

Attachment 1

DRAFT OAR RULES FOR APPLICATION PROCESS REVIEW PHASE 1
ODOE – THIS VERSION INCLUDES COMMENTS AND TRACK CHANGES TO
SUPPORT REVIEW OF CHANGES

**OAR CHAPTER 345 – OREGON ENERGY FACILITY SITING COUNCIL
DRAFT RULES FOR RULEMAKING PROCESS REVIEW PHASE 1**

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345-015-0001 - Purpose and Authority

The rules in this division, authorized by ORS 469.040, 469.470 and 469.440, establish procedures governing Department of Energy and Council review processes, including contested case hearings. The Council shall apply the Attorney General's Uniform and Model Rules, as specified in OAR 345-001-0005, for contested case proceedings and collaborative dispute resolution.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.310 to 183.550, ORS 469.040, ORS 469.370, ORS 469.405, ORS 469.440

345-015-0003 - Remote and Electronic Public Meeting and Hearings

(1) The Council or Chair may waive any provision of OAR chapter 345 requiring that a public meeting or public hearing be held in person or in a specific geographical area, if:

- (a) The Council or Chair finds that in-person attendance at the meeting or hearing would present a risk to public health or safety or the health and safety of the participants;
- (b) The public meeting or public hearing is held through the use of telephone or other electronic communication in accordance with ORS 192.610 to 192.690; and
- (c) For public hearings, the Council provides an opportunity for submission of testimony by telephone, video, or through some other electronic or virtual means, or provides a means of submitting written testimony, including by email or other electronic methods, that the Council may consider in a timely manner.

(2) This rule does not apply to:

- (a) Any meeting or hearing otherwise required to be held in-person or in a specified geographic location by ORS chapter 469; or
- (b) A contested case hearing held pursuant to ORS chapter 183 and OAR chapter 345.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 192.670

Procedures for the Conduct of Contested Cases

~~345-015-0012 – Filing and Service of Documents in a Contested Case~~

~~(1) The hearing officer shall specify permissible means of filing and service of any pleading or document. The methods of filing with the Council or its hearing officer and service upon any party or limited party, may include, but are not limited to personal delivery, first class or certified mail (properly addressed with postage prepaid), facsimile or other electronic means.~~

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~~(2) A party or limited party shall file a pleading or document with the Council accompanied by as many copies as required by the Council or its hearing officer and a certificate of service stating the names and addresses of the persons upon whom a true copy of the document was served and the date of service.~~

~~(3) Upon motion by any party or limited party, the hearing officer may waive requirements for serving parties who are no longer actively participating in the proceeding and may modify the requirements for serving a limited party consistent with such party's limited interest.~~

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440

~~345-015-0014 – Contested Case Notices~~

~~(1) The Department must issue contested case notices for Council contested case proceedings as provided in OAR 137-003-0001. The notices, at a minimum, must include:~~

- ~~(a) A caption with the name of the person or agency to whom the notice is issued;~~
- ~~(b) A short and plain statement of the issues to be considered under OAR 345-015-0016, and a reference to the particular sections of the statute and rules involved;~~
- ~~(c) A statement of the party's right to be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources;~~
- ~~(d) A statement of the party's rights to participate in the hearing as a party or limited party;~~
- ~~(e) A statement of the agency's authority and jurisdiction to hold a hearing on the issues; and~~
- ~~(f) A statement of the time and place of the hearing; and~~
- ~~(g) A statement that active duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act as described in ORS 183.415(3)(g); and~~

~~(2) The Department must send a contested case notice by registered or certified mail to the applicant or certificate holder, and to each party or limited party to the contested case.~~

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 183.415

~~345-015-0016 – Requests for Party or Limited Party Status in Contested Cases on Applications for a Site Certificate~~

~~(1) Notwithstanding OAR 137-003-0005(2), a person requesting to participate as a party or limited party in a contested case proceeding must submit a petition to the hearing officer by the date specified in the Department's notice issued under OAR 345-015-0230.~~

~~(2) Persons who have an interest in the outcome of the Council's contested case proceeding or who represent a public interest in such result may request to participate as parties or limited parties.~~

~~(3) Except as described in section (4) of this rule, only those persons who have commented in person or in writing on the record of the public hearing described in OAR 345-015-0220 may request to participate~~

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as a party or limited party in a contested case proceeding on an application for a site certificate. To raise an issue in a contested case proceeding, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing, unless the Department did not follow the requirements of ORS 469.370(2) or (3) or unless the action recommended in the proposed order described in OAR 345-015-230, including any recommended conditions of approval, differs materially from the action recommended in the draft proposed order, in which case the person may raise only new issues within the jurisdiction of the Council that are related to such differences. If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the hearing officer may not consider the issue in the contested case proceeding. To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support the person's position on the issue.

(4) Following a Council decision to grant a contested case hearing under OAR 345-015-0310, only those persons who have commented in person or in writing on the record of the public hearing described in OAR 345-015-0320 may request to participate as a party or limited party in a contested case proceeding on an application for a site certificate. To raise an issue in a contested case proceeding, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing. If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the hearing officer may not consider the issue in the contested case proceeding. To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support the person's position on the issue.

(5) In a petition to request party or limited party status, the person requesting such status must include:

- (a) The information required under OAR 137-003-0005(3);
- (b) A short and plain statement of the issue or issues that the person desires to raise in the contested case proceeding; and
- (c) A reference to the person's comments at the public hearing showing that the person raised the issue or issues at the public hearing.

(6) The hearing officer's determination on a request to participate as a party or limited party is final unless the requesting person submits an appeal to the Council within seven days after the date of service of the hearing officer's determination.

Statutory/Other Authority: ORS 469.373 & 469.470

Statutes/Other Implemented: ORS 469.370, 469.440, 469.605, 469.615 & 469.992

~~345-015-0018 – Authorized Representative~~

~~An authorized representative may represent a party or limited party, other than a state agency, participating in a contested case proceeding before the Council as provided in OAR 137-003-0008. An authorized representative may represent a state agency participating in a contested case as a party, limited party or interested agency subject to the requirements of ORS 183.450(7) and (8).~~

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Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

~~345-015-0022 – Petition for Indigent Status~~

~~(1) By petition to the hearing officer in a contested case submitted before the time of the prehearing conference, a party or limited party may request to be treated as an indigent. In the petition, the petitioner shall state in detail the facts demonstrating that the petitioner is indigent in the context of the financial burdens associated with full participation as a party or limited party in the contested case and the reasons why the petitioner would be prejudiced if indigent status were not granted.~~

~~(2) The hearing officer shall issue a determination on a petition for indigent status in writing and shall state the grounds for the determination. The hearing officer's determination is final unless the petitioner submits an appeal to the Council within seven days after the date of service of the determination.~~

~~(3) The hearing officer may excuse a person granted indigent status from such requirements of the rules of this division as the hearing officer determines appropriate. As determined by the hearing officer, the Council may provide for the cost of service of pleadings and other documents, reasonable travel expenses of witnesses and copies of the record necessary to enable a person granted indigent status to participate fully in the contested case.~~

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

~~345-015-0023 – Duties of Hearing Officer~~

~~(1) The Council shall appoint a hearing officer to conduct a contested case proceeding on behalf of the Council or to compile the record and recommend resolution of objections to the record of a local land use proceeding held pursuant to ORS 469.503(2)(a). The Council may appoint a Council member, an employee of the Department of Energy, or some other person or persons as it sees fit.~~

~~(2) A hearing officer shall take all necessary action to:~~

- ~~(a) Ensure a full, fair and impartial hearing;~~
- ~~(b) Facilitate presentation of evidence;~~
- ~~(c) Comply with statutory time limits on Council decisions;~~
- ~~(d) Maintain order; and~~
- ~~(e) Assist the Council in making its decision.~~

~~(3) At the commencement of a contested case hearing, the hearing officer shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.~~

~~(4) The hearing officer shall maintain a complete and current record of all motions, rulings, testimony and exhibits during the course of the hearing. The hearing officer shall keep the Council informed regularly on the status of the contested case.~~

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(5) ~~The hearing officer is authorized to carry out the responsibilities assigned in this rule, including but not limited to the authority to:~~

