shall be used for irrigation only during the irrigation season (15 March to 1 November)
 - new applications for appropriation of water shall not be accepted



Unauthorized Water Use Update



- NextEra contractors were withdrawing water from two private exempt wells starting June 2024. Both wells are limited to 5,000 gallons per day.
- Well 1 is located within the Butter Creek CGWA.
- Updated total water use:
 - **Well 1:** 2,227,400 gallons withdrawn.
 - Exceedance of 1,987,400 gallons, or 9 times the allowed exempt use amount.
 - **Well 2:** 2,963,500 gallons withdrawn.
 - Exceedance of 2,723,500 gallons, or 12 times the allowed exempt use amount.

Unauthorized Water Use Update

- NextEra is working with its contractors to obtain water use authorizations for the project.
- Currently, water use authorizations have been obtained from the city of Lone, Lexington, and Heppner. NextEra is pursuing a use authorization for Well 2 from OWRD and Morrow County.
- OWRD Notice of Violation was issued for use of Well 1 on August 14, 2024.
- The Department is currently investigating the issue in coordination with OWRD and the certificate holder to determine the appropriate course of action.



NextEra Energy Updates



Agenda Item F (Information Item)

PUBLIC COMMENT

Items Closed for Public Comment

- Mist Amendment 13 Draft Proposed Order

Time Limit – 7 Minutes per commentor



How to Raise Your Hand in Webex:

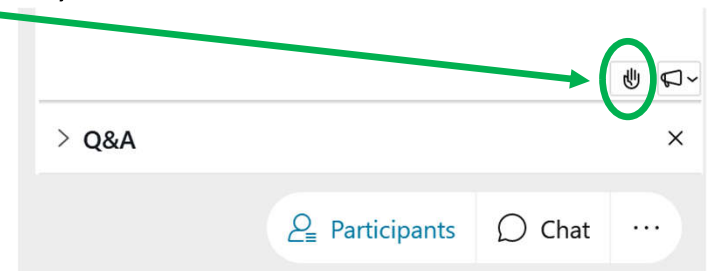
Webinar Participants

The bottom right of the main window is a set of icons:

Click on “Participants”

The bottom right of the participant window is a hand icon, click on the hand:

Clicking on it again will lower your hand.



Phone Participants

Press *3 on your telephone keypad to raise your hand.

Press *3 again on your telephone keypad to lower your hand.

BREAK



Agenda Item G (Information Item)

Sunstone Solar Project Application for Site Certificate Council Review of the Draft Proposed Order

Christopher M. Clark, Senior Siting Analyst, ODOE

September 20, 2024



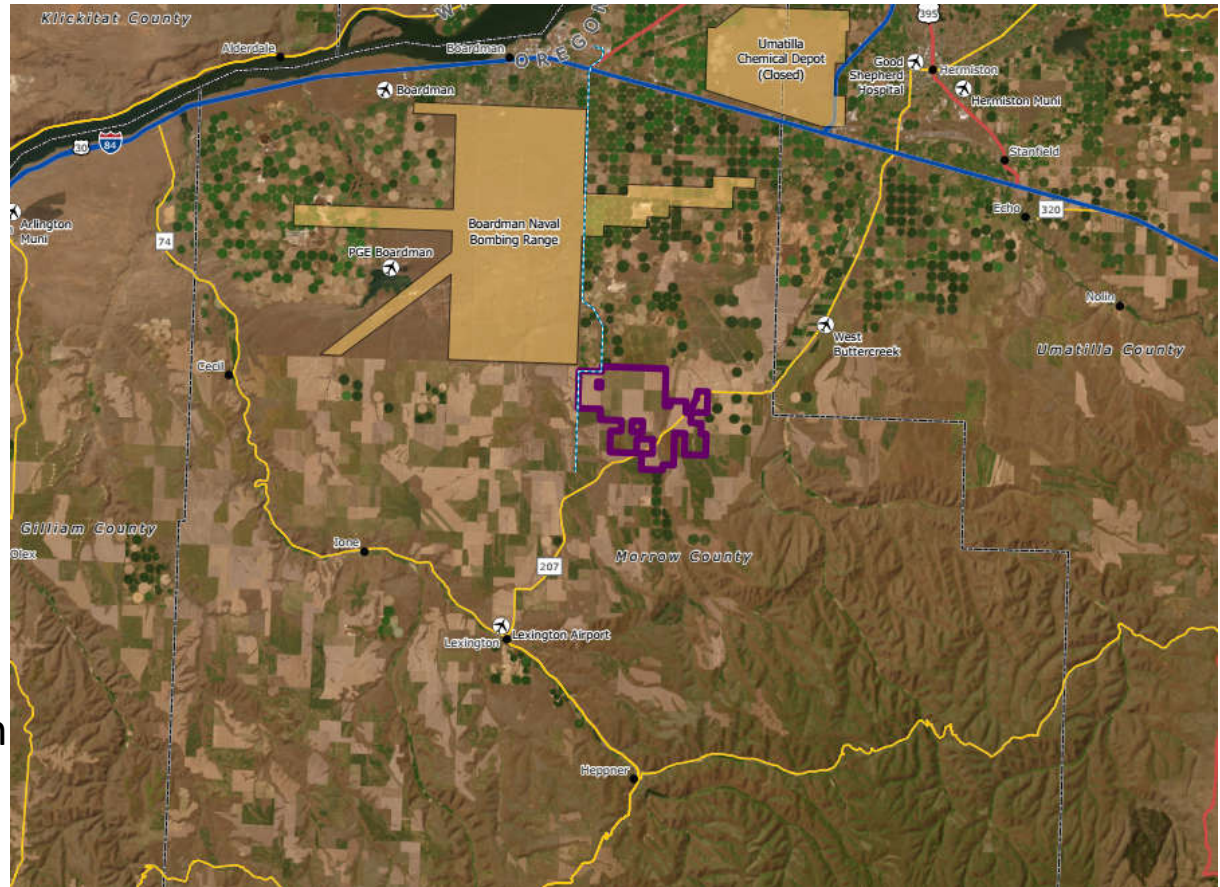
Sunstone Solar Project: Project Overview

Applicant: Sunstone Solar, LLC, a subsidiary of Pine Gate Renewables, LLC.

