



Energy Facility Siting Council Meeting Minutes

Friday April 19, 2024 8:30 AM

- A. Consent Calendar (Action Item & Information Item)¹
- B. Initiation of Carbon Offset Rate Rulemaking (Action Item)²
- C. Initiation of Application Process Phase 2 Rulemaking (Action Item)³
- D. Public Comment Period (Information Item)⁴
- E. Wheatridge Renewable Energy East Request for Amendment 1, Review of the Draft Proposed Order (Information Item)⁵
- F. Leaning Juniper IIA Request for Amendment 3, Review of the Draft Proposed Order (Information Item)⁶
- G. Summit Ridge Wind Site Certificate Termination (Action Item)⁷
- H. Hydrogen Electrolyzer Jurisdictional Determination (Action Item)⁸

The meeting materials presented to Council are available online at:

<https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Council-Meetings.aspx>

Call to Order: Chair Howe called the meeting to order on April 19, 2024, at 8:30 a.m.

Roll Call: Chair Kent Howe, Vice Chair Cynthia Condon, and Council Members Ann Beier, Marcy Grail, Katie Imes were present in person. Council Members Richard Devlin and Perry Chocktoot were present virtually.

Oregon Department of Energy representatives present were Senior Policy Advisor/Council Secretary, Sarah Esterson; Assistant Director for Siting, Todd Cornett; Rules Coordinator Tom Jackman; Senior Siting Analyst, Christopher Clark; Senior Siting Analyst, Chase McVeigh Walker and Administrative Specialist, Nancy Hatch. Oregon Department of Justice Senior Assistant Attorney General Patrick Rowe was also present.

¹ Audio/Video for Agenda Item A = 00:03:11 - 2024-04-19-EFSC-Meeting-Audio/Video

² Audio/Video for Agenda Item B = 00:32:01 - 2024-04-19-EFSC-Meeting-Audio/Video

³ Audio/Video for Agenda Item C = 00:41:52 - 2024-04-19-EFSC-Meeting-Audio/Video

⁴ Audio/Video for Agenda Item D = 01:02:36 - 2024-04-19-EFSC-Meeting-Audio/Video

⁵ Audio/Video for Agenda Item E = 01:45:59 - 2024-04-19-EFSC-Meeting-Audio/Video

⁶ Audio/Video for Agenda Item F = 04:09:58 - 2024-04-19-EFSC-Meeting-Audio/Video

⁷ Audio/Video for Agenda Item G = 04:50:28 - 2024-04-19-EFSC-Meeting-Audio/Video

⁸ Audio/Video for Agenda Item H = 05:03:52 - 2024-04-19-EFSC-Meeting-Audio/Video

Agenda Clarification and Modification

There were no agenda modifications.

- A. Consent Calendar (Action Item & Information Item)⁹** – Approval of March 22, 2024 minutes; Council Secretary Report; and other routine Council business.

Council Member Beier motioned the Council approve the March 2024 meeting minutes as presented.

Vice Chair Condon seconded the motion.

The motion was approved unanimously.

Council Secretary Report

Secretary Esterson offered the following comments during her report to the Council:

Staffing/Council Updates

Former Council Member Jordan Truitt was presented a plaque in appreciation of his 4 years of service as an Energy Facility Siting Council member.

Ash Woods will be joining staff as the new compliance officer for the Department. She has experience working on applications and amendments for the siting process. She will begin her position on April 29, 2024.

Legal Updates

Nolin Hills

Mr. Rowe provided Council an update regarding Umatilla County's appeal of Council's decision to grant a site certificate for the Nolin Hills facility, in which the County has asserted Council must apply its' ordinance requiring wind turbines to be set back two miles from rural residences. The Supreme Court affirmed Council's decision and in their opinion concluded that Council is authorized to approve a facility even if it does not meet applicable substantive criteria recommended by a special advisory group, if the facility otherwise complies with statewide land use planning goals.

Boardman to Hemingway Amendment 1

Mr. Rowe provided Council an update regarding Ms. Irene Gilbert's appeal of the Council's denial of her request for contested case on Boardman to Hemingway Amendment 1. Last month the Supreme Court denied a motion for it to assume jurisdiction over the appeal in place of the Union County Circuit Court, but affirmed that Council's decision approving the request for

⁹ Audio/Video for Agenda Item A = 00:03:11 - 2024-04-19-EFSC-Meeting-Audio/Video

Amendment 1 is final. Idaho Power and ODOE have since filed a motion to dismiss the appeal arguing that the case is moot as Council's decision is final. The parties are hopeful that a decision will be rendered in a reasonable amount of time.

Project Updates

Boardman to Hemingway Amendment 2

The department issued the Draft Proposed Order (DPO) on the request for Amendment 2 to the site certificate this week. There is currently an open comment period on the DPO and on the Amendment Request which closes on May 30th. The changes being proposed by Idaho Power Company include shifts in the location of the transmission line, temporary work areas, and substantially improved access roads. It also includes construction and operation of a capacitor station that would be in Union County, changes to previously imposed conditions and a proposal to expand the site boundary and micro siting areas.

