

**DRAFT AMENDED NOTICE OF PROPOSED RULEMAKING
CHAPTER 345 - ENERGY FACILITY SITING COUNCIL**

FILING CAPTION: Amendment of Protected Areas, Scenic Resources, and Recreation Standards and Associated Rules

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: [20 Days after Date of Issuance]

NEED FOR THE RULE(S):

The legislature established the Energy Facility Siting Council to oversee a comprehensive program for the siting, monitoring and regulation of energy facilities in Oregon. To this end, the Council must establish rules and standards to ensure that the siting, construction and operation of energy facilities is accomplished in a manner consistent with the protection of public health and safety and in compliance with Oregon's energy, land use, and environmental protection policies.

ORS 469.501(1) identifies several subjects that may be addressed by the Council's siting standards, including areas designated for protection by the state or federal government and the impacts of a facility on recreation, scenic, and aesthetic values. The Council has adopted standards for addressing these subjects under its general standards for siting facilities found in OAR chapter 345, division 22.

The Protected Areas and Scenic Resources Standards were last amended in 2007. The Recreation standard was last amended in 2002. Over the past 15 years, numerous new protected areas have been designated by the state and federal government, and many previously designated areas have been renamed, re-organized, or re-designated. In addition, changes to state law surrounding the protection of scenic resources and recreational opportunities have created a need for better accommodation of resources of statewide importance that are not otherwise located within a protected area. Rulemaking is needed to ensure that impacts to these new areas and designations are addressed during the siting process and that the siting of energy facilities continues to be accomplished in compliance with Oregon's current land use and environmental protection policies.

These rules also contain changes intended to facilitate the notification of and coordination with federal and state land managing agencies that administer protected areas. The Council will consider additional changes to its public notification procedures in a future rulemaking, but as an interim policy, will require any public notice issued by the Department during the review of an Application for Site Certificate or Request for Amendment of a Site Certificate be provided to the managing agency of any Protected Area within the applicable study or analysis area for the project. In addition to requesting comment on these proposed rules, the Council requests public comment on this policy and whether other options should be considered for achieving the policy's substantive goals while reducing negative economic impact of the rule on business.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Staff Report and Supporting Materials for Agenda Item E of the May 26-27 Energy Facility Siting Council Meeting, available from: <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Council-Meetings.aspx>

Staff Report and Supporting Materials for Agenda Item C of the April 22, 2022 Energy Facility Siting Council Meeting, available from: <https://www.oregon.gov/energy/facilities->

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE:

These rules amend standards intended to address the impacts of energy facility siting on protected areas, scenic resources, and recreational opportunities. These resources are important to many different communities in Oregon, and as such it is not clear that this rulemaking would have a direct impact on racial equity in this state. Energy facilities subject to the Council's jurisdiction are typically located in rural areas east of the Cascade Mountain Range. While these areas generally have similar demographics as the statewide population, some Counties that have seen significant levels of energy development, such as Wasco, Jefferson, Umatilla, and Klamath Counties also contain tribal lands and, according to 2021 data from the US Census Bureau Population Estimates Program, have higher percentages of people who identify as American Indian than the statewide population. Some counties which contain numerous energy facilities, including Morrow and Umatilla Counties, also have a higher percentage of people that identify as Hispanic or Latino than the statewide population.

FISCAL AND ECONOMIC IMPACT:

The rules are not expected to create additional expenditures or revenues for state agencies or units of local government. The rules could result in some fiscal or economic impacts on a person proposing to construct or operate a new energy facility. These impacts would primarily be associated with increased information and analysis needed to satisfy the standard, but there could also be increased costs associated with the mitigation of impacts to protected areas, scenic or recreational resources, including avoiding siting energy facilities in or near these resources.

Because these fiscal and economic impacts would only apply to future applications for a site certificate, and because their magnitude would be highly dependent on the size, type, and location of a proposed facility, we are unable to quantify the potential impacts.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

These rules will apply to persons applying for an energy facility site certificate, which typically includes utilities, independent power producers, and energy developers. These persons could be subject to some increased costs, including administrative costs and the costs of professional services associated with conducting analyses for impacts to protected areas, scenic resources, and recreational opportunities. Because the analysis required is substantively the same as that required under the current rules, any increases in costs are expected to be less than significant.