- ~~(a) Administer oaths and affirmations;~~
- ~~(b) Rule on offers of proof and receive evidence;~~
- ~~(c) Order depositions and other discovery to be taken and to issue subpoenas;~~
- ~~(d) Order and control discovery, as provided in OAR 137-003-0025, and all other aspects of the contested case hearing, the order of proof, and the conduct of the participants;~~
- ~~(e) Dispose of procedural matters and rule on motions;~~
- ~~(f) Call and examine witnesses;~~
- ~~(g) Hold conferences, including one or more prehearing conferences as provided in OAR 137-003-0035, before or during the hearing for settlement, simplification of issues, or any other purpose the hearing officer finds necessary. The hearing officer may limit the issues of the contested case including, for a contested case proceeding on an application for a site certificate, determining those issues that have been raised with sufficient specificity in the public hearing;~~
- ~~(h) Continue the hearing from time to time;~~
- ~~(i) Issue protective orders in accordance with the standards of Rule 36(C) of the Oregon Rules of Civil Procedure.~~
- ~~(j) At the request of the Council, or upon motion of a party or limited party for good cause shown as provided in OAR 345-015-0062, and with reasonable notice to all parties, reopen the hearing for reception of further evidence on issues identified in the notice at any time prior to final decision by the Council;~~
- ~~(k) Within the hearing officer's discretion, or at the request of the Council, certify any question to the Council for its consideration and disposition;~~
- ~~(l) Prepare and serve upon the parties a proposed order addressing those issues enumerated in the request for contested case hearing and any additional issues approved by the hearing officer, including findings of fact, findings of ultimate fact and conclusions of law; and~~
- ~~(m) Take any other action consistent with the Council's governing statutes and the Council's rules.~~

~~(6) Notwithstanding the provisions of OAR 137-003-0055(1), following the issuance of a notice of contested case, the hearing officer shall enter into the record the substance of any significant contact with Department staff or the parties from that point forward concerning facts in the record.~~

~~(7) The Council may, on its own motion or upon the motion of a party or limited party, remove a hearing officer if it determines that the hearing officer is not competent to conduct the proceeding, is demonstrably biased for or against any party, or is otherwise unable to conduct the proceeding.~~

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

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~~345-015-0024 – Suspension of Hearing and Exclusion of a Party~~

~~(1) If any person engages in conduct that interferes with the hearing officer's duty in connection with any aspect of a contested case proceeding or fails to obey an order of the hearing officer, the hearing officer may suspend the hearing or order such person excluded from the hearing temporarily or permanently. Conduct that interferes with the hearing officer's duties includes, but is not limited to, conduct impeding discovery, hearing schedules or the conduct of the contested case hearing.~~

~~(2) If the hearing officer issues an order permanently excluding a party, limited party, or legal counsel from further participation in a contested case proceeding, the hearing officer shall issue the order in writing and shall state in the order the grounds for the order. The order is final unless the person subject to the order submits an appeal to the Council within seven calendar days of service of the order.~~

~~Stat. Authority: ORS 469.470~~

~~Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992~~

~~345-015-0038 – Separate Hearings~~

~~The Council or its hearing officer may order separate hearings on particular matters at issue in a contested case to conduct the entire proceeding expeditiously.~~

~~Stat. Authority: ORS 469.470~~

~~Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992~~

~~345-015-0043 – Evidence: Testimony Submitted in Writing~~

~~A hearing officer may require parties or limited parties to submit to the hearing officer, in writing, the qualifications and direct testimony of each witness whom a party or limited party proposes to call and all exhibits that a party or limited party proposes to introduce in conjunction with the testimony of a witness. Parties and limited parties shall send to all other parties and limited parties copies of all written materials submitted to the hearing officer under this rule.~~

~~Stat. Authority: ORS 469.470~~

~~Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992~~

~~345-015-0046 – Evidence: Official Notice~~

~~(1) In a contested case proceeding, the hearing officer may take official notice of the following:~~

- ~~(a) All facts of which the courts of the State of Oregon may take judicial notice;~~
- ~~(b) Administrative rulings and reports of the Council and other governmental agencies;~~
- ~~(c) Facts contained in permits and licenses issued by the Council or any other government agency;~~
- ~~(d) The factual results of the hearing officer's or the Council's personal inspection of physical conditions involved in the contested case; and~~
- ~~(e) General, technical or scientific facts within the specialized knowledge of the Council or the Department of Energy.~~

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~~(2) The hearing officer shall notify parties of facts officially noticed and shall allow parties an opportunity to contest the facts so noticed.~~

Stat. Authority: ORS 469.470

Stat. Implemented: ~~ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992~~

~~345-015-0051 – Evidence: Resolutions of Cities, Counties and Tribes~~

~~Upon the request of a governing body of a city, county or tribe, the Department of Energy shall offer, and the hearing officer shall receive in evidence, a certified copy of a resolution of the governing body. The hearing officer shall receive such resolutions subject to rebuttal as to the authenticity of the resolution or the circumstances surrounding its procurement. The hearing officer shall receive such resolutions only for the purpose of showing the expression of official action of the resolving body with respect to matter contained in the resolution. Such resolutions are not proof of facts related to the subject of the resolution.~~

Stat. Authority: ORS 469.470

Stat. Implemented: ~~ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992~~

~~345-015-0054 – Motions~~

~~(1) All parties, including limited parties, shall submit any motions in a contested case to the hearing officer. Unless a motion is made orally on the record during a contested case hearing, or unless the hearing officer directs otherwise, the moving party shall submit the motion in writing and shall state with particularity the grounds and relief sought. The moving party shall submit with the motion any brief, affidavit or other document relied on, and, as appropriate, a proposed form of order. The moving party shall serve the motion on all parties and limited parties to the contested case.~~

~~(2) Within seven calendar days after the date of service of a written motion, or such other period as the hearing officer may prescribe, a party or limited party may file an answer in support of or in opposition to the motion, accompanied by affidavits or other evidence. The moving party shall have no right to reply, except as permitted by the hearing officer.~~

~~(3) The parties shall not have oral argument on a motion unless permitted by the hearing officer. The hearing officer shall dispose of motions by written order served on all parties and limited parties or read into the hearing record.~~

Stat. Authority: ORS 469.470

Stat. Implemented: ~~ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992~~

~~345-015-0057 – Prohibitions on Interlocutory Appeals to Council~~

~~(1) Except as otherwise specifically provided for in the rules of this division, a party or limited party may not take an interlocutory appeal to the Council from a ruling of the hearing officer unless such ruling would terminate that party's right to participate in the contested case proceeding.~~

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~~(2) A party or limited party shall submit an appeal involving that party's right to participate in a contested case proceeding, with supporting arguments and documents, to the Council within seven calendar days after the date of the ruling of the hearing officer.~~

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

345-015-0059—Prohibitions on Stays

~~Unless otherwise ordered by the hearing officer, neither the filing of a motion nor the certification of a question to the Council stays a contested case proceeding or extends the time for the performance of any act.~~

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

345-015-0062—Reopening Record Prior to Decision

~~The Council or its hearing officer, on its own motion or for good cause shown, may reopen the hearing record for the taking of additional evidence while the proceeding is under advisement with the hearing officer or the Council. In addition to good cause, the moving party or limited party shall show that:~~

- ~~(1) The evidence is material to the proceeding; or~~
- ~~(2) The evidence would substantially affect the outcome of the proceeding.~~

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

345-015-0080—Participation by Government Agencies

~~(1) Any state or local government agency other than the Department may request participation in a contested case as a party, limited party or interested agency, subject to the limitations described in OAR 345-015-0016. For a contested case on a site certificate application, the agency must submit the request to the hearing officer in writing by the date specified in the Department's public notice issued under OAR 345-015-0230(3). For a contested case on a site certificate amendment, the agency must submit the request to the Department by the date specified in the notice of the opportunity to request a contested case issued under OAR 345-027-0371(4).~~

~~(2) The Department must participate in all contested case proceedings conducted by the Council with all the rights of a party.~~

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.370, 469.405, 469.440, 469.605, 469.615 & 469.992

345-015-0083—Prehearing Conference and Prehearing Order

~~(1) The hearing officer may cancel or reschedule any previously noticed prehearing conference.~~

~~(2) The hearing officer may conduct one or more prehearing conferences for the purposes and in the manner described in OAR 137-003-0035. At the conclusion of the conferences, the hearing officer must~~

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issue a prehearing order stating the issues to be addressed in the contested case hearing and, in a contested case on an application for a site certificate, limiting parties to those issues they raised on the record of the public hearing described in OAR 345-015-0220. The hearing officer may not receive evidence or hear legal argument on issues not identified in the prehearing order.