Council Member Grail reiterated her opinion that part of the reason the process for a site certification is lengthy are the legal requirements within the process.

Summit Ridge Renewable Energy Facility East Notice of Intent

This is a proposed 201 wind and solar facility, to be located in Wasco County. A Notice of Intent was issued, and a Public Comment Period was opened on March 14th. The Department held a public informational meeting in Dufuron April 3rd. The comment period for the NOI extends through May 3, 2024. To date, no public comments have been received.

Eugene to Medford Transmission Line Request for Amendment

This existing transmission line is one of our oldest site certificates, issued in 1982. The certificate holder, PacifiCorp, submitted an amendment request in 2018, with proposed changes including a new 17-mile transmission line and 500 kV substation. This amendment request has been on hold for nearly 2 years, pending information needed to complete the evaluation of impacts to tribal resources. A resolution on information related to the impact assessment, combined with changes in need since the project initiated, has resulted in PacifiCorp submitting a request to withdraw the amendment. The amendment request is no longer under review.

Compliance Updates

In January 2024, the Department notified Avangrid of non-compliance with a site certificate requirement for the Leaning Juniper IIA and IIB facilities. The requirement is that every 5 years, raptor nest surveys be conducted to evaluate both nest occupancy and nest success. After the Department's findings of non-compliance, the Department consulted with ODFW on the issue. It was then determined that collection of nest success data is not useful. To resolve the compliance issue, and based on ODFW consultation, the certificate holder submitted a request to amend its WMMP for LJIIA and LJIIB to remove the obligation to evaluate nest success. The Department approved the amendment. This requirement was standard at the time of development of WMMPs for wind facilities and was also reflected in the WMMPs for Avangrid's Klondike, Golden Hills, and Montague Wind Project. The Department approved amendments to those plans as well.

Future Meetings

- May 30-31st - Meeting will be held in Boardman at the Riverfront Center. The Draft Proposed Order on Request for Amendment 2 of the Boardman to Hemingway Transmission Line Site Certificate and the Application for Site Certificate of the Wagon Trail Solar Project public hearings will be held on Thursday and the May EFSC meeting will be held on Friday.

B. Initiation of Carbon Offset Rate Rulemaking (Action Item)¹⁰ – Tom Jackman, Rulemaking Coordinator. The Council considered staff’s recommendation to initiate the Carbon Offset informal rulemaking to potentially update the monetary offset rate which can be increased or decreased by no more than 50% every two years pursuant to ORS 469.503(2)(c)(C).

Vice Chair Condon questioned what the current carbon market rate is. Her concern is that Carbon Standard monetary offset rate it is not up to date.

Mr. Jackman stated though he did not know the current rate, determining that is part of the work of this rulemaking. He will provide the current carbon market rate at a future meeting.

In reference to Staff’s request to consider not having a RAC for this rulemaking, Council Member Beier suggested there is a limited ability for the public to participate. She suggested in terms of resources being best utilized, the Department should not engage a Rulemaking Advisory Committee (RAC) here, unless a lot of comments are received. There is more value in fully staffing other RAC’s.

Vice Chair Condon agreed with Council Member Beier’s comments.

Vice Chair Condon motioned the Council initiate the Carbon Offset Rulemaking, with the scope and objectives as presented and recommended by staff and not approve the creation of a rulemaking advisory committee. She further moved that the Council delegate the authority to appoint specific members if there is a rulemaking advisory committee to the Department.

Council Member Grail seconded the motion.

The motion was carried unanimously.

C. Initiation of Application Process Phase 2 Rulemaking (Action Item)¹¹ – Tom Jackman, Rulemaking Coordinator. The Council considered staff’s recommendation to initiate Phase 2 proposed revisions to the Council’s rules informal rulemaking to improve the consistency of rules and the application process.

¹⁰ Audio/Video for Agenda Item B = 00:32:01- 2024-04-19-EFSC-Meeting-Audio/Video

¹¹ Audio/Video for Agenda Item C = 00:41:52- 2024-04-19-EFSC-Meeting-Audio/Video

Vice Chair Condon stated her hope is that there is ample opportunity for Council to go through the standards themselves and make note of what has worked and to think about what is lacking in order to give Staff additional direction.

Council Member Beier thanked Staff for the visuals and noted the visuals aid the public in understanding the process. She suggested a visual of the link between Division 21 requirements to the standards would be helpful. She also noted the need for a robust RAC for this rulemaking as it is a big task.

Mr. Jackman stated that this is an important rulemaking that will have a meaningful impact on the efficiency of the siting program.

Council Member Grail stated being a member of the Rulemaking Advisory Committee (RAC) can be a daunting task. She suggested breaking down the rules into subcategories for more clarification for RAC members. Providing some guidance and comfort that the RAC members are not required to know everything could aid in more and different participation.