No state agencies or units of local government are expected to be economically affected by the rules. In the event that a state agency or local government were required to assist in the review of a proposed project to determine compliance with the amended standards and rules, that agency or government's costs would be recoverable from the applicant under ORS 469.421.

Few, if any, small businesses are expected to be affected by the proposed rules. While a small business could apply for a site certificate in the future, all applicants to date have either been public utilities or other businesses with more than 50 employees, or project specific limited liability companies that are not independently owned and operated from all other businesses. If a small business were to apply for a site certificate in the future, the impacts would be identical to those experienced by other applicants. The expected reporting, recordkeeping and administrative activities and other costs required to comply with the rules would be similar to those required under the current rules. While there may be some increased costs, including the costs of professional services, equipment, supplies, labor, and increased administration required for conducting analyses for impacts to the additional protected areas, scenic resources, and recreational opportunities that must be evaluated under these rules, the costs would be similar to those required under the current rules and any increases are expected to be less than significant.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Because small businesses are not expected to be affected, small business were not specifically consulted during the development of these rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

No. In lieu of consulting an Administrative Rule Advisory Committee, the Council conducted a series of public workshops on the proposed rules to solicit public views and input. The Council also separately invited the nine federally recognized tribes in Oregon to provide input and recommendations on policy issues under consideration as part of this rulemaking.

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RULES PROPOSED:

345-001-0010, 345-020-0011, 345-021-0010, 345-022-0040, 345-022-0080, 345-022-0100

NOTE: The draft permanent rules provided in this document reflect rule changes adopted under Administrative Orders EFSC 1-2022 and EFSC 2-2022. As a result, some rule language and numbering differs from the proposed rules presented in the Notice of Proposed Rulemaking for this project issued on May 27, 2022.

The document shows rule text as follows:

- Existing rule language is shown as plain text
- Changes included in the proposed rules are shown in ~~strikethrough~~ for proposed deletions and underline for proposed additions.
- Staff's recommended modifications to the proposed rules are shown in ~~red-strikethrough~~ for proposed deletions and red underline for proposed additions.

AMEND: 345-001-0010

RULE TITLE: Definitions

RULE SUMMARY: Replaces and amends definition of “protected area” formerly located in OAR 345-022-0040. Categories of protected areas are updated, and specific area references are removed and replaced with references to authorizing law or statute for designation, where possible. Expands list to include special resource management areas administered by a Federal Agency other than the US Bureau of Land Management. Makes additional editorial changes for clarity and consistency.

RULE TEXT:

In this chapter, unless the context requires otherwise or a term is specifically defined within a division or a rule, terms have the meaning provided in ORS 469.300 and the following definitions:

(1) “Analysis area” means the area or areas specifically described in the project order issued under OAR 345-015-0160(1), containing resources that the proposed facility may significantly affect. The analysis area is the area for which the applicant must describe the proposed facility’s impacts in the application for a site certificate. A proposed facility might have different analysis areas for different types of resources. For the purpose of submitting an application for a site certificate in an expedited review granted under 345-015-0300 or 345-015-0310, the analysis areas are the study areas defined in this rule, subject to modification in the project order.

* * * * *

(26) “Protected Area” means an area designated for protection under federal or state law as one or more of the following:

(a) A ~~n~~National ~~p~~Park or other unit of the National Park System described under 54 U.S.C. 100501;

(b) A ~~n~~National ~~m~~Monument established under 54 U.S.C. 320~~2~~301 or by an act of Congress;

(c) A ~~w~~Wilderness ~~a~~Area established under 16 U.S.C 1131 et seq. or by an act of Congress;

(d) A ~~w~~Wild, ~~s~~Scenic, or ~~r~~Recreational ~~r~~River included in the National Wild and Scenic River System under 16 U.S.C. 1271 et seq.;

(e) A ~~n~~National ~~w~~Wildlife ~~r~~Refuge included in the National Wildlife Refuge System described under 16 U.S.C. 668dd;

(f) A ~~n~~National ~~f~~Fish ~~h~~Hatchery established under 16 U.S.C. 760aa;

(g) A ~~n~~National ~~r~~Recreation area, ~~n~~National ~~s~~Scenic area, or ~~s~~Special ~~r~~Resources ~~m~~Management ~~u~~Unit established by an act of Congress;