Proposed Facility:

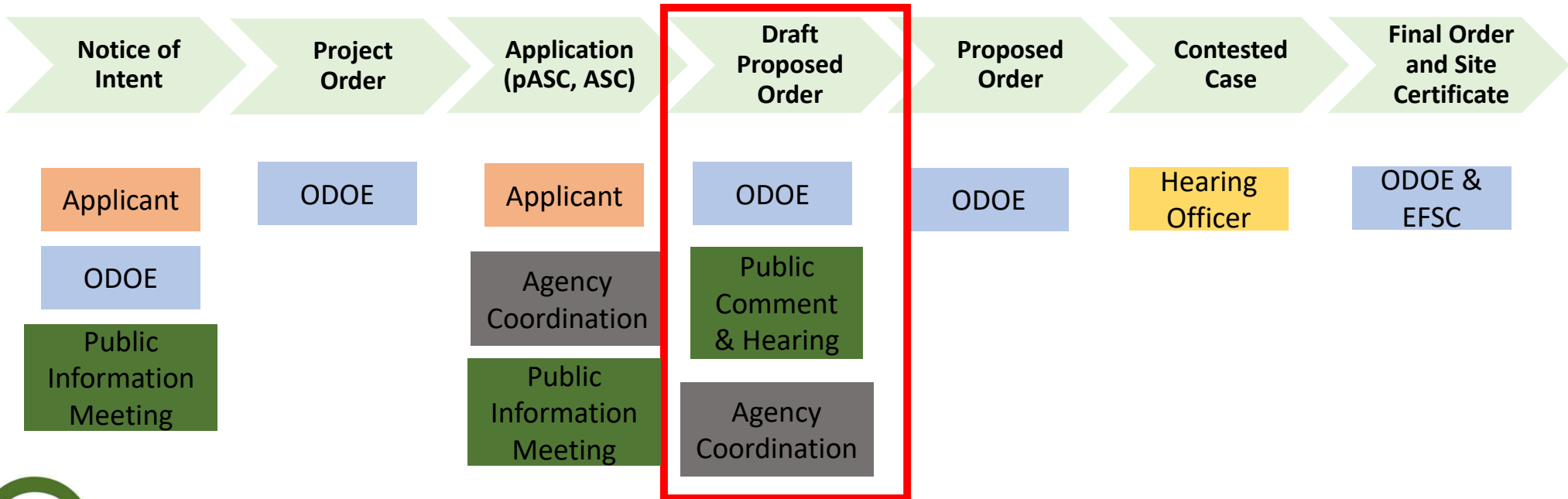
- 1,200 MW of solar PV arrays
- 7,200 MWh of battery storage
- 6 collector substations
- 4 O&M buildings
- 9.5 miles OH 230-kv Transmission
- Panel Storage
- Laydown yards
- Roads, fencing, etc.

Location/Site Boundary: The facility would occupy up to 9,442 acres within a 10,960-acre site in Morrow County.



Energy Facility Siting Process

Application for Site Certificate (ASC)



DPO Overview

GENERAL STANDARD OF REVIEW (DPO section IV.A., pg. 23-31)

- Recommended General Standard Condition 2 accommodates phased approach.

SOIL PROTECTION (DPO Section IV.D., pg. 47-53)

- Recommended Soil Protection Conditions 1 and 2 require Vegetation and Grading Plan to minimize soil impacts

RETIREMENT AND FINANCIAL ASSURANCE (DPO Section IV.G, pg. 134-143)

- DPO recommends applicant is reasonably likely to obtain bond for approximately \$117.945 million, in Q1 2023 dollars, needed to restore the site.

OTHER STANDARDS

- Facility would have minimal impacts on protected areas, recreation opportunities, scenic resources, fish and wildlife habitat, threatened and endangered species.
- Impacts to cultural resources will be mitigated in accordance with a separate agreement with the CTUIR.



Summary of Comments

Commenter	Comment Summary	Applicant Response	Staff Recommendation
Multiple	General support for project (energy goals, economic & workforce benefits, community partnerships, agricultural mitigation plan, minimal impacts to resources, etc.)	No specific response	No changes to findings or conditions necessary.
County	Support for weed plan/need for enforcement	Applicant will comply with DPO requirements, remains committed to minimizing noxious weed impacts.	No changes to findings or conditions necessary. Will continue to coordinate with County on compliance.
County	Support for Road Use Agreement	No specific response	No changes to findings or conditions necessary.
TC Energy	GTN pipeline Right-of-Way access	No specific response	Outside of Council jurisdiction. No changes to findings or conditions necessary.

Summary of Comments

Commenter	Comment Summary	Applicant Response	Staff Recommendation
@tenpeaksjournal	Lithium-ion battery safety issues	No specific response	No changes to findings or conditions necessary.
County	Local coordination on Wildfire Mitigation Plans	Agrees to collaborate with county Emergency Manager, but requests the Council not delegate final approval.	Coordination with county Emergency Manager in progress.
County	Request for reporting of workforce housing outcomes	Agrees to report aggregate data on housing outcomes	Clarifying changes to Recommended Public Services Condition 4
Applicant/ County	Goal 3 exception/support for economic benefits reason	N/A	Grant local economic benefits reason based on net benefit from Agricultural Mitigation Plan.

Lithium-ion Battery Safety Issues

COMMENT SUMMARY (STAFF REPORT, ATTACHMENT 1, PG. 30-46)

- @TenPeaksJournal raises concerns about the potential use of lithium-ion battery technology for the proposed BESS
 - Provides anecdotal evidence and citations regarding the flammability, toxicity, and recyclability of Lithium-ion BESS components compared to other battery chemistries.
 - Recommends that “...energy storage systems...that are non-flammable and do not pose the same risks of current lithium BESS technology...[should] take priority in the decision-making process for any proposed BESS facility under the Oregon Energy Facility Siting Council’s jurisdiction.”



Lithium-ion Battery Safety Issues

Department Recommendations

- Siting process requires an applicant to demonstrate that a proposed facility complies with the Council's standards and is not generally technology specific.
- No changes to findings are likely needed to address these comments, however staff is still reviewing.

Wildfire Mitigation Plan – County Coordination

WILDFIRE PREVENTION AND RISK MITIGATION (DPO SECTION IV.N., PG. 197-221)

- Recommended Wildfire Prevention and Risk Mitigation Conditions 1 to 4 require applicant to finalize and implement Construction and Operational Wildfire Mitigation Plans.
- Plans includes provisions for collaboration with County emergency management officials prior to finalization.



