



Oregon

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To: Oregon Energy Facility Siting Council

From: Thomas L. Jackman, Rules Coordinator

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Subject: Agenda Item E (Action Item) – Initiation of Application Process Phase 2 Formal Rulemaking for the December 13, 2024 EFSC Meeting

Attachments: Attachment 1 – Draft Rules
Attachment 2 – Draft Rules Crosswalk
Attachment 3 – Notice of Proposed Rulemaking (forthcoming)

BACKGROUND AND SUMMARY

As part of the 2024-2026 Rulemaking Schedule, the Council directed staff to continue its work on its comprehensive review of the rules governing the site certificate application process. Phase 1 of this effort was completed in 2023. That phase was designed to improve the readability of the application process rules found in Division 015.

Phase 2 of the Application Process Review Project is intended to be a review of application information and procedural requirements currently located in divisions 020 and 021 to ensure that requirements align with what is needed to demonstrate compliance with the Council's standards.

The original intent for this rulemaking effort was for staff to evaluate whether the requirements should be removed, or if the standards should be modified to conform to application requirements (and vice versa). However, staff now requests that Council modify the scope of this rulemaking and narrow it solely to a migration of application information requirements to the rules in which their respective standards are found. In other words, a relatively straightforward reorganization of the rules with no substantive changes.

Given the narrow scope that staff is now recommending for this rulemaking, staff also recommends that the rulemaking advisory committee that was previously discussed at the April 2024 Council meeting not occur. Of course, should the Council agree with these recommendations, all parties who have thoughts or ideas about this rulemaking are encouraged to participate in the public comment period.

Below is a summary of the objectives of the draft language and an overview of the draft rules found in Attachment 1.

APPLICATION PROCESS PHASE 2 RULEMAKING - OBJECTIVES

The Application Process Phase 2 rulemaking is intended to achieve one main goal: reorganize the rules so that the rules containing the Council's standards (found in OAR 345, divisions 022 through 024) also contain the information an applicant is required to submit to Council for those standards.

Notably, this focused objective no longer includes removing information requirements that are deemed unnecessary or redundant or identifying where new information requirements should be added to ensure staff is given the information they need to ensure compliance with the Council's standards. This important task is now expected to take place on a standard-by-standard basis—with some standards being reviewed in groups where it makes sense to do so. This effort is the heart of Phase 3 of the application process rules update.

OVERVIEW OF DRAFT LANGUAGE

This narrowed scope of this rulemaking makes describing the proposed draft rules very simple: all the information requirements in division 021 that are tied to Council standards have been moved to their associated sections in divisions 022, 023, and 024. Division 021 still exists in the proposed rules, as it contains some general instructions as well as some general background information requirements that are not tied to Council standards.

One notable change that is also being proposed is the replacement of all exhibit letters with the subject matter of the exhibit, e.g., "Exhibit P" would now be called the "Fish and Wildlife Habitat Exhibit." This should make it easier for all participants of the siting process to understand what the various exhibits are related to.

Additionally, it should be noted that while no substantive changes have been made to the information requirements, some exhibits will now be merged, e.g., Exhibits A, D, and E will now be merged into the "Organizational Expertise Exhibit." This should make it easier to locate all information related to the organizational expertise standard.

Attachment 2 is a crosswalk of the relationship between the current standards and the information requirements for those standards that are laid out in divisions 022 and 021, respectively. Staff utilized this crosswalk to migrate the information requirements to the appropriate locations. Note that the blanks in the chart indicate either an information requirement that is not tied to a standard or a standard that lacks an associated information requirement. Addressing these gaps will be one of the main tasks of phase 3 of the application process rulemaking update.

Lastly, regarding the draft proposed language in Attachment 1, it is helpful to know the following:

- As discussed above, the application rule language from OAR 345-21-0010 (aka, the exhibits as they exist now) can now be found throughout divisions 022, 023, and 024. This transferred language is colored blue. To keep the exhibit manageable, the language removed from 0010 is not displayed in redline as that would have generated numerous pages of strikeout text. Just know that all the blue language in the draft used to be in OAR 345, division 021.

- Language that has been altered from the original text or added to the rules is done using traditional red and ~~strikeout~~. Language in ~~strikeout green~~ is language that was literally cut and pasted somewhere else in the document.
- If the notice of proposed rulemaking is authorized by the Council, the formalized version of the draft proposed rules will contain all changes in an official redline. This can be harder to read as it is formatted as a giant block of text, but it will also include all changes in context.
- Staff is still reviewing all the various rule references that are implicated by the numerous proposed changes and will likely discover additional ones that need to be updated. These will appear in the notice of proposed rulemaking (Attachment 3, forthcoming).

STAFF RECOMMENDATION

Staff recommends that the Council initiate formal proceedings on the Application Process Phase 2 Rulemaking, which was approved for the 2024-2026 Rulemaking Schedule. Staff recommends that Council approve staff to file a notice of proposed rulemaking as detailed in Attachment 2 (forthcoming) and authorize staff to schedule a public hearing during the public comment period. Please note that the Council is not being asked at this time to consider the adoption of permanent rules.