Council Member Imes asked for an explanation of how the RAC is formed.

Mr. Jackman provided the steps normally taken to form a RAC, noting that members of the public are more likely to participate in the processes that affect them directly. This particular rulemaking is more challenging as it doesn't have specific effects on the public.

Council Member Beier suggested using the desire to make EFSC rules clearer and more understandable could aid in recruiting for the RAC.

Council Member Imes asked if it has been difficult to fill the members of public RAC positions in the past.

Mr. Jackman stated the pool of people who represent the public is small and consistent. Staff is always trying to find ways to have different members of the public engage in the process.

Council Member Imes stated her concern is having the same reoccurring people on the RAC doesn't provide a broad scope of views and opinions.

Council Member Grail suggested reaching out to the reviewing agencies to communicate to their constituency that the Department is looking for members of the public to serve on a RAC.

Council Member Imes suggested a letter to boards and commissions that would be added to their calendar may provide additional interest from the public.

Council Member Grail motioned the Council initiate the Application Process Phase Rulemaking, with the scope and objectives presented and recommended by staff and approve the creation

of a rulemaking advisory committee. She further moved that the Council delegate the authority to appoint specific members to the rulemaking advisory committee to the Department.

Council Member Beier seconded the motion.

The motion carried unanimously.

D. Public Comment Period (Information Item)¹² – This time was reserved for the public to address the Council regarding any item within Council jurisdiction that is not otherwise closed for comment.

Mr. Troy Jones - Mr. Jones stated that he and his neighbors came to the meeting in February and spoke of the concern of water contamination and also the lack of an end of life policy for solar panels in the state. There is still a legitimate concern with the Muddy Creek project proposed in their area. The community is trying to be proactive in their communication with EFSC so the Council is aware of the concerns related to the project. The primary concern is the potential loss of farmland property. There are records that show as of 2022 up to 660,000 acres of EFU farmland has been lost to urban growth boundaries and industrial sitings. There are other concerns, specifically wildlife impacts and the loss of wetlands as most of the land involved in the project is designated farm wetlands. Their hope is that their presence and continued communication will have a positive impact on the Council and the Council will take these considerations into their process as it evolves. He believes if nothing was spoken of and the project just comes about, it'll be too late in the process. It is his hope that Council will strongly consider their concerns as this goes along as the process evolves.

Vice Chair Condon questioned if the loss of EFU land conversion is the biggest and the foremost concern of his community.

Mr. Jones confirmed that is correct. We just can't keep taking farmland away if it is what makes Oregon what it is, the beauty of the farmland, the beauty of the timber, the beauty of the beaches. Once this is allowed, where does it stop?

Vice Chair Condon asked if the community Mr. Jones is representing recognizes that a solar facility may have an end of life and that there is an EFSC requirement that it be returned to usable condition.

Mr. Jones stated they are aware. It's a 35 year lease of the land. The concern is that it will take a long period of time to bring the land back to a farmable state.

Ms. Fuji Kreider - Ms. Kreider wanted to confirm that Council Members received her comments on the Contested Case rulemaking from the public hearing. She has them outlined by the rules and with examples for providing clarity.

¹² Audio/Video for Agenda Item D = 01:02:36- 2024-04-19-EFSC-Meeting-Audio/Video

She also noted she had sent a letter to Secretary Cornett, Ms. Esterson and Mr. Rowe requesting additional time to submit comments on the Boardman to Hemingway Amendment 2 due to the complexity of the DPO and the mapping issues Stop B2H has been navigating.

Mr. Rowe reminded Council that they review requests to extend comment deadlines for "good cause" and referenced two instances in the recent past in which Council considered such requests. He provided Council with the options of addressing the request today or keeping the current comment deadline and addressing the issue at the May EFSC meeting, possibly extending the deadline at that time.

- **After a brief discussion, Council decided to defer the request for extension until they are able to review the letter from Ms. Kreider and will discuss further at the end of the meeting.**

Mr. Jim Kreider - Mr. Kreider commented on the Contested Case Rulemaking Advisory Committee (RAC) stating in his opinion that RAC's are not a two way communication between the public and the staff. As a member of a RAC, he submitted extensive comments and suggestions, none of which were actually discussed. He noted he has served on other rulemaking groups, specifically with the public utility commission where they went section by section and discussed the comments. The RAC came to a consensus and staff made the decisions. He believes that the rulemaking process is not as public driven as Council may think because staff synthesizes what people say and then gives it to Council. He has sent his comments directly to Council members for their review.

Mr. Kreider also noted his agreement with Ms. Kreider's comments regarding the mapping issues faced by Stop B2H, reiterating their opinion that the Department and Idaho Power have multi layered mapping while members of the public do not.