~~(3) Failure to raise an issue in the prehearing conferences for the contested case hearing on an application for a site certificate constitutes a waiver of that issue.~~

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615, 469.992

~~345-015-0085 – Hearing Officer's Proposed Contested Case Order~~

~~(1) The hearing officer shall allow any party, including any limited party, to propose site certificate conditions that the party believes are necessary or appropriate to implement the policy of ORS 469.310 or to meet the requirements of any other applicable statute, administrative rule or local government ordinance. Parties shall submit proposed site certificate conditions to the hearing officer in writing according to a schedule set by the hearing officer.~~

~~(2) In a contested case proceeding on an application for a site certificate or on a proposed site certificate amendment, any party or limited party may present evidence relating to the appropriateness, scope or wording of any other party's proposed site certificate conditions and may present written proposed findings of fact, briefs and other argument concerning proposed conditions.~~

~~(3) After the hearing in a contested case proceeding on an application for a site certificate or on a proposed site certificate amendment, the hearing officer shall issue a proposed contested case order stating the hearing officer's findings of fact, conclusions of law, and recommended site certificate conditions on the issues in the contested case. The hearing officer shall serve the proposed order on all parties and limited parties. In the proposed order, the hearing officer shall include recommended resolutions of objections to the local land use record, if any. The hearing officer's recommendations are part of the decision record for the application but are not part of the Council's order.~~

~~(4) After the hearing in a contested case proceeding on any matter other than an application for a site certificate or proposed site certificate amendment, the hearing officer shall issue a proposed order stating the hearing officer's findings of fact and conclusions of law. The hearing officer shall serve the proposed order on all parties and limited parties.~~

~~(5) Parties and limited parties may file exceptions to the proposed order within the time set by the hearing officer, not to exceed 30 days after the hearing officer issues the proposed order. A party filing exceptions shall serve a copy of the exceptions on all other parties and limited parties. In an exception, the party shall specifically identify the finding of fact, conclusion of law or, in contested case proceedings on an application for a site certificate or a proposed site certificate amendment, recommended site certificate condition to which the party excepts and shall state the basis for the exception.~~

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~~(6) Parties and limited parties may file responses to exceptions within the time set by the hearing officer, not to exceed 15 days after the time set for filing exceptions. A party filing responses to exceptions shall serve a copy of the responses to exceptions on all other parties and limited parties.~~

~~(7) After the period for filing responses to exceptions, the Council shall issue a final order. The Council may adopt, modify or reject the hearing officer's proposed order.~~

~~(8) Following a contested case proceeding on an application for a site certificate, the Council, in its final order, shall either grant or deny issuance of a site certificate. If the Council grants issuance of a site certificate, the Council shall issue a site certificate. The site certificate becomes effective upon execution by the Council and by the applicant. However, for purposes of identification, the Department may refer to a site certificate by the date of the Council action.~~

~~(9) Following a contested case proceeding on a proposed site certificate amendment, the Council, in its final order, shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate. The amended site certificate becomes effective upon execution by the Council and by the applicant. However, for purposes of identification, the Department may refer to a site certificate by the date of the Council action.~~

~~(10) The Council shall issue a site certificate or amended site certificate in duplicate counterpart originals and each counterpart, upon signing, will have the same effect.~~

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

Procedures for Council and Department of Energy Review of an Application for a Site Certificate

345-015-0110 - Public Notice of a Notice of Intent

(1) After receiving a notice of intent (NOI), the Department must issue public notice of the NOI by:

(a) Sending notice by mail or email to persons on the Council's general mailing list as defined in OAR 345-011-0020 and any special mailing list set up for the proposed project;

(b) Sending notice by mail to the property owners listed in Exhibit F of the NOI;

(c) Sending notice by mail or email to the land management agency or organization with jurisdiction over the protected areas identified in Exhibit L of the NOI;

~~(d)~~ Except as provided in subsection ~~(d)~~, publishing notice in a newspaper of general circulation available in the vicinity of the proposed facility; and

~~(e)~~ If the energy facility is a transmission line or a pipeline 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

Commented [JT*O2]: The Council approved this addition as part of the Protected Areas rulemaking, but deferred the rule change since R211 was set to be opened.

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469.300, publishing notice in one or, if possible, two newspapers of general circulation in the vicinity of the proposed facility.

(2) In the public notice of the NOI, the Department must include the following information:

- (a) A description of the proposed facility;
- (b) The location of the site of the proposed facility;
- (c) The date when the applicant expects to submit an application for a site certificate;
- (d) A brief description of the Council's review process, including an explanation of the difference between the informational meetings described in OAR 345-015-0130 and the public hearing described in 345-015-0220;
- (e) An explanation that the applicant may choose to meet the Council's land use standard, OAR 345-022-0030, by obtaining local land use approval from the affected local government and that, if the applicant chooses to obtain local land use approval, any person interested in land use issues should participate in that affected local government's land use process if it is not yet complete;
- (f) The date, time, and location of any informational meeting on the NOI that the Department has scheduled or an explanation of how interested persons may request an informational meeting. If the Department has scheduled an informational meeting, the Department must state in the notice that public comments on the NOI may be given in person at the meeting;
- (g) An explanation that written comments on the NOI must be submitted by a specified date and may be submitted by regular mail, email or fax;
- (h) The name, address, email address and telephone number of a Department representative to contact for additional information; and
- (i) If the applicant has identified one or more proposed corridors in Exhibit D of the NOI, as required by 345-020-0011(1)(d):
 - (A) An explanation that the corridors proposed by the applicant in the NOI are subject to change and that the applicant may propose adjustments to any proposed corridor in the application;
 - (B) An explanation that the applicant may present adjustments to any proposed corridors at the informational meeting; and
 - (C) An explanation that, in selecting one or more corridors for analysis in the application for a site certificate, the applicant must consider public comments on the corridors proposed in the NOI and on any corridor adjustments the applicant presents at the informational meeting.

(3) If the Department learns that an applicant has applied for local land use approval, the Department must post a notice of the local land use proceeding on its website.

(4) The Department must issue public notice in accordance with ~~345-015-110~~section (1)- through (3) of this rule of any amended notice of intent that:

Commented [JT*O3]: Moved from 345-020-0016(2) - Amendment of Notice of Intent. Removed "in the manner described in OAR 345-015-0110 as this language is now siting inside 110."

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(a) Significantly changes the proposed site boundary or location of the proposed energy facility or related or supporting facility;

(b) Significantly increases:

(A) The estimated quantity of fuel that will be used or produced by the proposed facility, or changes the proposed fuel type or source;

(B) The generating capacity of the proposed energy facility;

(C) The voltage of a proposed transmission line;

(D) The capacity or operating pressure of a proposed pipeline; or

(E) The estimated gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed facility, or the proposed means of compliance with any applicable carbon dioxide standard emissions standard;

(c) Increases water consumption or disposal by more than 5 percent; or

(d) Changes the source of water.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.330

345-015-01XX – Appointment of Special Advisory Groups

(1) After receiving the notice of intent (NOI), the Department shall designate as a special advisory group the governing body of any local government within whose jurisdiction the facility is proposed to be located.

(2) [Additional provisions still under consideration, e.g., possible rules on how long the SAG should be operative.]

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.480

345-015-0120 -- Agency Memorandum on a Notice of Intent

After receiving a notice of intent (NOI), the Department must prepare a memorandum for distribution ~~as described in OAR 345-020-0040.~~ The Department must compile a distribution list for this memorandum that includes, but is not limited to, the reviewing agencies for the proposed facility. In the memorandum, the Department must:

(1) Request comments from the reviewing agency by a specified date.

(2) Request the following information:

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INCLUDING SITE CERTIFICATE HEARINGS

Commented [JT*04]: New OAR, consider additional material clarifying how and when this happens.

Commented [JT*05]: This language is from 345-020-0040, which is now gone.