Wildfire Mitigation Plan – County Coordination

COMMENT SUMMARY (STAFF REPORT, ATTACHMENT 1, PG. 59, 72)

- Morrow County recommended plans be approved by the County Emergency Manager and reiterated the importance of including the Emergency Manager in plan review.
- Applicant responded that it agrees to collaborate with County Emergency Manager, but requests Council not delegate final approval.

DEPARTMENT RECOMMENDATION

- The Department is coordinating with the County Emergency Manager on review prior to Proposed Order issuance. May recommended changes to findings or plans based on feedback.



Wildfire Mitigation Plan – County Coordination

COMMENT SUMMARY (STAFF REPORT, ATTACHMENT 1, PG. 59, 72)

- Morrow County recommends the applicant be required to collaborate with the County in the update of the Community Wildfire Protection Plan (CWPP) to ensure that the location-specific wildfire risks of the facility can be assessed and addressed in the plan.
- Applicant states that it is willing to participate in Morrow County’s CWPP update process and collaborate to the extent invited by the County.

DEPARTMENT RECOMMENDATION

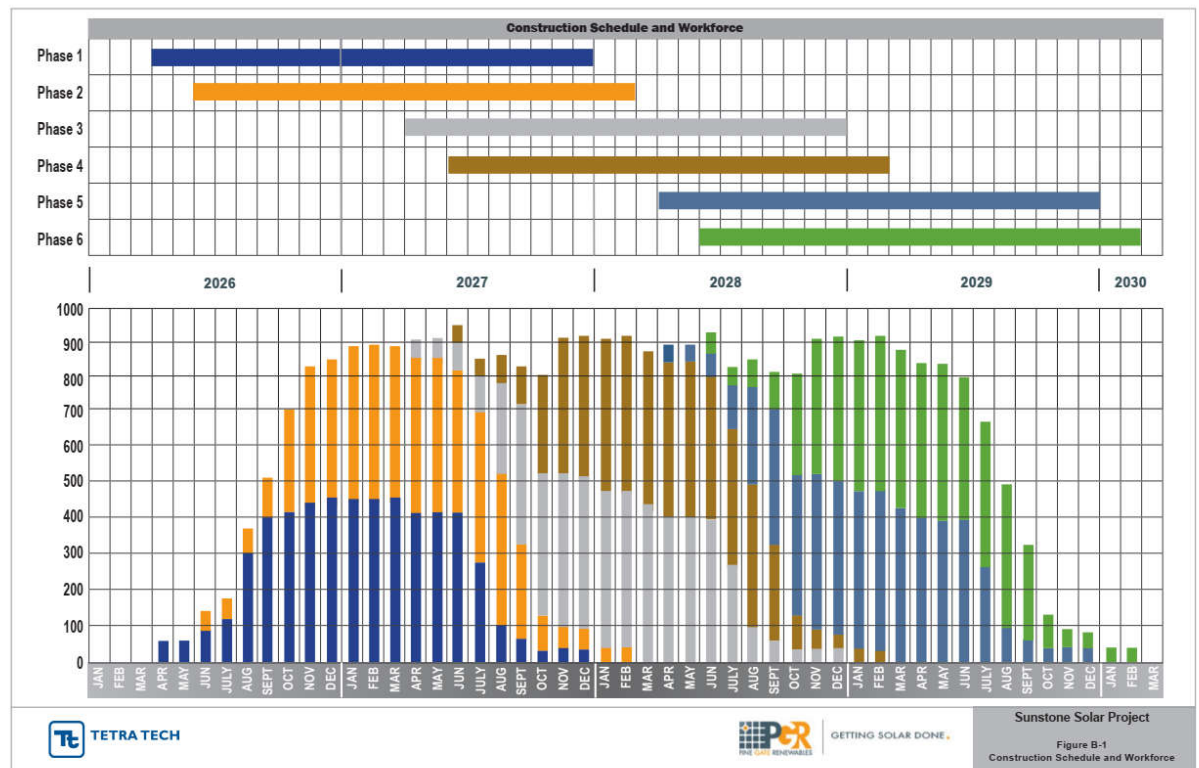
- Department supports the participation of the applicant in the CWPP update but does not recommend mandating participation.



Reporting Workforce Housing Outcomes

PUBLIC SERVICES – HOUSING (DPO Section IV.M.2.8, pg. 195-196)

- Applicant estimates:
 - 682 workers/day on site on average
 - 950 workers/day during peak construction periods
- Recommended Public Services Conditions 3 and 4 require a temporary housing plan that identifies strategies to minimize housing impacts.



Reporting Workforce Housing Outcomes

COMMENT SUMMARY (Packet Attachment 1, pg. 59-60, 73)

- Morrow County requests modification of Recommended Public Services Condition 4 to require applicant to collect and report data on workforce housing outcomes (i.e. location and housing type).
- Applicant responded that it is supportive of county recommendation if data is reported in aggregate to protect worker privacy.