(h) A ~~w~~Wilderness ~~s~~Study ~~a~~Area established under 43 U.S.C. 1782;

(i) Federal Land designated in a federal land management plan as:

(A) An Area of Critical Environmental Concern;

(B) An Outstanding Natural Area;

(C) A Research Natural Area;

(D) An Experimental Forest or Range; or

(E) A Special Interest Area designated for scenic, geologic, botanic, zoologic, paleontological, archaeological, historic, or recreational values, or combinations of these values;

(j) A state park, wayside, corridor, monument, historic, or recreation area under the jurisdiction of the Oregon Parks and Recreation Department;

(k) The Willamette River Greenway created under ORS 390.310 to 390.368;

(L) A natural area listed in the Oregon Register of Natural Areas under ORS 273.581;

(m) The South Slough National Estuarine Research Reserve, described under ORS 273.5653;

(n) A state scenic waterway designated under ORS 390.805 to 390.925 and related adjacent lands;

(o) A state wildlife refuge or management area established under ORS chapter 496 identified in OAR chapter 635, division 008;

(p) A state fish hatchery established under ORS chapter 496 or 506 operated by the Oregon Department of Fish and Wildlife;

(q) An agricultural experiment station, experimental area, or research center established by Oregon State University under ORS chapter 567; or

(r) A research forest established by Oregon State University under ORS 526.215.

STATUTORY/OTHER AUTHORITY: ORS 469.470, 469.503

STATUTES/OTHER IMPLEMENTED: ORS 469.300-469.570, 469.590-469.619, 469.992

AMEND: 345-020-0011

RULE TITLE: Contents of a Notice of Intent

RULE SUMMARY: Requires applicant to identify all protected areas in study area in its Notice of Intent, and provide the name, mailing address, phone number, and email address of the land management agency or organization with jurisdiction over each protected area. Makes additional editorial changes for clarity and consistency.

RULE TEXT:

(1) The applicant must, to the extent reasonably practicable, include in the notice of intent (NOI) the information described in the following subsections. If the applicant proposes alternative sites, the applicant must describe each alternative separately. The applicant must designate the information with the appropriate exhibit label identified in the following subsections:

* * * * *

(d) **Exhibit D.** If the proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the definition in ORS 469.300, identification of at least two proposed corridors, as defined in OAR 345-001-0010, or identification of a single proposed corridor with an explanation of why alternate corridors are unlikely to better meet the applicant's needs and satisfy the Council's standards. The applicant must include an explanation of the basis for selecting the proposed corridors and, for each proposed corridor, the information described in subsections (e), (g), (i), (j), (k), (L), ~~(M)~~ and ~~(P)~~ that is available from existing maps, aerial photographs, and a search of readily available literature.

* * * * *

(j) **Exhibit J.** Identification of potential significant-~~potential~~ environmental impacts of construction and operation of the proposed facility on resources in the study areas, including those impacts affecting air quality, surface and ground water quality and availability, wildlife and wildlife habitat, threatened and endangered plant and animal species, historic, cultural and archaeological resources, scenic and aesthetic areas resources, recreation opportunities, land use, and wildfire risk.

* * * * *

(L) **Exhibit L.** A list of all protected areas in the study area for impacts to protected areas identifying:

(A) The distance and direction of the protected area from the proposed facility;

(B) The basis for protection of the area, by reference to a specific subsection under OAR 345-001-0010(49); and

(C) The name, mailing address, phone number, and email address of the land management agency or organization with jurisdiction over the protected area;

STATUTORY/OTHER AUTHORITY: ORS 469.470
STATUTES/OTHER IMPLEMENTED: ORS 469.330

DRAFT

AMEND: 345-021-0010

RULE TITLE: Contents of an Application

RULE SUMMARY: Requires applicant to provide the name, mailing address, phone number, and email address of the land management agency or organization with jurisdiction over each protected area in the analysis area for the project as part of the Application for Site Certificate. Clarifies and expands requirements for exhibits related to scenic resources and visual impact assessments. Makes additional editorial changes for clarity and consistency.