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- (a) The name, address and telephone number of the agency contact person assigned to review the application;
- (b) Comments on aspects of the proposed facility that are within the particular responsibility or expertise of the reviewing agency;
- (c) Recommendations regarding the size and location of analysis areas;
- (d) A list of studies that should be conducted to identify potential impacts of the proposed facility and mitigation measures;
- (e) If the applicant has identified one or more proposed corridors in Exhibit D of the NOI as required by OAR 345-020-0011(1)(d), a discussion of the relative merits of the corridors described in the NOI and recommendations, if any, on the selection of a corridor;
- (f) A list of statutes, administrative rules and local government ordinances administered by the agency that might apply to construction or operation of the proposed facility and a description of any INFORMATION needed for determining compliance;
- (g) A list of any permits administered by the agency that might apply to construction or operation of the proposed facility and a description of any information needed for reviewing a permit application; and
- (h) For tribes affected by the proposed facility, a list of tribal codes that the tribe recommends to the Council for its review of the application and specific information regarding the proposed facility or study areas described in the NOI that is necessary for determining compliance with those tribal codes.

(3) State the date, time, location, ~~agenda~~ and purpose of any informational meeting that the Department has scheduled on the NOI and encourage the recipient to attend and participate in the informational meeting.

(4) The Department must mail or email the memorandum and NOI to each person on the distribution list before the distribution date.

(5) ~~The applicant must provide a printed copy of all or part of the NOI to any person on the distribution list upon request. Should any person on the distribution list request a printed copy of all or part of the NOI, the Department will ensure that the applicant does so.~~

Commented [JT*06]: Modified to conform to 015-0110(2)(f).

Commented [JT*07]: This is from: 345-020-0040, which is now gone.

Commented [JT*08]: Rephrased to conform to Division 15 pertaining to staff

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.330

345-015-0130 - Informational Meeting on a Notice of Intent

(1) After issuing the public notice described in OAR 345-015-0110, the Department of Energy may hold one or more informational meetings on the proposed facility in the vicinity of the site of the proposed facility. The informational meeting is not a contested case hearing.

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(2) If the Department holds an informational meeting, the Department shall present an explanation of the notice of intent (NOI) process and the application process, including the means and opportunities for the general public to participate in these processes, and an explanation of the difference between the informational meetings described in OAR 345-015-0130 and the public hearing described in OAR 345-015-0220. The Department may present this information orally or by a written handout.

Stat. Authority: ORS 469.470
Stat. Implemented: ORS 469.330

~~**345-015-0140 – Review by the Department of Energy**~~

~~The Department of Energy shall review the notice of intent (NOI) and the comments and recommendations received by the final date for submission of comments specified in the public notice described in OAR 345-015-0110 and in the memorandum described in OAR 345-015-0120. The Department shall send copies of any written comments or recommendations to the applicant.~~

~~Stat. Authority: ORS 469.470
Stat. Implemented: ORS 469.330~~

345-015-0140 - Review by the Department of Energy

The Department of Energy shall review the notice of intent (NOI) and the comments and recommendations received by the final date for submission of comments specified in the public notice described in OAR 345-015-0110 and in the memorandum described in OAR 345-015-0120. The Department shall send copies of any written comments or recommendations to the applicant.

Stat. Authority: ORS 469.470
Stat. Implemented: ORS 469.330

345-015-0160 - Project Order

(1) Following the review of a notice of intent or, in the case of an expedited review, following receipt of a preliminary application for a site certificate, the Department of Energy shall ~~send issue~~ a project order to the applicant establishing the following:

Commented [JT*09]: Updated to conform to ORS 469.330.

- (a) All state statutes and administrative rules containing standards or criteria that must be met for the Council to issue a site certificate for the proposed facility, including applicable standards of Divisions 22, 23 and 24 of this chapter.
- (b) All local government ordinances applicable to the Council's decision on the proposed facility.
- (c) All application requirements in OAR 345-021-0010 applicable to the proposed facility.
- (d) All state and local permits necessary to the construction and operation of the proposed facility and the name of each agency with the authority to issue such permits.
- (e) Any other data and information that must be included in the application for a site certificate to allow the Council to determine whether the proposed facility will comply with applicable statutes, administrative rules and local government ordinances.

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(f) The analysis area(s) for the proposed facility.

(g) Public concerns that address matters within the jurisdiction of the Council that the applicant shall consider and discuss in the application for a site certificate, based on comments the Department has received in writing or at any informational meeting held under OAR 345-015-0130.

(h) If the applicant has identified one or more proposed corridors in Exhibit D of the notice of intent as required by OAR 345-020-0011(1)(d), any adjustments to the corridor(s) that the applicant shall evaluate in the corridor selection assessment described in OAR 345-021-0010(1)(b).

(i) If the applicant chooses to demonstrate need for a proposed electric transmission line, natural gas pipeline, or liquefied natural gas storage facility under the economically reasonable rules, OAR 345-023-0030 and OAR 345-023-0040, any alternatives to construction and operation of the proposed facility that the applicant must evaluate in the application in addition to the alternatives described in OAR 345-021-0010(1)(n)(F) or (G).

(j) Except in the case of an expedited review granted under OAR 345-015-0300 or OAR 345-015-0310, the expiration date of the notice of intent, according to OAR 345-020-0060(1).

(2) In determining the application and study requirements to be included in the project order, the Department shall consider the size and type of proposed facility and significant potential impacts of the proposed facility.

(3) The Council or the Department may amend the project order at any time.

(4) The project order is not a final order.

(5) Except in the case of an expedited review granted under OAR 345-015-0300 or OAR 345-015-0310, the Department shall, to the extent practicable, issue the project order within 140 days following the date of submission of the notice of intent.

Stat. Authority: ORS 469.373, ORS 469.470
Stat. Implemented: ORS 469.330, ORS 469.370

345-015-XXX - Public Notice of a Preliminary Application

After receiving the preliminary application, the Department must post an announcement on its website to notify the public that a preliminary application has been received. The Department must include the addresses of locations where the public may review copies of the preliminary application in the announcement. The announcement may include the preliminary application or sections of the preliminary application that may be viewed or downloaded. The announcement may include a link to the applicant's website, if any, where the preliminary application may be viewed or downloaded.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.350

Commented [JT*O10]: Pulled from Rule 345-021-0050(7).

Commented [JT*O11R10]: Moved here to match style of earlier rules so that each stage has the same steps.

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~~345-015-0180 - Agency Memorandum on a Site Certificate Application~~Preliminary Application

~~(1) Until the Department determines the application to be complete as described in OAR 345-015-0190 or 345-015-0310, it is a preliminary application.~~

~~(2) After receiving the preliminary application, the Department must, in coordination with the applicant, determine a distribution date and compile a distribution list that includes, but is not limited to, the reviewing agencies for the proposed facility.~~

~~(2) The Department must mail or email the memorandum described under ~~OAR 345-015-0180(4)~~ and email the preliminary application to each person on the distribution list before the distribution date to each person on the distribution list before the distribution date.~~

~~(3) Unless the Department directs otherwise, the applicant must mail or email an electronic copy of the preliminary application to each person on the distribution list on or before the distribution date. The applicant must provide a printed copy of part or all of the preliminary application to a person on the distribution list upon request.~~

~~(3) The applicant must provide a printed copy of part or all of the preliminary application to anyone on the distribution list upon request.~~

~~(4) After receiving a preliminary application, the Department must prepare a memorandum for distribution under OAR 345-021-0050. In the memorandum, the Department must:~~

~~(a) Request comments or recommendations regarding the preliminary application on the following:~~

~~(aA) State whether the reviewing agency needs any additional information from the applicant to review the application under the statutes, administrative rules or ordinances administered by the reviewing agency and describe such information; and~~

~~(aB) Describe the status of applications for permits, if any, that the applicant has submitted to the reviewing agency and that are necessary for the construction and operation of the proposed facility.~~

~~(aC) Request the recipient to return provide comments or recommendations described in ~~OAR 345-021-0050(2)~~ to the Department by a specified date;~~

~~(2) Describe the matters to be covered in the comments or recommendations as set forth in OAR 345-021-0050(2) and (4);~~

~~(b) For any special advisory group designated by the Council under ORS 469.480, request that the special advisory group recommend to the Council the applicable substantive criteria and explain that, as required by ORS 469.504(5), if the special advisory group does not recommend applicable substantive criteria by the specified date, the Council may either determine and apply the applicable substantive criteria or determine compliance with the statewide planning goals under ORS 469.504(1)(b)(B) or (C);~~

~~(c) Set a deadline for the response to (4)(a)-(b).~~

~~(d) State that the reviewing agency must comment in person or in writing on the record of the public hearing described in OAR 345-015-0220 to preserve the right to participate in the contested case~~

Commented [JT*012]: Significantly modified and combined with Rule 345-021-0050. Still needs additional work, and is subject to significant (but not substantive) changes to ensure clarity and readability.