DEPARTMENT RECOMMENDATION

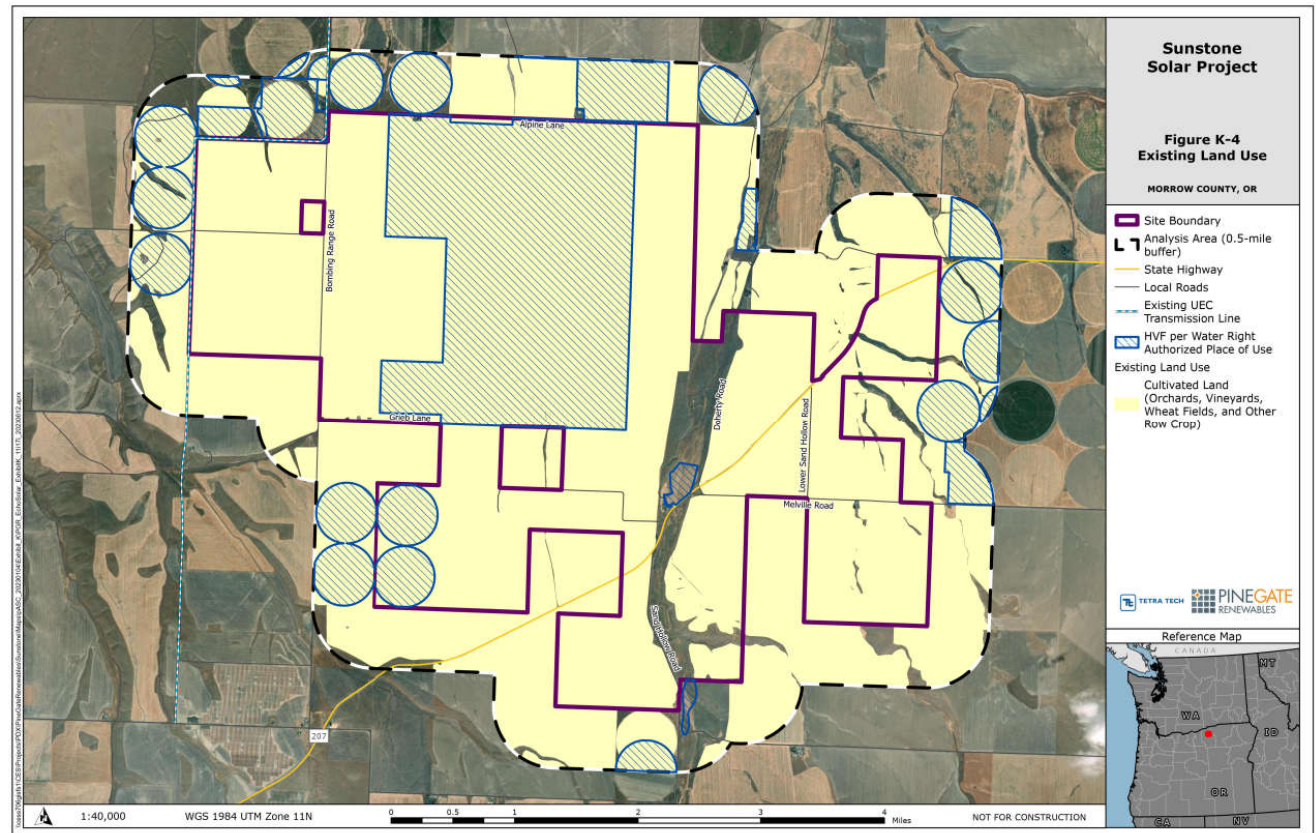
- Department recommends modification of condition as requested and agreed to by the applicant.



Goal 3 Exception - Local Economic Benefits

LAND USE – GOAL 3 EXCEPTION (DPO SECTION IV.E.1.3, PG. 106-122)

- The proposed facility would occupy up to 9,442 acres of land zoned for Exclusive Farm Use, virtually all of which is currently used for dryland wheat production.
- The applicant has requested that the Council authorize an exception to Statewide Land Use Planning Goal 3.



Goal 3 Exception - Local Economic Benefits

LAND USE – GOAL 3 EXCEPTION (DPO SECTION IV.E.1.3, PG. 106-122)

Under ORS 469.504(2)(c), the council may find goal compliance for a facility that does not otherwise comply with a statewide planning goal by taking an exception to the applicable goal, if the council finds the following standards are met:

- (A) Reasons justify why the state policy embodied in the applicable goal should not apply;
- (B) The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the council applicable to the siting of the proposed facility; and
- (C) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.



Goal 3 Exception – Reasons

LAND USE – GOAL 3 EXCEPTION (DPO SECTION IV.E.1.3, PG. 106-122)

The applicant provided the following reasons to support its exception request:

- 1. The facility is locationally dependent because of its proximity to existing energy infrastructure, the regional grid for interconnection, and major transportation corridors.**
- 2. The facility is located on water-challenged land and therefore does not impact irrigated crops and imposes minimal direct impacts to high value agricultural soils due to lack of available irrigation water.**
3. The facility preserves water supply in the Butter Creek Critical Ground Water Area for the benefit of other irrigators who rely on the same limited groundwater resource.
4. The facility creates local economic benefit and mitigates economic impacts to local agricultural economy.
- 5. The facility imposes minimal impacts to resources protected by Council standards.**
6. The facility responds to important state and county goals and priorities.



Goal 3 Exception - Local Economic Benefits

LAND USE – GOAL 3 EXCEPTION (DPO SECTION IV.E.1.3, PG. 106-122)

The DPO recommends that:

- Reasons 1 (locational dependance), 2 (water-challenged lands) and 5 (minimal impacts to other resources) justify taking an exception to Goal 3.
- All other reasons be rejected. Proposed Agricultural Mitigation Plan under Reason 4 (local economic benefit) was recommended to not be relied upon as a reason for the exception but supports a finding that impacts on the local agricultural economy would be sufficiently mitigated under ORS 469.502(2)(c)(B) and OAR 345-022-0030(4)(c)(B).



Goal 3 Exception - Local Economic Benefits

LAND USE – GOAL 3 EXCEPTION (DPO SECTION IV.E.1.3, PG. 106-122)

- In support of Reason 4 (net local economic benefit), the certificate holder acknowledges that the removal of farmland from production will indirectly impact the local agricultural economy.
- Applicant proposes to mitigate these impacts by contributing \$1,179 per acre of farmland occupied by the facility to an agricultural mitigation fund administered by the County.
- Total contribution for a ~9,400-acre buildout would be approximately \$11.08 million. EcoNorthwest modeling suggests benefits of investment will exceed contribution.



Goal 3 Exception - Local Economic Benefits

COMMENT SUMMARY (STAFF REPORT ATTACHMENT 1, PG. 1-6, 60-63)

The applicant and County disagree with the recommended denial of the economic benefits reason based on two arguments:

- 1) The facility will result in a net economic benefit, including a benefit to the local agricultural economy; and
- 2) The denial of the economic benefits reason are inconsistent with other Council decisions.



Goal 3 Exception - Local Economic Benefits

COMMENT SUMMARY (STAFF REPORT ATTACHMENT 1, PG. 1-6, 60-63)

1) Net economic benefit argument

- Job creation, revenue generation, lease payments to landowners, and the supply of clean energy to support other commercial and industrial uses all support an economic benefits reason.
- Disagrees there is not sufficient evidence linking these benefits to the agricultural economy, and that would be needed to justify an exception to Goal 3.