RULE TEXT:

(1) The project order described in OAR 345-015-0160(1) identifies the provisions of this rule applicable to the application for the proposed facility, including any appropriate modifications to applicable provisions of this rule. The applicant must include in its application for a site certificate information that addresses each provision of this rule identified in the project order. The applicant must designate the information with the appropriate exhibit label identified in the following subsections. If the same information is required in each of several exhibits the applicant may provide the required information in one exhibit and include appropriate references in the others. For the purpose of submitting an application for a site certificate in an expedited review granted under OAR 345-015-0300 or 345-015-0310, the applicant must include information that addresses all provisions of this rule. In such expedited reviews, analysis areas addressed in this rule are the study areas defined in OAR 345-001-0010, subject to later modification in the project order.

* * * * *

(L) **Exhibit L.** Information about the potential impacts of the proposed facility's impact on protected areas in the analysis area, providing evidence to support a finding by the Council as required by OAR 345-022-0040, including:

(A) A list of ~~the~~ all protected areas within the analysis area, showing identifying:

(i) ~~the~~ distance and direction of the protected area from the proposed facility; and

(ii) ~~the~~ basis for protection by reference to a specific subsection ~~under of~~ OAR ~~345-022-0010(1)~~ 345-001-0010(4926); and

(iii) The name, mailing address, phone number, and email address of the land management agency or organization with jurisdiction over the protected area;

(B) A map showing the location of the proposed facility in relation to the protected areas ~~listed in~~ OAR 345-022-0040 located within the analysis area; and

(C) A description of significant potential impacts of the proposed facility, if any, on the protected areas including, but not limited to, potential impacts such as:

(i) Noise resulting from facility construction or operation;

(ii) Increased traffic resulting from facility construction or operation;

(iii) Water use during facility construction or operation;

(iv) Wastewater disposal resulting from facility construction or operation;

(v) Visual impacts of facility structures or plumes, including, but not limited to, changes in landscape character or quality; and

(vi) Visual impacts from air emissions resulting from facility construction or operation, including, but not limited to, impacts on Class 1 Areas as described in OAR 340-204-0050.

* * * * *

(r) **Exhibit R.** An analysis of ~~significant~~ potential visual impacts of the proposed facility, if any, on ~~scenic resources identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located~~ significant or important scenic resources within the analysis area, providing evidence to support a finding by the Council ~~as required by~~ under OAR 345-022-0080, including:

(A) ~~A list of the~~ An inventory of scenic resources identified as significant or important in a land use management plan adopted by one or more local, tribal, state, and or federal plans that address government or agency applicable to lands within the analysis area for scenic resources. The applicant must provide a list of the land management plans reviewed in developing the inventory and a copy of the relevant portion of the plans;

~~(B) Identification and description of the scenic resources identified as significant or important in the plans listed in (A), including a copy of the portion of the management plan that identifies the resource as significant or important;~~

(B) A map or maps showing the location of the scenic resources described under paragraph (A), in relation to the site of the proposed facility;

~~(C) A description of the methodology the applicant used to identify and assess significant potential adverse~~ visual impacts to the scenic resources identified in paragraph (A);

(D) Identification of potential visual impacts to the scenic resources identified in paragraph (A), including, but not limited to, impacts such as:

(i) Loss of vegetation or alteration of the landscape as a result of construction or operation; ~~and~~

(ii) ~~Changes in landscape character or quality due~~ Visual impacts of facility structures or plumes, including, but not limited to changes in landscape character or quality; and

(iii) Loss of visibility due to air emissions or other pollution resulting from the construction or operation of the proposed facility;

(E) An assessment of the significance of the visual impacts described under paragraph (D);

~~(F)~~ A description of the measures the applicant proposes to avoid, reduce or otherwise mitigate any significant adverse impacts; and

~~(E)~~ A map or maps showing the location of the scenic resources described under (B); and

~~(F)~~ The applicant's proposed monitoring program, if any, for impacts to scenic resources.