Commented [JT*013]: Removed to conform with standard practice.

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proceeding as a party, limited party or interested agency and the right to appeal the Council's final decision;

(e) Explain that the recipient's written comments, recommendations and reports are part of the decision record for the application for a site certificate;

(5) The Department must, as soon as practicable, send the applicant copies of all comments submitted under section (4)(a) that identify a need for additional information.

(6) (a) If the applicant has elected to demonstrate compliance with the Council's land use standard under ORS 469.504(1)(a), each local government with land use jurisdiction over the proposed facility must, in the comments or recommendations submitted to the Department under section (4)(a), describe the status of the local land use proceedings and state the date when the local government expects to issue a final land use decision;

(b) If the applicant has elected to obtain a Council determination of compliance with the Council's land use standard under ORS 469.504(1)(b), each local government with land use jurisdiction over the proposed facility must, in the comments or recommendations submitted to the Department under section (4)(a), include:

(A) A complete list of applicable substantive criteria from the local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and that are in effect on the date the application was submitted. For the purpose of this rule, the application is submitted on the date that the Department receives the preliminary application. "Applicable substantive criteria" means the criteria and standards that the local government would apply in making all land use decisions necessary to site the proposed facility in the absence of a Council proceeding;

(B) A complete list of Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3);

(C) Copies of the criteria listed in (A) and any interpretations of ambiguous terms and matters arising from the local government's land use regulations; and

(c) The local government may submit its recommendations, comments and interpretations as described in subsection (b) in the form of a resolution adopted by the local governing body.

(3c) Explain that the recipient's written comments, recommendations and reports are part of the decision record for the application for a site certificate;

(4d) State that the reviewing agency must comment in person or in writing on the record of the public hearing described in OAR 345-015-0220 to preserve the right to participate in the contested case proceeding as a party, limited party or interested agency and the right to appeal the Council's final decision; and

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~~(5e) For any special advisory group designated by the Council under ORS 469.480, request that the special advisory group recommend to the Council the applicable substantive criteria and explain that, as required by ORS 469.504(5), if the special advisory group does not recommend applicable substantive criteria by the specified date, the Council may either determine and apply the applicable substantive criteria or determine compliance with the statewide planning goals under ORS 469.504(1)(b)(B) or (C).~~

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.350 & 469.504

345-015-0190 - Determination of Completeness

(1) ~~Until the Department determines the application to be complete, it is a preliminary application.~~

Within 60 days after receipt of a preliminary application for a site certificate, the Department must notify the applicant whether the application is complete. In the notification, the Department must:

- (a) State that the application is complete and state the date of filing;
- (b) State that the application is incomplete, and:
 - (A) Describe any information needed to complete the application to the extent known to the Department at the time of the notification;
 - (B) Ask the applicant to submit the needed information by the deadline described in section (4); and
 - (C) Estimate the additional time the Department will need to make a determination of completeness; or
- (c) Explain the reasons why the Department cannot determine completeness and estimate the additional time the Department will need to make a determination of completeness.

(2) If the Department does not notify the applicant as described in section (1), the application is deemed complete and filed 60 days after receipt of the preliminary application. Otherwise, the application is complete as determined under section (5) and the date of filing is the date determined under section (6).

(3) If the Department finds that the applicant did not give adequate consideration to public concerns about the corridors the applicant identified in Exhibit D of the notice of intent or corridor adjustments presented at the informational hearing described in OAR 345-015-0130, the Department may find the application incomplete and notify the applicant as described under section (1)(b).

(4) The Department may specify a date by which the applicant must submit additional information needed to complete the application. If follow-up requests for additional information are needed, the Department may specify dates by which the applicant must submit the information. At the request of the applicant, the Department may allow additional time for submission of the information. If the applicant does not submit the information by the deadline specified by the Department, including any allowed extension, the Council may reject the application. The rejection of an application is subject to appeal under ORS 469.403(3).

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Commented [JT*O14]: Removed because it is stated in 345-015-0180 now.

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(5) An application is complete when the Department finds that the applicant has submitted information adequate for the Council to make findings or impose conditions on all applicable Council standards. The Department may find that the application is complete without requiring the applicant to submit all information described under OAR 345-021-0000 and 345-021-0010. The Department must notify the applicant when the Department finds that the application is complete and, if needed, may request the application supplement described in OAR 345-021-0055.

(6) The date of filing is the date the Department receives the application supplement described in OAR 345-021-0055 or, if no supplement is needed, the date the Department notifies the applicant that the application is complete.

~~(7)~~ After a determination that an application is complete, if the Department identifies a need for additional information during its review of the application, the applicant must submit additional information to the Department. Submission of such information does not constitute an amendment of the application.

Commented [JT*015]: Rewritten for clarity.

345-015-XXX - Public Notice of Complete Application for Site Certificate

~~(7)~~ The Department must inform the public that the application is complete by publishing notice in a newspaper of general circulation available in the vicinity of the proposed facility. In addition, the Department must send notice by mail or email to all persons on:

- (a) The Council's general mailing list as defined in OAR 345-011-0020;
- (b) Any special mailing list set up for the proposed facility; and
- (c) The list of property owners provided in Exhibit F of the application.

~~(d)~~ The land management agency or organization with jurisdiction over the protected areas identified in the application;

Commented [JT*016]: The Council approved this change as part of the Protected Areas rulemaking, but deferred the rule change since this was set to be opened.

~~(8)~~ In notices described in section ~~(7)~~, the Department must include the following information:

- (a) A description of the proposed facility;
- (b) The location of the site of the proposed facility;
- (c) The date of filing;
- (d) A description of the procedure for review of the application, including the date, time and location of any informational meeting that has been scheduled on the application and an explanation of the difference between the informational meeting and the public hearing described in OAR 345-015-0220;
- (e) Addresses of locations where the public may review copies of the application;
- (f) The name, address, email address, and telephone number of the Department's representative to contact for more information;

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(g) If the applicant has elected to seek local land use approvals pursuant to ORS 469.503(2)(a), a statement of the status of the land use approvals, and the name, address and telephone number of the local governments(s) making or having made the land use determination; and

(h) If the proposed facility is an energy facility that must comply with a carbon dioxide emissions standard adopted by the Council, a statement of the applicant's proposed means of compliance with the applicable carbon dioxide emissions standard.

Stat. Authority: ORS 469.470
Stat. Implemented: ORS 469.350

345-015-XXX - Informational Meeting on a Complete Application

(1) After issuing the public notice described in OAR 345-015-XXXX, the Department of Energy may hold one or more informational meetings on the proposed facility in the vicinity of the site of the proposed facility. The informational meeting is not a contested case hearing.

(2) If the Department holds an informational meeting, the Department shall present an explanation of the application process, including the means and opportunities for the general public to participate in these processes, and an explanation of the difference between the informational meetings described in OAR 345-015-0130 and the public hearing described in OAR 345-015-0220. The Department may present this information orally or by a written handout.

Commented [JT*O17]: Created for internal consistency between the various phases of the siting process.

Commented [JT*O18]: Removed self reference for clarity.