Ms. Irene Gilbert - Ms. Gilbert expressed her agreement with the previous comments regarding the issues with the mapping and the request for additional time for comments on the B2H Amendment 2. She also commented on the earlier discussion regarding recruiting new members of the public for RAC's, stating that rulemaking is a legal process. Statutes define limits and opportunities regarding rules. The rules are complex. Without experience with the existing rules, it's difficult to identify what is lacking, how rules are being interpreted, and how changes will be implemented. Additionally, the time commitment is significant. It can be frustrating for the public due to a lack of influence in the final product.

Regarding the Contested Case rulemaking, Ms. Gilbert stated the contested case rules are not user friendly. The Council has the role of ensuring that there's a fair and balanced process. She believes that in the current process the applicant works with the Department of Energy for years in the development of the application and the Draft Proposed Order during which relationships are developed and ODOE takes ownership of the site certificates and the application. The public is provided an opportunity to review this Draft Proposed Order that has been developed by ODOE late in the process. The timeframe for public comment is often short. Ms. Gilbert described her experience in the Boardman to Hemingway contested case. She

stated it's very difficult for the public to deal with the system. The system is balanced against the public. She suggested Council think about whether it is their objective to make access to contested cases more difficult. She stated that there is no point in making it harder for people to obtain a contested case before ODOE.

Ms. Wendy King - Ms. King noted her agreement with the request for additional time for comments on the Boardman to Hemingway Amendment 2, stating in her county (Morrow), there are multiple energy projects that she is concerned about and is providing comments for.

She also noted she has drafted a public comment letter concerning the contested case rules that were encountered with B2H. She hopes Council will review as it contains answers to questions from Vice Chair Condon and Council Member Beier.

The Public Comment period was closed at: 10:27 a.m.

E. Wheatridge Renewable Energy East Request for Amendment 1, Review of the Draft Proposed Order (Information Item)¹³ – Christopher Clark, Senior Siting Analyst. Mr. Clark presented an overview of the approved 200 MW wind energy generation facility in Umatilla and Morrow Counties, the expansion proposed in Request for Amendment 1, and significant issues raised in the Draft Proposed Order, and comments received during the public hearing. The Council reviewed the Draft Proposed Order, including issues raised in comments received on the record of the DPO public hearing, and provided comments to staff for consideration in the Proposed Order.

During the discussion of issues raised in public comments, Council Member Beier asked if the Road Use Agreements with the Counties are required to be in place before construction.

Mr. Clark confirmed that the draft site certificate requires the Road Use Agreement with the applicable County to be in place before construction, or a phase of construction, and added that the Agreements would be implemented throughout construction; explaining that there is a requirement to do a preconstruction evaluation of existing road conditions and then go out and do repairs if there is damage from construction.

Council Member Beier asked if the roads are subject to the Erosion and Sediment Control Plan under the certificate holder's 1200-C permit.

Mr. Clark explained that the Erosion and Sediment Control Plan applies to construction activities. He explained that it would apply to use of private access roads used for construction within the site and would require best management practices (BMP) to be implemented along those roads, but that he was not sure if it would apply to the use of public roads during construction, which are really what's addressed by the Road Use Agreements.

¹³ Audio/Video for Agenda Item E = 01:45:59- 2024-04-19-EFSC-Meeting-Audio/Video

Council Member Imes asked if the Erosion and Sediment Control Plan and DEQ Permit would be available for Council review prior to construction.

Mr. Clark stated the certificate holder is required to get their Construction Stormwater Management Permit prior to construction, and that the plan would be attached to the permit. Mr. Clark explained that the opportunity for council review and approval of the Erosion and Sediment Control Plan is not specifically built into the process, as the Department would normally review it as part of the preconstruction compliance process. Mr. Clark further clarified that the draft site certificate does allow for the Department, or Council, to impose additional requirements in the Erosion and Sediment Control Plan if it determines they are necessary to address soil impacts.

Council Member Imes stated because the site boundary has changed so much from the original approval, she believes it's important for Council to evaluate.

Mr. Clark explained that the new permit and the new plan will be specific to the site, and phase of construction, specifically being moved forward with. He noted that there is also language in the draft site certificate that allows for a certificate holder to amend their plan to address micro siting changes that occur during construction, or if the Department, certificate holder, or DEQ determines that the BMPs aren't working as intended.

In response to an issue regarding codes and standards for the facility, Chair Howe asked if the recent Supreme Court decision (Umatilla County v. Dept. of Energy, 372 Or 194) affects the standards for the facility design.

Mr. Clark explained that the issue raised in the comment was that the record didn't include adequate information regarding ice loading, wind loads, or seismic criteria that would go into the structural design of the facility. He clarified that the Supreme Court decision was related to setback requirements and more nuanced arguments about what land use criteria apply to a review. Mr. Clark stated that the Supreme Court's decision doesn't have any substantive effect on the Draft Proposal Order. He explained that the Draft Proposed Order includes a footnote explaining the reasoning why setbacks had been applied in this case and not in Nolin Hills. He explained that since the footnote was explanatory, and since the reasoning was based on a pending Supreme Court decision that has now been issued, he assumed the footnote would probably be removed in the Proposed Order, and that the Department would not consider that a material change.