Goal 3 Exception - Local Economic Benefits

COMMENT SUMMARY (STAFF REPORT ATTACHMENT 1, PG. 1-6, 60-63)

1) Net economic benefit (cont'd):

- Applicant argues that proposed benefits from contributions to the agricultural mitigation fund exceed impacts and represent a net benefit to the agricultural economy.
- Argues agricultural mitigation fund will also facilitate projects and programs with operations that will improve the long-term viability and resilience of Morrow County's wheat farms and supporting organizations.

Goal 3 Exception - Local Economic Benefits

COMMENT SUMMARY (STAFF REPORT ATTACHMENT 1, PG. 1-6, 60-63)

2) Consistency with other Council decisions.

- 2021 Department Memo
- Final Orders on ASC for Obsidian Solar Center (2022) and Nolin Hills Wind (2023)
- Proposed Order on Wagon Trail Solar Project



Goal 3 Exception - Local Economic Benefits

DEPARTMENT RECOMMENDATIONS

- Consistent with Final Order on ASC for Madras Solar Energy Facility, Department recommends Council maintain rejection of general economic benefits related to job creation, revenue generation, and lease payments as a reason for an exception to Goal 3.
- Department recommends Council find that the evidence in the record supports a finding that economic benefits from the Agricultural Mitigation Plan would exceed negative impacts, resulting in net economic benefit. The Department recommends Council granting the local economic benefit reason based on these benefits.



WORKING LUNCH BREAK



BREAK



Agenda Item H (Action Item)

Contested Case Rulemaking Consideration of Permanent Order

Thomas Jackman, Rules Coordinator, ODOE

September 20, 2024



CC Rulemaking: Agenda Overview

- Background
- Review of:
 - Rulemaking Language
 - Review of Public Comments
- Next Steps

CC Rulemaking: Background

Rulemaking Process



CC Rulemaking: Background

Scope and Objectives

1. Reorder and reorganize the rules to better match the flow of the contested case process.
2. Update the rules to reflect a proposed adoption of the Office of Administrative Hearing's model rules for contested cases.
3. Improve the consistency of the rules, both internally and to ensure they properly match Oregon laws and other administrative rules.
4. Improve the clarity of the rules by providing or enhancing definitions.
5. Improve the efficiency of the contested case process by providing additional guidance to prospective parties and removing the ability for interlocutory appeal in some cases.

CC Rulemaking: Background

Scope and Objectives

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CC Rulemaking: Background

Scope and Objectives

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4. Improve the clarity of the rules by providing or enhancing definitions.
5. **Improve the efficiency of the contested case process by providing additional guidance to prospective parties and removing the ability for interlocutory appeal in some cases.**

CC Rulemaking: Change #1- Optimized Order

- 345-015-0400 – Governing Provisions
- 345-015-0403 – Contested Case Notices
- 345-015-0405 – Appointment and Duties of Hearing Officer
- 345-015-0410 – Filing and Service
- 345-015-0415 – Requests for Party or Limited Party Status
- 345-015-0420 – Petition for Indigent Status
- 345-015-0425 – Participation by Government Agencies
- 345-015-0430 – Prehearing Conference and Prehearing Order
- 345-015-0435 – Suspension of Hearing and Exclusion of a Party
- 345-015-0440 – Burden of Presenting Evidence
- 345-015-0445 – Submission of Evidence and Proposed Site Certificate Conditions
- 345-015-0450 – Official Notice of Evidence
- 345-015-0455 – Motions
- 345-015-0460 – Interlocutory Appeals to Council
- 345-015-0465 – Stays
- 345-015-0470 – Reopening Record Prior to Decision
- 345-015-0475 – Hearing Officer's Proposed Contested Case Order and Filing Exception
- 345-015-0480 – Council's Final Order and Issuance of a Site Certificate

CC Rulemaking: Change #2 – OAH Model Rule Adoption

Three Goals

- 1) Improve efficiency by adopting model rules that the OAH ALJ's are more familiar with.
- 2) Increase clarity on issues that the current model rules are silent on, such as: motions for summary determination, appointment of a hearing officer, and several discovery related matters.
- 3) Reduce – if not eliminate – any potentially confusing overlap between model rules and Council's supplementary rules.

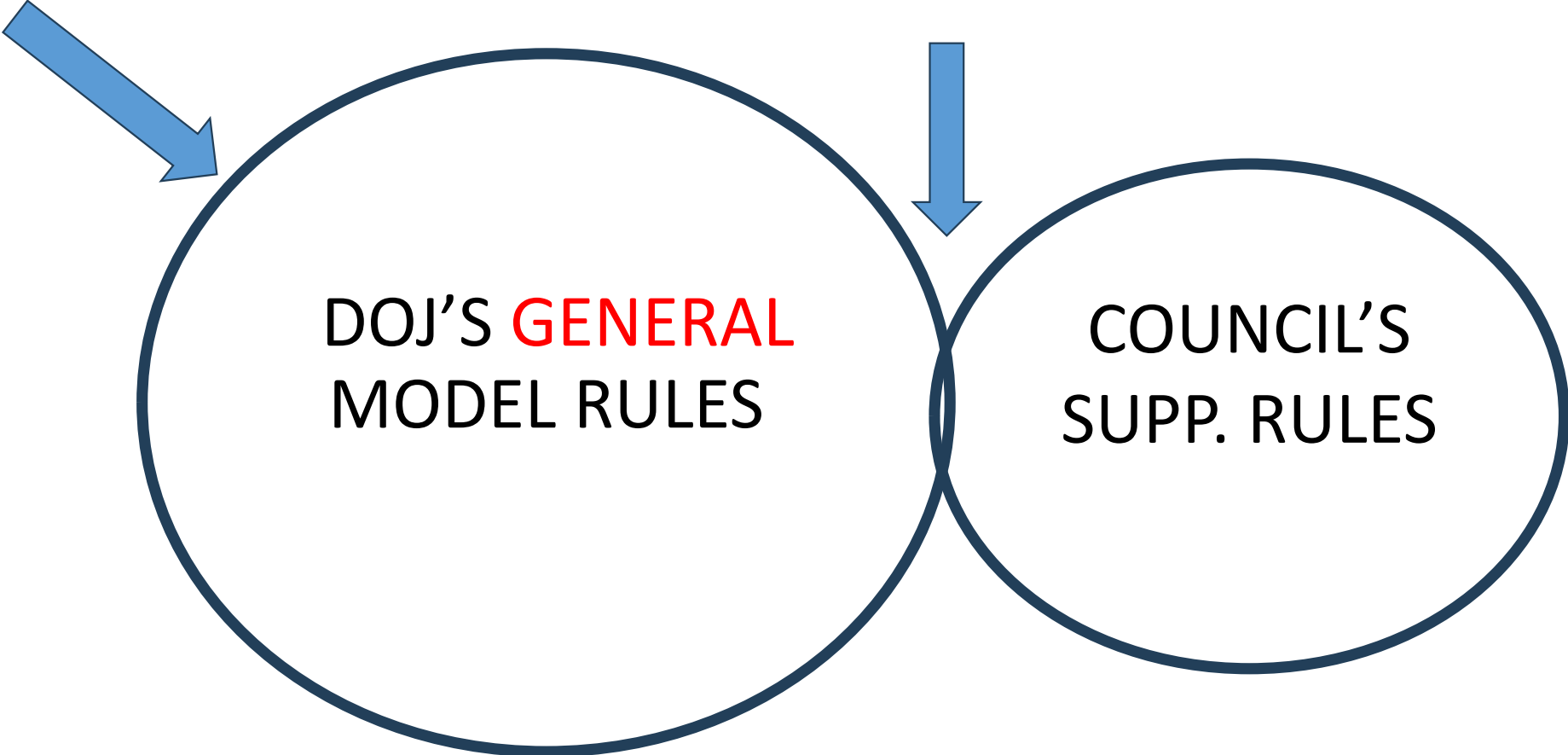
CC Rulemaking: Change #2 - Current Setup