345-015-0200 – Notice to Agencies that the Application is Complete

~~After the date of filing, the Department must prepare a notice for distribution under OAR 345-021-0055. In the notice, the Department must:~~

~~(1) State the date of filing;~~

~~(2) Explain that if a person intends to raise an issue in the contested case, the person must raise the issue in the manner described in OAR 345-015-0016;~~

~~(3) State a date by which the Department and the applicant must receive the reports described in sections (4) through (6) below;~~

~~(4) Request an agency report containing the following information:~~

~~(a) The agency's recommendations regarding any applications for permits administered by the agency that are applicable to construction or operation of the proposed facility;~~

~~(b) Issues significant to the agency;~~

~~(c) The agency's conclusions concerning the proposed facility's compliance with state statutes, administrative rules or ordinances administered by the agency;~~

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~~(d) A list of site certificate conditions recommended by the agency; and~~

~~(e) Any other information that the reviewing agency believes will be useful to the Council in reviewing the site certificate application.~~

~~(5) Request a report from the affected local government regarding the proposed facility's compliance with the applicable substantive criteria for a land use decision under ORS 469.504(1)(b).~~

~~(6) Request a report from the affected local government that describes any land use decisions made under ORS 469.504(1)(a).~~

~~(7) Explain that the reports described in sections (4) through (6) above are part of the decision record for the application for a site certificate.~~

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.350

345-02115-0055200 - Distribution of a Complete Application and Notice Thereof

~~(1) After receiving notification from the Department that the application is complete, the applicant must prepare an application supplement that includes all amendments to the preliminary application and all additional information requested by the Department before the determination of completeness.~~

~~(2) The applicant must submit to the Department, two printed copies of the application supplement, and an electronic version of the application supplement in a non-copy-protected format acceptable to the Department. The applicant must submit additional printed copies of the application supplement to the Department upon request.~~

~~(3) After receiving the application supplement, the Department must determine a distribution date and prepare a distribution list that includes, but is not limited to, the reviewing agencies for the application.~~

~~(4) The Department must mail or email the notice described under OAR 345-015-0200 to each person on the distribution list before the distribution date.~~

~~(5) Except as described in OAR 345-015-0310, and unless the Department directs otherwise, the applicant must mail or email an electronic copy of the application supplement to each person on the distribution list provided by the Department on or before the distribution date. The applicant must provide a printed copy of all or part of the application supplement to a person on the mailing list upon request.~~

~~(6) If the Department determines it is necessary to present the amendments and additional information described in section (1) of this rule clearly, the Department may require the applicant to provide a complete revision of the preliminary application in place of the application supplement under section (2) and (5) of this rule.~~

~~(7) After the date of filing, the Department must prepare a notice for distribution under OAR 345-021-0055. In the notice, the Department must:~~

Commented [JT*O19]: Moved and combined with 345-021-0055. Was 345-015-0200

Commented [JT*O20]: Removed as redundant.

Commented [JT*O21]: Removed for clarity.

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(4a) State the date of filing;

(2b) Explain that if a person intends to raise an issue in the contested case, the person must raise the issue in the manner described in OAR 345-015-0016;

(c3) State a date by which the Department and the applicant must receive the reports described in sections (4d) through (6f) below;

(4d) Request an agency report containing the following information:

(aA) The agency's recommendations regarding any applications for permits administered by the agency that are applicable to construction or operation of the proposed facility;

(bB) Issues significant to the agency;

(cC) The agency's conclusions concerning the proposed facility's compliance with state statutes, administrative rules or ordinances administered by the agency;

(dD) A list of site certificate conditions recommended by the agency; and

(eE) Any other information that the reviewing agency believes will be useful to the Council in reviewing the site certificate application.

(5e) Request a report from the affected local government regarding the proposed facility's compliance with the applicable substantive criteria for a land use decision under ORS 469.504(1)(b).

(6f) Request a report from the affected local government that describes any land use decisions made under ORS 469.504(1)(a).

(7g) Explain that the reports described in sections (4d) through (6f) above are part of the decision record for the application for a site certificate.

Statutory/Other Authority: ORS 469.373 & 469.470

Statutes/Other Implemented: ORS 469.350

345-015-0210 - Draft Proposed Order

(1) Following the deadline for its receipt of agency reports and final land use decisions stated under OAR 345-015-0200, the Department of Energy shall issue a draft proposed order on the application that includes its recommendation to grant with conditions or deny a site certificate for the proposed facility and a discussion of the reasons for that recommendation. The draft proposed order may include, but is not limited to:

(a) Draft proposed findings of fact and conclusions of law concerning the proposed facility's compliance with all state statutes and administrative rules and ordinances applicable to the issuance of a site certificate for the proposed facility;

(b) Draft proposed conditions for inclusion in the site certificate;

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Commented [JT*022]: Moved and combined with 345-021-0055. Was 345-015-0200

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(c) Draft proposed monitoring plans to ensure the proposed facility's continued compliance with applicable state statutes and administrative rules and ordinances; and

(d) A description of the status of other applications for state permits and local government land use permits for the proposed facility.

(2) If the applicant has elected to address the Council's land use standard under ORS 469.504(1)(a), the Department shall include in the draft proposed order the local government's land use decisions on the proposed facility, if available, including findings of fact, conclusions of law, and conditions.

(3) If the applicant has elected to address the Council's land use standard under ORS 469.504(1)(b), the Department shall include in the draft proposed order the Department's proposed findings of fact, conclusions of law, and proposed conditions under the applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations, under the applicable statewide planning goals, or under the exception criteria set forth in ORS 469.504(2).

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.370

345-015-0220 - Public Hearing on the Draft Proposed Order and -Notice Thereof

(1) After the issuance of the draft proposed order described in OAR 345-015-0210, the Council or its hearing officer must conduct at least one public hearing on the draft proposed order in the vicinity of the site of the proposed facility. The public hearing is not a contested case hearing. If there is more than one public hearing, the "close of the record of the public hearing" means the close of the record of the final public hearing.

(2) The Department must, at least 20 days before the hearing:

(a) Submit notice for publication in a newspaper of general circulation available in the vicinity of the proposed facility; and

(b) Send notice of the hearing by mail or email to:

(A) Persons on the Council's general mailing list as defined in OAR 345-011-0020;

(B) Persons on any special mailing list set up for the proposed project; and

(C) The property owners listed in Exhibit F of the application, as updated by the applicant upon the request of the Department.

(3) In the notices described in subsections (2)(a) and (2)(b), the Department must include:

(a) The date, time and location of the public hearing;

(b) A description of the facility and the facility's general location;

(c) The name, address, email address, and telephone number of the Department's representative to contact for additional information;

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(d) The addresses of locations where the public may inspect copies of the complete application and the website where the application may be found;

(e) The website where the draft proposed order may be found;

(f) The deadline for the public to submit written comments to be included in the record of the public hearing and a statement that such comments should be submitted to the presiding officer in care of the Department;

(g) A statement that to raise an issue on the record of the public hearing, a person must raise the issue in person at the public hearing or in a written comment submitted after the date of the notice and received by the Department before the deadline;

(h) A statement that failure to raise an issue in person or in writing on the record of the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes consideration of the issue in a contested case;

(i) A statement that to raise an issue with sufficient specificity, a person must present facts that support the person's position on the issue; and

(j) A statement that the Council will not accept or consider any further public comment on the site certificate application or on the draft proposed order after the close of the record of the public hearing.

(4) During the public hearing, the Department must explain the application process, including the means and opportunities for the general public to participate in the process. The Department may provide this explanation by a written handout.

(5) At the commencement of the public hearing, the presiding officer must state that:

(a) A person who intends to raise any issue that may be the basis for a contested case must raise the issue in person at the hearing or in a written comment submitted to the Department before the deadline stated in the notice of the public hearing; and

(b) A person who intends to raise any issue that may be the basis for a contested case must raise the issue with sufficient specificity to afford the Council, the Department, and the applicant an adequate opportunity to respond, including a statement of facts that support the person's position on the issue.

(6) At the public hearing, any person may present information regarding the pending application without administration of an oath. The presiding officer must record all presentations made during the public hearing. The presentations are part of the decision record for the application and may be rebutted in the contested case proceeding.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.370

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345-015-0230 - Council Review and the Department of Energy's Proposed Order

(1) Following the close of the record of the public hearing conducted under OAR 345-015-0220, the Council must review the draft proposed order. In accordance with ORS 469.370(3), when the Council meets to review a draft proposed order, the Council may not permit the applicant, reviewing agencies or the public to comment on any issue that may be the basis for a contested case.

(2) Following the Council's meeting to review the draft proposed order, the Department must issue a proposed order in accordance with ORS 469.370(4), taking into consideration the comments of the Council, any public comments made at a public hearing, written comments received before the close of the record of the public hearing, and agency consultation. In the proposed order, the Department must recommend either granting a site certificate with conditions or denying a site certificate for the proposed facility.