Vice Chair Condon suggested that the footnote not be removed because it is a matter of record of the thinking on issues as time progressed.

Mr. Clark stated that staff will take everything into consideration and consult with legal counsel and the secretary on the best way to deal with the footnote.

In regard to an issue regarding construction deadlines, Vice Chair Condon asked if, since there are two different time constraints imposed for different components of the same project, would

council rules limiting the number of extensions that can be granted also apply differently to the older and newer components of the project?

Mr. Clark confirmed that there are two different time constraints for previously approved and newly proposed facility components. He explained that this would be the first amendment for what was previously approved, and the certificate holder would be eligible to request one more amendment. For the new components, there would still be two potential extensions of both deadlines.

In response to an issue regarding potential wildfire impacts on agricultural soils, Council Member Devlin asked if the Department distinguished between wildfires on agricultural land and wildfires on grasslands in eastern Oregon, as grassland wildfires are fairly common in Oregon.

Mr. Clark explained that the distinction was made in two ways. One is that the fire risk data used to model hazard shows crop lands, fallow lands, and grasslands as different fuel loads, to the overall fire hazard for agricultural lands and grasslands is differentiated. Mr. Clark explained that the modelling indicates that the risk of an uncontrollable fire occurring on grassland is higher than on cultivated or fallow land. The other way is differentiating requirements for containment of the fires that could affect agricultural and grasslands. Mr. Clark explained that if the certificate holder needs to suppress a fire at the site, the Department believes those efforts should be focused first on preventing hazard to the public, people, and human infrastructure, and then on all the other resources at the site, including agricultural operations and private property.

Council Member Imes suggested that this issue is a good example of how the rulemaking process could be improved for these kinds of situations. She noted that in her opinion in the project area, the combination of high winds, dryland grasses and dryland wheat are high risk areas but are classified as low risk. She asked whether the National Weather Service data was utilized in the analysis as suggested in the comments.

Mr. Clark explained that the fire risk modelling is not perfect, but that the model used considers the fuel loads on the site, topography and other factors that would increase the intensity of the fire or the spread of fire do determine the level of fire risk. He explained that the fire models rely on 2018 data, and that the Department is expecting the Oregon Department of Forestry to release a new wildfire risk map soon, and that it expects the updated data to be incorporated into Wildfire plans.

Regarding utilization of National Weather Service data, Mr. Clark explained that while he is not sure of the source, climate and precipitation data are incorporated into the model. He also explained that Red Flag Warnings and other events are dealt with in the wildfire mitigation plan, as the certificate holder and Department's revised WMP include provisions for maintaining fire weather watches during Red Flag Warnings and Fire Weather Watches.

Council Member Beier stated this will be an ongoing discussion as this is a new standard for the Council and the science is evolving. She suggested it would be helpful to have a work session with the Department of Forestry regarding the data that is available. She noted agreement that in off-site fire mitigation, there was likely a hierarchy of what needed to be protected, with human health and safety and the top, and things like agricultural infrastructure and productivity following. She explained that weather data should be used to trigger on site behavior, so that fire weather should result in more monitoring. Council member Beier noted that the Wildfire Mitigation Plan submitted by the certificate holder did a good job of identifying on-site actions, but that the Council was looking for more coordination with local fire responders regarding off-site mitigation.

Council Member Imes noted her disagreement with the Department's suggestion that the risk of widespread fire occurring in an agricultural area is low. Vice Chair Condon agreed, and asked if the modeling is looking forward given what is currently known regarding climate changes and drought.

Mr. Clark answered that the model is based on historic data that uses statistics to predict future vulnerability. He stated that the way the model categorizes risk is complicated, but that his understanding is that when the model says the risk in a pixel is low, it means that the risk of an uncontrollable fire starting in that pixel is lower than the risk in a pixel categorized as high. He explained that this was not the same as saying that the damage that would result from a fire occurring in that square was low. He explained that the Department had intended to explain the data in the model by referring to the low-risk label and could look for alternative language.

Secretary Esterson added that whether the risk is low or high, isn't substantively being used to inform the adequacy of the plan. The plan represents how you prevent situations that are high risk or any risk, and how to respond once you have an issue. The Department doesn't have a plan that is appropriate for low, medium, and high risk. It really is a plan for all risk.

Vice Chair Condon stated while she appreciates the use of modeling, she is concerned about moving forward without understanding the underlying data.

Chair Howe noted his appreciation with the explanation of the rating is more based upon how likely a fire is to spread as opposed to the damage it would cause.

Council Member Beier noted Secretary Esterson's comments that because the fire risk is low doesn't mean that an applicant is off the hook. She explained that the risk level can inform expectations but does not determine the conditions the Council can impose for managing a fire onsite or offsite.