DOJ'S GENERAL
MODEL RULES

The diagram consists of two overlapping circles. The left circle is larger and contains the text 'DOJ'S GENERAL MODEL RULES'. The right circle is smaller and contains the text 'COUNCIL'S SUPP. RULES'. The two circles overlap in the center, indicating a shared or overlapping area between the two rule sets.

COUNCIL'S
SUPP. RULES

CC Rulemaking: Change #2 - Current Setup



CC Rulemaking: Change #2 – OAH Model Rule Adoption



DOJ'S **OAH**
MODEL RULES

COUNCIL'S
SUPP. RULES

CC Rulemaking: Change #2 – Website Tool

Council's Contested Case Rules
(OAH Model Rules + OAR 345-15-400s)

CC Rulemaking: Change #3 – Consistency

- **“Decision maker” to “Council, the Department and the applicant”**
 - See OAR 345-015-0415(2), changed to be consistent with ORS 469.370(3), which states that “issues shall be raised with sufficient specificity to afford the council, the department and the applicant an adequate opportunity to respond to each issue.”
- Consistent use of **“hearing officer,” “contested case hearing,”** and **“contested case proceeding”**
- **“Proposed order” to “proposed contested case order”**
 - More than one order referred to during the CC proceeding – which one is it?

CC Rulemaking: Change #3 – Consistency

- **New Rule 345-015-0440** - Burden of Presenting Evidence
 - Added to be consistent with ORS 183.450(2), which states: "The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position."
- **Change 345-015-0415(4)(b) and (c)** – Comments don't need to be made at the hearing, just while the record is open for public comment.
 - "A reference to the person's comments ***at the public hearing***"
 - "A reference to the person's comments ***on the record of the draft proposed order***"

CC Rulemaking: Change #4 – Clarity

1. What it means to **qualify as indigent**. See OAR 345-015-0420(2).
2. That **a hearing officer has the power to stay a contested case proceeding**. See OAR 345-015-0465(1).
3. That **proposals for new site certificate conditions must be related to issues on which a party has been granted standing**. See OAR 345-015-0445(3).
4. What the **governing provisions** are for contested cases. See OAR 345-015-0400.
5. What is and is not part of a **complete and current record**. See OAR 345-015-0405(3).
6. Evidence submitted by parties must be part of the **schedule established by the Hearing Officer**. See OAR 345-015-0405(4)(b).
7. “other electronic means” → includes **electronic mail**. See OAR 345-015-0410(1).
8. What it means to be **sufficiently specific** at OAR 345-015-0415(3) and (4).

CC Rulemaking: Change #4 – Clarity

9. How **responses to petitioner requests** by department and applicant should take place. See OAR 345-015-0415(5).
10. Better defining **party vs. limited party** status at OAR 345-015-0415(6) (and throughout the rules)
11. How the **prehearing conference** works. See OAR 345-015-0430(1)-(4).
12. Party **status** is set after the prehearing conference(s). See OAR 345-015-0430(3).
13. An **amended order is required if party status is granted** as the result of an appeal of party status. See OAR 345-015-0430(6).
14. How **waiver of an issue** occurs. Current language suggests parties must reraise every issue throughout contested case proceeding to maintain standing. See OAR 345-015-0430(7).
15. Who is allowed to **file responses** to exceptions. See OAR 345-015-475(5).
16. How the Council uses **the exceptions** and the hearing officer's **proposed contested case order** when issuing its **own final order**. See OAR 345-015-480(1)

CC Rulemaking: Change #5 Efficiency

- In OAR 345-015-0415, updating petition to request party status to require:
 - “A short and plain statement **for each issue or issues** that the person desires to raise in the contested case proceeding.”
 - Done to simplify and speed up resolution of issues. Separate statements for each issue makes it easier for a hearing officer and the parties to address each issue.

CC Rulemaking: Change #5 Efficiency

In OAR 345-015-0430(6):

- “The hearing officer’s order on a request to participate as a party or limited party is **final and may not be appealed to Energy Facility Siting Council unless the ruling would terminate the petitioner’s ability to participate in the contested case proceeding.**”
- Immediate resolution of party status disputes appeals to the petitioner, but fails the balancing test given the likelihood that the hearing officer will not be overturned on appeal.
- Siting process must balance need for robust public participation with reasonable expectations on the efficiency of the siting of projects.

CC Rulemaking: Change #5 Efficiency

- Every effort is being made as part of this rulemaking to clarify how best to submit a comment **during the DPO public comment period** such that it will hold up to review by the hearing officer.
- This should reduce likelihood of a need to appeal.
- This is also the most efficient time to address concerns by the public.