(3) Following issuance of the proposed order, the Department must issue a public notice of the proposed order, subject to the following:

(a) The public notice of the proposed order must include:

- (A) A description of the facility and the facility's general location;
- (B) A summary of the recommendations included in the Proposed Order;
- (C) A description of the process and deadline for requests to participate as a party or limited party in the contested case under OAR 345-015-0016;
- (D) The date of the prehearing conference, if any; and
- (E) The date of the hearing; and

(b) The Department must send the notice by mail or email to:

- (A) All persons on the Council's general mailing list;
- (B) All persons on any special mailing list set up for the proposed project;
- (C) All persons who commented in person or in writing on the record of the public hearing conducted under OAR 345-015-0220; and
- (D) The property owners listed in Exhibit F of the site certificate application, as updated by the applicant upon the request of the Department.

(E) The land management agency or organizations with jurisdiction over the protected areas identified in the proposed order;

(4) On the same date as notice is issued under section (3) of this rule, the Department must notify the applicant that the applicant must notify the hearing officer and the Department of any issues the applicant intends to raise in the contested case proceedings by the date established in paragraph (3)(a)(C) of this rule.

Commented [JT*023]: The Council approved this change as part of the Protected Areas rulemaking, but deferred the rule change since this was set to be opened.

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~~(5) After the conclusion of the contested case proceeding, the Council will take final action on the site certificate application, as described in OAR 345-015-0085.~~

Commented [JT*024]: Removed as redundant.

Stat. Authority: ORS 469.470
Stat. Implemented: ORS 469.370

345-015-0240 - The Decision-Making Record

The decision-making record on an application for a site certificate includes the decision record for the Department of Energy's proposed order and the record of the contested case proceeding.

Stat. Authority: ORS 469.470
Stat. Implemented: ORS 469.370

Procedures for the Conduct of Contested Cases

345-015-0012 - Filing and Service of Documents in a Contested Case

~~(1) The hearing officer shall specify permissible means of filing and service of any pleading or document. The methods of filing with the Council or its hearing officer and service upon any party or limited party, may include, but are not limited to personal delivery, first class or certified mail (properly addressed with postage prepaid), facsimile or other electronic means.~~

~~(2) A party or limited party shall file a pleading or document with the Council accompanied by as many copies as required by the Council or its hearing officer and a certificate of service stating the names and addresses of the persons upon whom a true copy of the document was served and the date of service.~~

~~(3) Upon motion by any party or limited party, the hearing officer may waive requirements for serving parties who are no longer actively participating in the proceeding and may modify the requirements for serving a limited party consistent with such party's limited interest.~~

Stat. Authority: ORS 469.470
Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440

345-015-0014 - Contested Case Notices

~~(1) The Department must issue contested case notices for Council contested case proceedings as provided in OAR 137-003-0001. The notices, at a minimum, must include:~~

- ~~(a) A caption with the name of the person or agency to whom the notice is issued;~~
- ~~(b) A short and plain statement of the issues to be considered under OAR 345-015-0016, and a reference to the particular sections of the statute and rules involved;~~
- ~~(c) A statement of the party's right to be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources;~~

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(d) A statement of the party's rights to participate in the hearing as a party or limited party;

(e) A statement of the agency's authority and jurisdiction to hold a hearing on the issues; and

(f) A statement of the time and place of the hearing; and

(g) A statement that active duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act as described in ORS 183.415(3)(g); and

(2) The Department must send a contested case notice by registered or certified mail to the applicant or certificate holder, and to each party or limited party to the contested case.

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 183.415

345-015-0016 - Requests for Party or Limited Party Status in Contested Cases on Applications for a Site Certificate

(1) Notwithstanding OAR 137-003-0005(2), a person requesting to participate as a party or limited party in a contested case proceeding must submit a petition to the hearing officer by the date specified in the Department's notice issued under OAR 345-015-0230.

(2) Persons who have an interest in the outcome of the Council's contested case proceeding or who represent a public interest in such result may request to participate as parties or limited parties.

(3) Except as described in section (4) of this rule, only those persons who have commented in person or in writing on the record of the public hearing described in OAR 345-015-0220 may request to participate as a party or limited party in a contested case proceeding on an application for a site certificate. To raise an issue in a contested case proceeding, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing, unless the Department did not follow the requirements of ORS 469.370(2) or (3) or unless the action recommended in the proposed order described in OAR 345-015-230, including any recommended conditions of approval, differs materially from the action recommended in the draft proposed order, in which case the person may raise only new issues within the jurisdiction of the Council that are related to such differences. If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the hearing officer may not consider the issue in the contested case proceeding. To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support the person's position on the issue.

(4) Following a Council decision to grant a contested case hearing under OAR 345-015-0310, only those persons who have commented in person or in writing on the record of the public hearing described in OAR 345-015-0320 may request to participate as a party or limited party in a contested case proceeding on an application for a site certificate. To raise an issue in a contested case proceeding, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing. If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the hearing officer may not consider the issue in the contested case proceeding. To have raised an issue with

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sufficient specificity, the person must have presented facts at the public hearing that support the person's position on the issue.

(5) In a petition to request party or limited party status, the person requesting such status must include:

(a) The information required under OAR 137-003-0005(3);

(b) A short and plain statement of the issue or issues that the person desires to raise in the contested case proceeding; and

(c) A reference to the person's comments at the public hearing showing that the person raised the issue or issues at the public hearing.

(6) The hearing officer's determination on a request to participate as a party or limited party is final unless the requesting person submits an appeal to the Council within seven days after the date of service of the hearing officer's determination.

Statutory/Other Authority: ORS 469.373 & 469.470

Statutes/Other Implemented: ORS 469.370, 469.440, 469.605, 469.615 & 469.992

345-015-0018 - Authorized Representative

An authorized representative may represent a party or limited party, other than a state agency, participating in a contested case proceeding before the Council as provided in OAR 137-003-0008. An authorized representative may represent a state agency participating in a contested case as a party, limited party or interested agency subject to the requirements of ORS 183.450(7) and (8).

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

345-015-0022 - Petition for Indigent Status

(1) By petition to the hearing officer in a contested case submitted before the time of the prehearing conference, a party or limited party may request to be treated as an indigent. In the petition, the petitioner shall state in detail the facts demonstrating that the petitioner is indigent in the context of the financial burdens associated with full participation as a party or limited party in the contested case and the reasons why the petitioner would be prejudiced if indigent status were not granted.

(2) The hearing officer shall issue a determination on a petition for indigent status in writing and shall state the grounds for the determination. The hearing officer's determination is final unless the petitioner submits an appeal to the Council within seven days after the date of service of the determination.

(3) The hearing officer may excuse a person granted indigent status from such requirements of the rules of this division as the hearing officer determines appropriate. As determined by the hearing officer, the Council may provide for the cost of service of pleadings and other documents, reasonable travel expenses of witnesses and copies of the record necessary to enable a person granted indigent status to participate fully in the contested case.

Stat. Authority: ORS 469.470

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Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

345-015-0023 - Duties of Hearing Officer

(1) The Council shall appoint a hearing officer to conduct a contested case proceeding on behalf of the Council or to compile the record and recommend resolution of objections to the record of a local land use proceeding held pursuant to ORS 469.503(2)(a). The Council may appoint a Council member, an employee of the Department of Energy, or some other person or persons as it sees fit.

(2) A hearing officer shall take all necessary action to:

- (a) Ensure a full, fair and impartial hearing;
- (b) Facilitate presentation of evidence;
- (c) Comply with statutory time limits on Council decisions;
- (d) Maintain order; and
- (e) Assist the Council in making its decision.

(3) At the commencement of a contested case hearing, the hearing officer shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(4) The hearing officer shall maintain a complete and current record of all motions, rulings, testimony and exhibits during the course of the hearing. The hearing officer shall keep the Council informed regularly on the status of the contested case.

(5) The hearing officer is authorized to carry out the responsibilities assigned in this rule, including but not limited to the authority to:

- (a) Administer oaths and affirmations;
- (b) Rule on offers of proof and receive evidence;
- (c) Order depositions and other discovery to be taken and to issue subpoenas;
- (d) Order and control discovery, as provided in OAR 137-003-0025, and all other aspects of the contested case hearing, the order of proof, and the conduct of the participants;
- (e) Dispose of procedural matters and rule on motions;
- (f) Call and examine witnesses;
- (g) Hold conferences, including one or more prehearing conferences as provided in OAR 137-003-0035, before or during the hearing for settlement, simplification of issues, or any other purpose the hearing officer finds necessary. The hearing officer may limit the issues of the contested case including, for a contested case proceeding on an application for a site certificate, determining those issues that have been raised with sufficient specificity in the public hearing;
- (h) Continue the hearing from time to time;

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(i) Issue protective orders in accordance with the standards of Rule 36(C) of the Oregon Rules of Civil Procedure.