* * * * *

(t) **Exhibit T.** Information about the impacts the proposed facility would have on important recreational opportunities in the analysis area, providing evidence to support a finding by the Council as required by OAR 345-022-0100, including:

(A) A description of the recreational opportunities in the analysis area that includes information on the factors listed in OAR 345-022-0100(1) as a basis for identifying important recreational opportunities;

(B) A description of any ~~significant~~ potential adverse impacts to the important opportunities identified in paragraph (A) including, but not limited to:

(i) Direct or indirect loss of a recreational opportunity as a result of facility construction or operation;

(ii) Noise resulting from facility construction or operation;

(iii) Increased traffic resulting from facility construction or operation;

(iv) Visual impacts of facility structures or plumes, including, but not limited to, changes in changes in landscape character or quality;

(C) An evaluation of the significance of the potential adverse impacts identified under paragraph (B);

~~(D)~~ A description of any measures the applicant proposes to avoid, reduce or otherwise mitigate any significant adverse impacts identified in paragraph (B);

~~(E)~~ A map of the analysis area showing the locations of important recreational opportunities identified in paragraph (A); and

~~(F)~~ The applicant's proposed monitoring program, if any, for impacts to important recreational opportunities.

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STATUTORY/OTHER AUTHORITY: ORS 469.373, 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.350, 469.370, 469.413, 469.501, 469.503, 469.504

AMEND: 345-022-0040

RULE TITLE: Protected Areas

RULE SUMMARY: Removes the effective date for protected area designations, allowing the Council to consider impacts to all protected areas that are designated prior to the filing of a complete application. Relocates definition of "protected area" to OAR 345-001-0010. Clarifies exception for when a linear facility may be located within a Protected Area. Specifies that amended standards will only be applicable to the review of applications or requests for amendment filed on or after the effective date of the rules. Makes additional editorial changes for clarity and consistency.

RULE TEXT:

~~(1) Except as provided in sections (2) and (3), the Council shall not issue a site certificate for a proposed facility located in the areas listed below. To issue a site certificate for a proposed facility located outside the areas listed below, the Council must find that, taking into account mitigation, the design, construction and operation of the facility are not likely to result in significant adverse impact to the areas listed below. References in this rule to protected areas designated under federal or state statutes or regulations are to the designations in effect as of May 11, 2007:~~

~~(a) National parks, including but not limited to Crater Lake National Park and Fort Clatsop National Memorial;~~

~~(b) National monuments, including but not limited to John Day Fossil Bed National Monument, Newberry National Volcanic Monument and Oregon Caves National Monument;~~

~~(c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131 et seq. and areas recommended for designation as wilderness areas pursuant to 43 U.S.C. 1782;~~

~~(d) National and state wildlife refuges, including but not limited to Ankeny, Bandon Marsh, Baskett Slough, Bear Valley, Cape Meares, Cold Springs, Deer Flat, Hart Mountain, Julia Butler Hansen, Klamath Forest, Lewis and Clark, Lower Klamath, Malheur, McKay Creek, Oregon Islands, Sheldon, Three Arch Rocks, Umatilla, Upper Klamath, and William L. Finley;~~

~~(e) National coordination areas, including but not limited to Government Island, Ochoco and Summer Lake;~~

~~(f) National and state fish hatcheries, including but not limited to Eagle Creek and Warm Springs;~~

~~(g) National recreation and scenic areas, including but not limited to Oregon Dunes National Recreation Area, Hell's Canyon National Recreation Area, and the Oregon Cascades Recreation Area, and Columbia River Gorge National Scenic Area;~~

~~(h) State parks and waysides as listed by the Oregon Department of Parks and Recreation and the Willamette River Greenway;~~

~~(i) State natural heritage areas listed in the Oregon Register of Natural Heritage Areas pursuant to~~

~~ORS 273.581;~~

~~(j) State estuarine sanctuaries, including but not limited to South Slough Estuarine Sanctuary, OAR chapter 142;~~

~~(k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed as potentials for designation;~~

~~(l) Experimental areas established by the Rangeland Resources Program, College of Agriculture, Oregon State University: the Prineville site, the Burns (Squaw Butte) site, the Starkey site and the Union site;~~

~~(m) Agricultural experimental stations established by the College of Agriculture, Oregon State University, including but not limited to:~~