CC Rulemaking

Public Comments Included in Proposed Rules

CC Rulemaking: Public Comments

Party Designation – OAR 345-015-0430(3)

Concern: OAR 345-015-0430(3) as proposed in the most recent NOPR is unlawful, as it does not clearly distinguish between full and limited parties as directed by the Supreme Court.

Proposal:

OAR 345-015-0430 Prehearing Conference and Prehearing Order

(3) At the conclusion of the prehearing conference(s) described in (1) and (2), the hearing officer must issue a prehearing order or orders stating the issues to be addressed in the contested case hearing, the parties, ~~or the~~ limited parties ~~who may participate on each issue~~, the issue(s) on which each limited party may participate, the contested case procedures, and the schedule.

CC Rulemaking: Public Comments

Notice Requirements – OAR 345-015-0403

Concern: OAR 345-015-0403 (notice requirements) does not specify the information needed by a would-be party member sufficient to know how to properly apply for party status.

Proposal:

345-015-0403 – Contested Case Notices

The notices must also include:

(2) The deadline for [submitting a petition for party or limited party status in a contested case and the deadline for](#) the Department and applicant or certificate holder to respond to petitions for party or limited party status [as outlined in OAR 345-015-0415](#);

CC Rulemaking: Public Comments

Appeal of Procedural Issues – OAR 345-015-0430

Concern: While the rules mention waiver of procedural issues – there is no clear path to appealing procedural issues, i.e., how a party member would proceed if their objection to a procedural issue was overruled.

Staff Response: There is no right to an interlocutory appeal for procedural concerns.

CC Rulemaking: Public Comments

Appeal of Procedural Issues – OAR 345-015-0430

Proposal:

OAR 345-015-0430 Prehearing Conference and Prehearing Order

(7) 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 ~~issue~~objection.

CC Rulemaking: Minor Updates / Fixes

345-015-0415 - Requests for Party or Limited Party Status

1) The Department and applicant or certificate holder are parties to the contested case proceeding, with the right to participate on all issues in the contested case proceeding. Notwithstanding OAR 137-003-0535(2) and (3), other persons requesting to participate as a party or limited party in a contested case proceeding must submit a petition to the hearing officer and provide copies to the ~~agency~~[Department](#) and the site certificate applicant [or certificate holder](#) by the date specified in the Department's notice issued under OAR 345-015-0230 and OAR 345-015-~~0014~~[0403](#).

(7) The applicant, the Department, or the certificate holder may submit written responses to petitions to request party or limited party status to the hearing officer by the date specified for such responses in the Department's notice issued under OAR 345-015-0230 [and OAR 345-015-0403](#), providing copies to one another and the person who submitted the petition for party or limited party status

CC Rulemaking: Minor Updates / Fixes

345-015-0425 - Participation by Government Agencies

(1) Any state or local government agency other than the Department may request participation in a contested case as a party, limited party or interested agency, subject to the limitations described in OAR 345-015-0415. For a contested case on a site certificate application, the agency must submit the request to the hearing officer in writing by the date specified in the Department's public notice issued under OAR 345-015-0230(3) [and OAR 345-015-0403](#).

CC Rulemaking

Public Comments
Not Included In Proposed Rules

CC Rulemaking: Public Comments

Docket System

Concern: Service and organization of documents can be tricky, especially with larger contested cases like B2H.

Proposal: Create a docket or require OAH to create one for us.

Staff Response: Neither the Department nor the Council have the authority to mandate that OAH establish a docketing system and make it available to the public. The Council has relatively few contested cases and B2H was an anomaly.

CC Rulemaking: Public Comments

Ex Parte Communications – OAR 345-001-0005(2)

Concern: Newly adopted rules do not have the requirement for ex parte communications between staff and the Council to be preserved and provided to parties.

Proposal: Modify ex parte communication rules, either by:

- keeping existing applicable model rules; or
- adding additional clarifying language

CC Rulemaking: Public Comments

Ex Parte Communications – OAR 345-001-0005(2)

Staff Response: The proposed revision of OAR 345-001-0005(2) establishes that the Department will continue the practice of reporting communications between the Department and the Council, even though such communications are not considered “ex parte” under OAR 137-003-0660(1).

CC Rulemaking: Public Comments

Denial of Contested Case - Orders

Concern: EFSC does not issue an order when it denies a request for contested case.

Proposal: Create rule mandating creation of orders for denial of a request to participate in a contested case proceeding.

CC Rulemaking: Public Comments

Denial of Contested Case - Orders

Staff Response: Staff recommends no changes to rules, but instead that the Council have a policy for final orders to incorporate or adopt a hearing officer's rulings on contested case issues, including on party and limited party status.

This will make it clear that any appeal of the hearing officer's rulings goes to the Supreme Court as an appeal of Council's final order.

CC Rulemaking

What is an
Interlocutory Appeal?

CC Rulemaking: Public Comments

Interlocutory Appeal – OAR 345-015-0430(4)/0460(1)

- In sum (from the mass comment submitted by over 80 people):

“Please do not repeal the ability for interlocutory administrative appeals to the Council. If you do, then when an interested person wishes to challenge a ruling barring them from participating on a specific issue in a contested case, their only recourse will be to file one or more court cases, which will be expensive, inefficient, slow, and potentially very disruptive to the Council’s administrative siting processes.

It is far better for you to retain your authority to quickly fix any errors made by hearing officers before a contested case is underway. Repealing the above-cited rules will only lead to more costly litigation in court, which nobody wants.”

CC Rulemaking: Public Comments

Interlocutory Appeal – OAR 345-015-0430(4)/0460(1)

- Commentors provided no data to support their claims
- Participation in contested cases is infrequent, appeals of denial of claims even more so
- Only Boardman to Hemingway (B2H) provides meaningful data:
 - 26 petitioners filed appeals
 - 8 were reversed by the Council
 - 5 of these were dismissed on motion for summary determination
 - 3 issues out of 17, or roughly only 18%, were meaningfully reversed

CC Rulemaking: Public Comments

Interlocutory Appeal – OAR 345-015-0430(4)/0460(1)

Ultimate resolution of all siting disputes for energy facilities will always be resolved by filing with the Supreme Court.