Council Member Imes agreed with Chair Howe that the explanation of the ratings is helpful. She also noted that means that local resources to fight a fire should be taken into

consideration in the mitigation plan as there are limited capacities of resources in rural locations.

In regards to the Noxious Weed Control Plan, Council Member Beier stated with this project as well as others, there is disturbed ground even if the disturbance is on a temporary basis. Getting on top of the noxious weeds early is critical. The conditions included must reinforce how important it is to monitor for noxious weeds, and then control them. Noxious weeds can affect the local agriculture economy.

Council Member Grail stated it is her hope that the certificate holder is listening and thinking about how they can support the rural county in the noxious weed control.

Secretary Esterson noted that the Department is about a month away from having a contract in place with an individual that has been selected in coordination with Morrow County Planning to operate as a dual enforcement compliance officer specific to noxious weeds in Morrow County. The Department is testing how this might work, but it's much more robust of an agreement to cover noxious weed control than in the past.

Council Member Imes added as she lives in the rural area and has dealt with the noxious weeds, she affirmed it is a significant issue.

Council Member Imes asked, in reference to the protection of Threatened or Endangered Species, specifically Lawrence's milkvetch, if the applicant had a plan in place.

Mr. Clark confirmed that there is a draft plan, though the applicant does not have an actual number of plants that will be affected and has not completed surveys of some of the site as surveys can only be done during the growing season. He confirmed that the surveys will be completed before construction begins.

In response to an issue regarding potential impacts to emergency communications, Council Member Beier asked what would happen in an agency identified potential impacts?

Mr. Clark acknowledged that would depend on the impact. If there were a direct impact to the emergency communications network, Staff would work to mitigate the impacts through the preconstruction compliance process.

In regards to issues regarding wildfire mitigation, Council Member Imes noted that the winds can carry embers for miles and suggested incorporating the wind factor into the Wildfire Prevention and Risk Mitigation map.

Mr. Clark stated one of the things Staff identified as needing to be developed in the final plan is the identification of permanent and natural fire breaks and where other fire suppression activities would be concentrated.

Council Member Imes, referring to her hometown of Lexington, stated there was a fire during the past summer in town which jumped the fire break. She reminded Council and the applicant that the dry summer weather combined with the winds in the area present additional risks which should be considered.

Council Member Imes asked if there was a specific time of year for the preventative measures for vegetation control in the Wildfire Mitigation Plan.

Mr. Clark stated that vegetation inspections and the preparation of the annual vegetation management plan would occur before the fire season each year.

Council Member Imes suggested having the county lead person give input on when the preventative measures would be most effective.

Mr. Clark noted that the weed supervisor is directly involved with the development of the weed treatments and the weed eradication program. He noted that maintaining transmission line clearance is a separate issue.

Council Member Imes stated her concern is the weed control is done at the appropriate time. She would like to see coordination and collaboration with the county regarding the WMP.

Council Member Grail stated there is a difference between construction and operation with the number of people on a site. She suggested during high risk of fire periods, operating facilities should consider additional staff. She expressed her agreement with Council Member Imes comments regarding coordination adding the developer should coordinate with other facilities, utilities, and county plans as part of the WMP.

Council Member Beier requested the lightning protection systems be reflected in the WMP.

Mr. Clark noted his agreement.

Council Member Grail stated that Council needs to ensure that the certificate holder and the developer are doing everything possible for fire prevention including working with local fire service providers recognizing that rural areas do not have a lot of resources and they may need to help support it to protect areas.

Chair Howe questioned if there is a difference in fire response for a preconstructed site and an operational site.

Mr. Clark stated fire prevention planning is the same but the response changes when things such as a battery system are on the landscape.

Council Member Imes suggested the certificate holder engage with the local county fire districts and possibly have on-site training for first responders. Local fire districts could have the

opportunity to access the plan and respond to the plan and any potential issues before construction begins.

Council Member Grail suggested adding local utilities to the training and coordination suggested by Council Member Imes as they would be an additional resource and are considered first responders.

Council Member Imes questioned if the emergency manager for the counties is involved in the WMP and suggested that would be an additional good resource.

Secretary Esterson reviewed existing Condition GEN-PS-03 which states “prior to construction and operation, certificate holder must provide training on fire prevention and response that includes instruction on facility fire hazards. They shall notify the department and first response agencies at least 30 days prior to the training and provide them an opportunity to participate.”

Council Member Imes reiterated the importance of having training and coordination with county agencies included in the WMP.

Mr. Clark stated that coordination with the local fire service providers and the opportunity to provide comments on the adequacy of the plan and comment on their ability to respond are in the preliminary recommendation. When and how that should occur is yet to be determined.

Council Member Beier suggested preconstruction would be critical for the coordination and training with a possible additional check in before operations begin. She commented that the applicant should be responsible for the coordination. She also suggested requiring the local emergency management or first responders to acknowledge their involvement.

Chair Howe and Council Member Imes agreed with Council Member Beier’s suggestions.