~~Coastal Oregon Marine Experiment Station, Astoria.~~

~~Mid-Columbia Agriculture Research and Extension Center, Hood River.~~

~~Agriculture Research and Extension Center, Hermiston.~~

~~Columbia Basin Agriculture Research Center, Pendleton.~~

~~Columbia Basin Agriculture Research Center, Moro.~~

~~North Willamette Research and Extension Center, Aurora.~~

~~East Oregon Agriculture Research Center, Union.~~

~~Malheur Experiment Station, Ontario.~~

~~Eastern Oregon Agriculture Research Center, Burns.~~

~~Eastern Oregon Agriculture Research Center, Squaw Butte.~~

~~Central Oregon Experiment Station, Madras.~~

~~Central Oregon Experiment Station, Powell Butte.~~

~~Central Oregon Experiment Station, Redmond.~~

~~Central Station, Corvallis.~~

~~Coastal Oregon Marine Experiment Station, Newport.~~

~~Southern Oregon Experiment Station, Medford.~~

~~Klamath Experiment Station, Klamath Falls.~~

~~(n) Research forests established by the College of Forestry, Oregon State University, including but not limited to McDonald Forest, Paul M. Dunn Forest, the Blodgett Tract in Columbia County, the Spaulding Tract in the Mary's Peak area and the Marchel Tract;~~

~~(o) Bureau of Land Management areas of critical environmental concern, outstanding natural areas and research natural areas;~~

~~(p) State wildlife areas and management areas identified in OAR chapter 635, division 8.~~

(1) To issue a site certificate, the Council must find:

(a) The proposed facility will not be located within the boundaries of a protected area designated on or before the date the application for site certificate or request for amendment was determined to be complete under OAR 345-015-0190 or 345-027-0363;

(b) The design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to a protected area designated on or before the date the application for site certificate or request for amendment was determined to be complete under OAR 345-015-0190 or 345-027-0363.

(2) Notwithstanding section (1)(a), the Council may issue a site certificate for ~~a transmission line or a natural gas pipeline or for a facility located outside a protected area:~~

(a) A facility that includes a transmission line or, natural gas pipeline, or water pipeline as a related or supporting facility located in a protected area identified in section (1), if other if the Council determines that other reasonable alternative routes or sites have been studied and determined by the Council to have greater impacts that the proposed route or site is likely to result in fewer adverse impacts to resources or interests protected by Council standards; or

(b) Notwithstanding section (1), the Council may issue a site certificate for sSurface facilities related to an underground gas storage reservoir that have pipelines and injection, withdrawal or monitoring wells and individual wellhead equipment and pumps located in a protected area, if the Council determines that other alternative routes or sites have been studied and determined by the Council to be are unsuitable.

(3) The provisions of section (1) do not apply to:

(a) A transmission lines or natural gas pipelines routed within 500 feet of an existing utility right-of-way containing at least one transmission line with a voltage rating of 115 kilovolts or higher; or

(b) A natural gas pipeline routed within 500 feet of an existing utility right-of-way containing at least one natural gas pipeline of 8 inches or greater diameter that is operated at a pressure of 125 psig.

(4) The Council shall apply the ~~standard~~ version of this rule adopted under Administrative Order EFSC 1-2007, filed and effective May 15, 2007, to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule. Nothing in this section waives the obligations of the certificate holder and Council to abide by local ordinances, state law, and other rules of the Council for the construction and operation of energy facilities in effect on the date the site certificate or amended site certificate is executed.

[ALTERNATE TEXT]

(4) For any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule, section (1) to (3) of this rule do not apply and the Council shall apply a standard as provided in section:

(a) Except as provided in subsections (4)(b) and (c) of this rule, the Council shall not issue a site certificate for a proposed facility located in the areas listed below. To issue a site certificate for a proposed facility located outside the areas listed below, the Council must find that, taking into account mitigation, the design, construction and operation of the facility are not likely to result in significant adverse impact to the areas listed below. References in this rule to protected areas designated under federal or state statutes or regulations are to the designations in effect as of May 11, 2007:

(A) National parks, including but not limited to Crater Lake National Park and Fort Clatsop National Memorial;

(B) National monuments, including but not limited to John Day Fossil Bed National Monument, Newberry National Volcanic Monument and Oregon Caves National Monument;

(C) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131 et seq. and areas recommended for designation as wilderness areas pursuant to 43 U.S.C. 1782;

(D) National and state wildlife refuges, including but not limited to Ankeny, Bandon Marsh, Baskett Slough, Bear Valley, Cape Meares, Cold Springs, Deer Flat, Hart Mountain, Julia Butler Hansen, Klamath Forest, Lewis and Clark, Lower Klamath, Malheur, McKay Creek, Oregon Islands, Sheldon, Three Arch Rocks, Umatilla, Upper Klamath, and William L. Finley;