CC Rulemaking: Public Comments

Interlocutory Appeal – OAR 345-015-0430(4)/0460(1)

- Note: the interlocutory appeal right is **not being revoked**.
- For participants who have singular or even multiple concerns about a project and the denial of party status on all their issues will remove them from the contested case process, **an interlocutory right remains.**
- Change in rights is only for petitioners who wish to participate on multiple issues and where some – but not all – of their issues are denied party status by the hearing officer.

CC Rulemaking: Public Comments

Interlocutory Appeal – OAR 345-015-0430(4)/0460(1)

- Despite concerns about efficiency and judiciousness, the proposed change is simply in line with Oregon law, which states that review of party status does not happen until after the agency issues its final order.
- As described in ORS 183.310(7)(c) (emphasis added):
 - “The agency’s determination [of party or limited party status] is subject to judicial review in the manner provided by ORS 183.482 (Jurisdiction for review of contested cases) **after the agency has issued its final order in the proceedings.**”

Council Options

Option 1 - Recommended

**Approve the filing of a
permanent rule order
as presented**

Option 2

**Approve the filing of a
permanent rule order,
with changes**

Option 3

Deny the proposal

Council Deliberation



Agenda Item I (Action Item)

Initiation of Tribal Communication Rulemaking

Thomas Jackman, Rules Coordinator, ODOE

September 20, 2024



Background - Rulemaking Process



Tribal Comm. Rulemaking: Background

- On July 23, 2024, Thomas Jackman, Council rulemaking coordinator, attended the Oregon Tribal Cultural Cluster, which is a gathering intended to find ways to better protect tribal cultural resources.
- The tribes were invited to participate in a rulemaking designed to improve communication and early identification of tribal resources



Tribal Comm. Rulemaking: Scope

This rulemaking is designed to:

- Encourage communication by the applicant with tribal governments and
- Better identify and protect cultural resources as well as other resources important to tribal governments.

Tribal Comm. Rulemaking: Scope

This rulemaking is intended to be procedural and **not** intended to alter siting standards.



Tribal Comm. Rulemaking: Focused Outreach

Staff asks Council to direct it to engage with stakeholders individually with a draft of potential rule language.

This approach:

- Allows each sovereign tribe the chance to get the attention and opportunity for open discussion they so desire
- Allows staff to approach energy developers and other state agencies to see if there are any significant concerns before requesting that the Council approve the start of formal rulemaking

Council Options

Option 1 - Recommended

**Approve the initiation
of the rulemaking as
recommended**

Option 2

**Approve the initiation of
the rulemaking with
changes**

Option 3

Deny the proposal

Council Deliberation



Agenda Item J (Information Item)

Review of EFSC's Wildfire Prevention and Risk Mitigation Standard (OAR 345-022-0115)

Sarah Esterson, Senior Policy Advisor, ODOE

September 20, 2024



Background

- Wildfire Prevention and Risk Mitigation Standard adopted in 2022 (newest EFSC standard)
- Standard requires:
 - Characterization of wildfire risk within and extending from a facility site boundary
 - Development and implementation of an approved Wildfire Mitigation Plan (for both construction and operations)

Applicability Summary

- Standard has been applied to 6 facilities/site certificates
 - 1 ASC and 6 Amendments [for 5 facilities]
- Facilities located in eastern Oregon (5); and south-central Oregon (1)
- Standard/Wildfire Mitigation Plan applied to facility, post approval, for 1 facility for 1 phase (Wheatridge Renewable Energy Facility East/Construction)



Wildfire Risk Assessment/Mitigation Plans

- Facility sites are in moderate to high wildfire risk
 - Limitations on complete data covering sites > conservative assumptions are applied
- Construction/Operational Wildfire Mitigation Plans (across facilities) are generally consistent, regardless of differences in risk

Construction Wildfire Mitigation Plan

Typically Includes:

- Monitoring red-flag warnings during fire season
 - Avoiding or minimizing hot work during red-flag warning
- Worker training on fire prevention and response
- Equipping the site and work vehicles with proper fire-fighting equipment
- Restrictions on onsite fueling and areas of operation
- Emergency communication procedures
- Vegetation maintenance



Operational Wildfire Mitigation Plan

Typically Includes:

- Maintaining vegetative clearance areas
- Facility component inspection procedures/schedules
- Vegetation maintenance
- Fire weather monitoring, and restricted operations during red-flag warnings
- Emergency response procedures; and,
- Process for WMP updates



Initial Observations for Standard Implementation

- Staff and applicants/certificate holders would benefit from guidance on how to apply the wildfire risk data required by the standard to the scope/scale of the WMP
- Staff and applicants/certificate holder would benefit from templates with minimum requirements for both a construction and operational WMP (particularly construction WMP)

Review of Other Wildfire Requirements in Oregon

Oregon Public Utilities Commission

- Similar to EFSC standard, but requires Public Safety Power Shut-off Plan (line de-energization)
- Uses third-party to review WMPs (in all instances to date)

Oregon Department of Forestry

- Regulates/enforces Industrial Fire Precaution Levels during fire-season
- Inspections are conducted by fire wardens

Community Wildfire Protection Plans

- Results in zoning/mapping and identification of key projects
- Has identified robust emergency response/communication procedures

Review of Wildfire Requirements in other Western States

California – California Natural Resources Agency

- WMPs are reviewed by staff and Office of State Fire Marshal, and presented to Wildfire Safety Advisory Board
- Agency had developed a template/guidance for use in development and updates

Washington – Department of Natural Resources

- WMPs are required to be reviewed by third-party consultant
- Agency has developed a template to be used in development and updates

Recommendations for Council Consideration

- Develop a guidance document to support the evaluation of the wildfire risk assessment and the adequacy of proposed mitigation measures for both construction and operations.
 - Clarify that projects within counties that have adopted a CWPP and WUI zone should be considered/applied to the wildfire risk evaluation and addressed, as applicable, in WMP development
- Develop guidance for the scope and scale of public notification and community engagement to be included in the WMP.
- Establish the state and local governments that Siting staff should be consulting with in review of construction and operational WMPs.
- Evaluate the availability of third-party consultants with subject matter expertise in climate and wildfire management, and develop a plan for utilizing their support in reviewing WMPs and/or preparing or evaluating guidance documents

ADJOURN