In response to issues regarding the visual impacts of the facility, Council Member Beier noted the landscape in the eastern part of the state has changed dramatically in the past 20 years. She noted that it is important for the Council to consider the cumulative effects, though Council standards are specific on what is protected and what is considered in the cumulative effect standard. While she sympathizes with the property owners whose world is changing, she noted that the Council currently does not have a standard to address the issue.

Chair Howe agreed with Council Member Beier’s comments.

Secretary Esterson stated visual impacts, cumulative or not, are one of the hardest environmental impacts to evaluate as the Department does not have specific criteria. The significance of what is being impacted is what is examined.

Council Member Imes noted as the landscape is dramatically transforming with energy projects, it is her hope that the cumulative effect is examined thoroughly during rulemaking. She also noted her sympathy to the commentors.

Council Member Devlin commented adding visual impacts in a standard would be challenging as there are many different opinions of what constitutes visual impacts.

Council Member Chocktoot stated that over the past 10 years, 37 species of birds have been lost. He believes that energy projects are a contributing factor to the deaths. He suggested any type of additional studies or analysis that can curb the deaths should be considered.

Mr. Clark noted that there was some concerning evidence in the record regarding the cumulative impacts of wind development on bird and bat species in the Columbia Plateau. Staff has responded to that in the DPO by requiring the setback requirements represented by the applicant and requiring the thresholds of concerns to be revisited which could trigger additional mitigation under the wildlife monitoring mitigation plan.

F. Leaning Juniper IIA Request for Amendment 3, Review of the Draft Proposed Order (Information Item)¹⁴ – Chase McVeigh-Walker, Senior Siting Analyst. Council was presented with an overview of the operational 90.3 MW wind energy generation facility. It consists of 43 wind turbines, with a maximum blade tip height of 492 feet, and related and supporting facilities within a site boundary of 6,404 acres in Gilliam County. Amendment 3 propose to repower 36 wind turbines, decommission 2 wind turbines, temporarily disturb 396 acres of high-value farmland, and add new conditions. Council reviewed the Draft Proposed Order on Amendment 3, including issues raised in comments received on the record of the DPO public hearing, and provided comments to staff for consideration in the Proposed Order.

Council Member Beier stated her comments regarding the WMP and the Organizational Expertise Standard may not be appropriate for a repowering of this facility but urged Staff to review and make sure the updated requirements for the standards are in place.

Secretary Esterson noted in response to Council's comments about looking back to prior decisions for consistency related to the wildfire mitigation plan, Staff did have the opportunity to look at the Obsidian project where there was a good Council discussion section for Staff to incorporate a requirement as part of the coordination by the certificate holder with emergency response providers that there be a plan for how those service providers could notify surrounding landowners. The directive is now being applied to WMP's.

Vice Chair Condon added it is important that the Organizational Expertise Standard is updated with new requirements to include what the public safety provisions are in case of a wildfire as many projects are Limited Liability Corporations to a parent company.

Vice Chair Condon questioned the language change from "appropriate" to "necessary" in the Recommended Retirement and Financial Assurance Condition asking what defines necessary.

¹⁴ Audio/Video for Agenda Item F = 04:09:58- 2024-04-19-EFSC-Meeting-Audio/Video

Secretary Esterson stated the compliance program would be evaluating their annual report, which would provide evidence of whether they're complying with the standards and are keeping the site clean.

Council Member Imes suggested with this project being a repowering of the facility, there will be a significant amount of waste. She believes an updated waste minimization plan would be appropriate and recommends the plan should be put forth prior to construction.

Secretary Esterson responded that Condition 130 is effectively a plan for recycling of turban parts. Condition 98 which was applied during construction of the original facility had recycling requirements and there is an operational requirement for a waste of optimization plan which continues to apply.

After reviewing and discussing the current language of Condition 130, Council Member Imes suggested additions to the language regarding documentation submitted and notification to the Department when changes occur.

Council Member Devlin noted that most of the wind turban parts are recyclable and many of the components are being consistently recycled in Oregon.

G. Summit Ridge Wind Site Certificate Termination (Action Item)¹⁵ – Sarah Esterson, Senior Policy Advisor. The Summit Ridge Wind Farm is an approved wind energy generation facility that would consist of up to 72 wind turbines with a peak generating capacity of 194.4 megawatts (MW), located within a site boundary of approximately 11,000 acres. On March 8, 2024 the Department received a complete Application to Terminate the Summit Ridge Wind Farm Site Certificate.

Council Member Grail motioned that the Council issue a final order approving the proposed final retirement plan as the final retirement plan and terminating the Summit Ridge Wind site certificate, as presented and recommended by staff.

Council Member Devlin seconded the motion.

The motion carried unanimously.

H. Hydrogen Electrolyzer Jurisdictional Determination (Action Item)¹⁶ – Todd Cornett, Assistant Director for Siting and Michael Freels, Senior Policy Analyst. Council evaluated whether hydrogen electrolyzers by themselves constitute an “Energy Facility” as included in ORS 469.300(11)(a)(F) below and are therefore within their jurisdiction.