(E) National coordination areas, including but not limited to Government Island, Ochoco and Summer Lake;

(F) National and state fish hatcheries, including but not limited to Eagle Creek and Warm Springs;

(G) National recreation and scenic areas, including but not limited to Oregon Dunes National Recreation Area, Hell's Canyon National Recreation Area, and the Oregon Cascades Recreation Area, and Columbia River Gorge National Scenic Area;

(H) State parks and waysides as listed by the Oregon Department of Parks and Recreation and the

Willamette River Greenway;

(I) State natural heritage areas listed in the Oregon Register of Natural Heritage Areas pursuant to ORS 273.581;

(J) State estuarine sanctuaries, including but not limited to South Slough Estuarine Sanctuary, OAR chapter 142;

(K) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed as potentials for designation;

(L) Experimental areas established by the Rangeland Resources Program, College of Agriculture, Oregon State University: the Prineville site, the Burns (Squaw Butte) site, the Starkey site and the Union site;

(M) Agricultural experimental stations established by the College of Agriculture, Oregon State University, including but not limited to:

Coastal Oregon Marine Experiment Station, Astoria.

Mid-Columbia Agriculture Research and Extension Center, Hood River.

Agriculture Research and Extension Center, Hermiston.

Columbia Basin Agriculture Research Center, Pendleton.

Columbia Basin Agriculture Research Center, Moro.

North Willamette Research and Extension Center, Aurora.

East Oregon Agriculture Research Center, Union.

Malheur Experiment Station, Ontario.

Eastern Oregon Agriculture Research Center, Burns.

Eastern Oregon Agriculture Research Center, Squaw Butte.

Central Oregon Experiment Station, Madras.

Central Oregon Experiment Station, Powell Butte.

Central Oregon Experiment Station, Redmond.

Central Station, Corvallis.

Coastal Oregon Marine Experiment Station, Newport.

Southern Oregon Experiment Station, Medford.

Klamath Experiment Station, Klamath Falls.

(N) Research forests established by the College of Forestry, Oregon State University, including but not limited to McDonald Forest, Paul M. Dunn Forest, the Blodgett Tract in Columbia County, the Spaulding Tract in the Mary's Peak area and the Marchel Tract;

(O) Bureau of Land Management areas of critical environmental concern, outstanding natural areas and research natural areas;

(P) State wildlife areas and management areas identified in OAR chapter 635, division 8.

(b) Notwithstanding subsection (4)(a) of this rule, the Council may issue a site certificate for a transmission line or a natural gas pipeline or for a facility located outside a protected area that

includes a transmission line or natural gas or water pipeline as a related or supporting facility located in a protected area identified in subsection (4)(a) of this rule, if other alternative routes or sites have been studied and determined by the Council to have greater impacts. Notwithstanding subsection (4)(a) of this rule, the Council may issue a site certificate for surface facilities related to an underground gas storage reservoir that have pipelines and injection, withdrawal or monitoring wells and individual wellhead equipment and pumps located in a protected area, if other alternative routes or sites have been studied and determined by the Council to be unsuitable.

(c) The provisions of subsection (4)(a) do not apply to transmission lines or natural gas pipelines routed within 500 feet of an existing utility right-of-way containing at least one transmission line with a voltage rating of 115 kilovolts or higher or containing at least one natural gas pipeline of 8 inches or greater diameter that is operated at a pressure of 125 psig.

(5) Nothing in this section waives the obligations of the certificate holder and Council to abide by local ordinances, state law, and other rules of the Council for the construction and operation of energy facilities in effect on the date the site certificate or amended site certificate is executed.

STATUTORY/OTHER AUTHORITY: ORS 469.470, 469.501

STATUTES/OTHER IMPLEMENTED: ORS 469.501

AMEND: 345-022-0080

RULE TITLE: Scenic Resources

RULE SUMMARY: Removes reverence to analysis area to allow the Council to consider evidence introduced into the record related to impacts to scenic resources and recreational opportunities outside the analysis area. Establishes that scenic resources identified as significant or important under state or multi-jurisdictional land management plans are protected under standard. Specifies that amended standards will only be applicable to the review of applications or requests for amendment filed on or after the effective date of the rules. Makes additional editorial changes for clarity and consistency

RULE TEXT:

(1) ~~Except for facilities described in section (2),~~ To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse visual impacts to significant or important scenic resources and values identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area described in the project order.

(2) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). ~~However~~ In issuing such a site certificate, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility impose conditions of approval to minimize the potential significant adverse visual impacts from the design, construction, and operation of the facility on significant or important scenic resources.

(3) A scenic resource is considered to be significant or important if it is identified as significant or important in current a land use management plan adopted by one or more local, tribal, state, or federal government or agency.

(4) The Council shall apply the **standard version of this rule** adopted under Administrative Order EFSC 1-2007, filed and effective May 15, 2007, to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule. **Nothing in this section waives the obligations of the certificate holder and Council to abide by local ordinances, state law, and other rules of the Council for the construction and operation of energy facilities in effect on the date the site certificate or amended site certificate is executed.**

ALT TEXT

(4) For any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule, section (1) to (3) of this rule do not apply and the Council shall apply a standard as provided in this section:

(a) Except for facilities described in subsection (b) of this section, to issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to scenic resources and values identified as significant or important in local land use plans, tribal land management plans and

federal land management plans for any lands located within the analysis area described in the project order.

(b) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in subsection (a) of this section. However, the Council may apply the requirements of subsection (a) to impose conditions on a site certificate issued for such a facility.

(c) Nothing in this section waives the obligations of the certificate holder and Council to abide by local ordinances, state law, and other rules of the Council for the construction and operation of energy facilities in effect on the date the site certificate or amended site certificate is executed.

STATUTORY/OTHER AUTHORITY: ORS 469.470, 469.501

STATUTES/OTHER IMPLEMENTED: ORS 469.501

DRAFT

AMEND: 345-022-0100

RULE TITLE: Recreation

RULE SUMMARY: Makes editorial changes for clarity and consistency. Specifies that amended standards will only be applicable to the review of applications or requests for amendment filed on or after the effective date of the rules.

RULE TEXT:

(1) ~~Except for facilities described in section (2), t~~To issue a site certificate, the Council must find that the design, construction and operation of a facility, taking into account mitigation, are not likely to result in a significant adverse impact to important recreational opportunities ~~in the analysis area as described in the project order.~~

(2) The Council shall must consider the following factors in judging the importance of a recreational opportunity:

(a) Any special designation or management of the location;

(b) The degree of demand;

(c) Outstanding or unusual qualities;

(d) Availability or rareness;

(e) Irreplaceability or irretrievability of the opportunity.

(23) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However In issuing such a site certificate, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility impose conditions of approval to minimize the potential significant adverse impacts from the design, construction, and operation of the facility on important recreational opportunities.

(4) The Council must apply the ~~standard~~ **standard version of this rule** adopted under Administrative Order EFSC 1-2002, filed and effective April 3, 2002, to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule. **Nothing in this section waives the obligations of the certificate holder and Council to abide by local ordinances, state law, and other rules of the Council for the construction and operation of energy facilities in effect on the date the site certificate or amended site certificate is executed.**

ALT TEXT

(4) For any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule, sections (1) to (3) of this rule do not apply and the Council shall apply a standard as provided in this section:

(a) Except for facilities described in subsection (b) of this section, to issue a site certificate, the Council must find that the design, construction and operation of a facility, taking into account

mitigation, are not likely to result in a significant adverse impact to important recreational opportunities in the analysis area as described in the project order. The Council shall consider the following factors in judging the importance of a recreational opportunity:

(A) Any special designation or management of the location;

(B) The degree of demand;

(C) Outstanding or unusual qualities;

(D) Availability or rareness;

(E) Irreplaceability or irretrievability of the opportunity.

(b) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in subsection (a) of this section. However, the Council may apply the requirements of subsection (a) of this section to impose conditions on a site certificate issued for such a facility.

(c) Nothing in this section waives the obligations of the certificate holder and Council to abide by local ordinances, state law, and other rules of the Council for the construction and operation of energy facilities in effect on the date the site certificate or amended site certificate is executed.

STATUTORY/OTHER AUTHORITY: ORS 469.470, 469.501

STATUTES/OTHER IMPLEMENTED: ORS 469.501