¹⁵Audio/Video for Agenda Item G = 04:50:28- 2024-04-19-EFSC-Meeting-Audio/Video

¹⁶ Audio/Video for Agenda Item H = 05:03:52- 2024-04-19-EFSC-Meeting-Audio/Video

A synthetic fuel plant which converts a natural resource including, but not limited to, coal or oil to a gas, liquid or solid product intended to be used as a fuel and capable of being burned to produce the equivalent of two billion Btu of heat a day.

Council Member Beier questioned what is the size of a hydrogen electrolyzer.

Mr. Freels stated the size can be dramatically different but in this particular situation of it being part of an industrial facility, it would be as large as a vehicle.

Chair Howe asked as this process is taking water and splitting it with the electricity, is the comparison whether this is a synthetic process.

Vice Chair Condon asked what the amount of energy is produced with a hydrogen electrolyzer.

Mr. Cornett stated that if all the hydrogen that was produced at a facility on a daily basis were utilized, it would be equal to, or greater than 2 Billion BTU. Council will make the determination today if a hydrogen electrolyzer is a synthetic fuel plant.

Council Member Devlin added his understanding of the process of hydrogen electrolyzing adding in his opinion it is out of Council purview.

Council Member Beier asked if water consumption is part of the process and if so, who would monitor the water use.

Mr. Cornett stated there would have to be legal access to the volume of water that they need to produce the amount of hydrogen that they're intending to produce. A developer of a hydrogen electrolyzer would have to figure the water consumption out as part of their process.

Mr. Freels added some of the water used in the process is converted into hydrogen and oxygen. Water is also used for cooling and maintenance of the electrolyzer and would be considered wastewater and it should be tested prior to going into a water way.

Mr. Rowe noted that the water consumption issue was mentioned in the legislative history, but there was virtually no discussion of it by the legislature. The legislature was focused on coal gasification plants. He reminded Council that they are not discussing whether Council has jurisdiction over the facility that produces the electricity. They are discussing the electrolyzer itself.

Vice Chair Condon expressed her view as the Council would not have jurisdiction over a petroleum refinery for the production of fossil fuel not electricity, similarly as the hydrogen electrolyzer does not produce electricity, the Council would have no jurisdiction.

Council Member Grail motioned that the Council determine a Hydrogen Electrolyzer, by itself, does not constitute an “Energy Facility” as described in ORS 469.300(11)(a)(F) for the reasons presented and recommended by staff.

Council Member Devlin seconded the motion.

The motion carried unanimously.

- **Council returned to the discussion regarding the request for additional time for comments on the Boardman to Hemingway Transmission Line Amendment 2.**

Council Member Beier acknowledged the request and expressed her understanding that some will feel there is never enough time to comment. The comment period that the Department established was 45 days as opposed to the minimum legal requirement of 21 days. The Department has established a robust comment period. She suggested the Council continue with the comment period as Staff has established.

Council Member Imes asked if the mapping tool that staff uses is available on the website and accessible to the public.

Mr. Cornett stated that the Department utilizes the ORESA mapping tool. It is a publicly available online mapping tool and a link to it is included in the notice. The Department has done some education on the use of the tool but this is a good reminder that more education on the mapping tool is needed. There are tremendous amounts of data on ORESA. He provided a brief tutorial on navigating the mapping tool.

Council Member Beier asked if the mapping tool has transportation layers and property ownership lines.

Mr. Cornett responded it does have the Department of Transportation paved roads. The Department of Revenue is working on a tax lot layer which would be very valuable. Counties have their own mapping of tax lot layers but the state does not have a unified map of tax lot layers yet.

Secretary Esterson stated that the ORESA mapping tool is provided by the Department of Energy. The GIS site boundary maps provided by Idaho Power are loaded to the ORESA mapping tool and are available to the public. There is a set of maps and figures that were provided in the amendment request. There are also additional maps and figures and the amendment request on the project website.

Vice Chair Condon, noting the Department has provided information and education about the ORESA tool at previous Council meetings, asked how the public has been introduced to the ORESA tool.

Mr. Cornett provided there was some education and outreach when the ORESA tool was first introduced. However, Staff is currently working on an educational video to better explain how the tool works. Staff has more work to do on creating that education as there is a huge amount of information and layers within the ORESA tool.

Council Member Beier stated the tool is a great resource adding that the education for use is critical. If the use of it is maximized, it will alleviate some of the public frustration.

Council Member Beier motioned the Council deny the request to extend the B2H AMD DPO comment period because the comment period provides 45 days, the ORESA tool has available data and members of the public will have another opportunity to request more time at the May 30, 2024 hearing.

Vice Chair Condon seconded the motion.

The motion carried unanimously.

Chair Howe adjourned the meeting at 3:04 p.m.