(j) At the request of the Council, or upon motion of a party or limited party for good cause shown as provided in OAR 345-015-0062, and with reasonable notice to all parties, reopen the hearing for reception of further evidence on issues identified in the notice at any time prior to final decision by the Council;

(k) Within the hearing officer's discretion, or at the request of the Council, certify any question to the Council for its consideration and disposition;

(l) Prepare and serve upon the parties a proposed order addressing those issues enumerated in the request for contested case hearing and any additional issues approved by the hearing officer, including findings of fact, findings of ultimate fact and conclusions of law; and

(m) Take any other action consistent with the Council's governing statutes and the Council's rules.

(6) Notwithstanding the provisions of OAR 137-003-0055(1), following the issuance of a notice of contested case, the hearing officer shall enter into the record the substance of any significant contact with Department staff or the parties from that point forward concerning facts in the record.

(7) The Council may, on its own motion or upon the motion of a party or limited party, remove a hearing officer if it determines that the hearing officer is not competent to conduct the proceeding, is demonstrably biased for or against any party, or is otherwise unable to conduct the proceeding.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

345-015-0024 - Suspension of Hearing and Exclusion of a Party

(1) If any person engages in conduct that interferes with the hearing officer's duty in connection with any aspect of a contested case proceeding or fails to obey an order of the hearing officer, the hearing officer may suspend the hearing or order such person excluded from the hearing temporarily or permanently. Conduct that interferes with the hearing officer's duties includes, but is not limited to, conduct impeding discovery, hearing schedules or the conduct of the contested case hearing.

(2) If the hearing officer issues an order permanently excluding a party, limited party, or legal counsel from further participation in a contested case proceeding, the hearing officer shall issue the order in writing and shall state in the order the grounds for the order. The order is final unless the person subject to the order submits an appeal to the Council within seven calendar days of service of the order.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

345-015-0038 - Separate Hearings

The Council or its hearing officer may order separate hearings on particular matters at issue in a contested case to conduct the entire proceeding expeditiously.

Stat. Authority: ORS 469.470

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Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

345-015-0043 - Evidence: Testimony Submitted in Writing

A hearing officer may require parties or limited parties to submit to the hearing officer, in writing, the qualifications and direct testimony of each witness whom a party or limited party proposes to call and all exhibits that a party or limited party proposes to introduce in conjunction with the testimony of a witness. Parties and limited parties shall send to all other parties and limited parties copies of all written materials submitted to the hearing officer under this rule.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

345-015-0046 - Evidence: Official Notice

(1) In a contested case proceeding, the hearing officer may take official notice of the following:

- (a) All facts of which the courts of the State of Oregon may take judicial notice;
- (b) Administrative rulings and reports of the Council and other governmental agencies;
- (c) Facts contained in permits and licenses issued by the Council or any other government agency;
- (d) The factual results of the hearing officer's or the Council's personal inspection of physical conditions involved in the contested case; and
- (e) General, technical or scientific facts within the specialized knowledge of the Council or the Department of Energy.

(2) The hearing officer shall notify parties of facts officially noticed and shall allow parties an opportunity to contest the facts so noticed.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

345-015-0051 - Evidence: Resolutions of Cities, Counties and Tribes

Upon the request of a governing body of a city, county or tribe, the Department of Energy shall offer, and the hearing officer shall receive in evidence, a certified copy of a resolution of the governing body. The hearing officer shall receive such resolutions subject to rebuttal as to the authenticity of the resolution or the circumstances surrounding its procurement. The hearing officer shall receive such resolutions only for the purpose of showing the expression of official action of the resolving body with respect to matter contained in the resolution. Such resolutions are not proof of facts related to the subject of the resolution.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

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345-015-0054 - Motions

(1) All parties, including limited parties, shall submit any motions in a contested case to the hearing officer. Unless a motion is made orally on the record during a contested case hearing, or unless the hearing officer directs otherwise, the moving party shall submit the motion in writing and shall state with particularity the grounds and relief sought. The moving party shall submit with the motion any brief, affidavit or other document relied on, and, as appropriate, a proposed form of order. The moving party shall serve the motion on all parties and limited parties to the contested case.

(2) Within seven calendar days after the date of service of a written motion, or such other period as the hearing officer may prescribe, a party or limited party may file an answer in support of or in opposition to the motion, accompanied by affidavits or other evidence. The moving party shall have no right to reply, except as permitted by the hearing officer.

(3) The parties shall not have oral argument on a motion unless permitted by the hearing officer. The hearing officer shall dispose of motions by written order served on all parties and limited parties or read into the hearing record.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

345-015-0057 - Prohibitions on Interlocutory Appeals to Council

(1) Except as otherwise specifically provided for in the rules of this division, a party or limited party may not take an interlocutory appeal to the Council from a ruling of the hearing officer unless such ruling would terminate that party's right to participate in the contested case proceeding.

(2) A party or limited party shall submit an appeal involving that party's right to participate in a contested case proceeding, with supporting arguments and documents, to the Council within seven calendar days after the date of the ruling of the hearing officer.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

345-015-0059 - Prohibitions on Stays

Unless otherwise ordered by the hearing officer, neither the filing of a motion nor the certification of a question to the Council stays a contested case proceeding or extends the time for the performance of any act.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

345-015-0062 - Reopening Record Prior to Decision

The Council or its hearing officer, on its own motion or for good cause shown, may reopen the hearing record for the taking of additional evidence while the proceeding is under advisement with the hearing officer or the Council. In addition to good cause, the moving party or limited party shall show that:

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- (1) The evidence is material to the proceeding; or
- (2) The evidence would substantially affect the outcome of the proceeding.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

345-015-0080 - Participation by Government Agencies

(1) Any state or local government agency other than the Department may request participation in a contested case as a party, limited party or interested agency, subject to the limitations described in OAR 345-015-0016. For a contested case on a site certificate application, the agency must submit the request to the hearing officer in writing by the date specified in the Department's public notice issued under OAR 345-015-0230(3). For a contested case on a site certificate amendment, the agency must submit the request to the Department by the date specified in the notice of the opportunity to request a contested case issued under OAR 345-027-0371(4).

(2) The Department must participate in all contested case proceedings conducted by the Council with all the rights of a party.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.370, 469.405, 469.440, 469.605, 469.615 & 469.992

345-015-0083 - Prehearing Conference and Prehearing Order

(1) The hearing officer may cancel or reschedule any previously noticed prehearing conference.

(2) The hearing officer may conduct one or more prehearing conferences for the purposes and in the manner described in OAR 137-003-0035. At the conclusion of the conferences, the hearing officer must issue a prehearing order stating the issues to be addressed in the contested case hearing and, in a contested case on an application for a site certificate, limiting parties to those issues they raised on the record of the public hearing described in OAR 345-015-0220. The hearing officer may not receive evidence or hear legal argument on issues not identified in the prehearing order.

(3) Failure to raise an issue in the prehearing conferences for the contested case hearing on an application for a site certificate constitutes a waiver of that issue.

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615, 469.992

345-015-0085 - Hearing Officer's Proposed Contested Case Order

(1) The hearing officer shall allow any party, including any limited party, to propose site certificate conditions that the party believes are necessary or appropriate to implement the policy of ORS 469.310 or to meet the requirements of any other applicable statute, administrative rule or local government ordinance. Parties shall submit proposed site certificate conditions to the hearing officer in writing according to a schedule set by the hearing officer.

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(2) In a contested case proceeding on an application for a site certificate or on a proposed site certificate amendment, any party or limited party may present evidence relating to the appropriateness, scope or wording of any other party's proposed site certificate conditions and may present written proposed findings of fact, briefs and other argument concerning proposed conditions.

(3) After the hearing in a contested case proceeding on an application for a site certificate or on a proposed site certificate amendment, the hearing officer shall issue a proposed contested case order stating the hearing officer's findings of fact, conclusions of law, and recommended site certificate conditions on the issues in the contested case. The hearing officer shall serve the proposed order on all parties and limited parties. In the proposed order, the hearing officer shall include recommended resolutions of objections to the local land use record, if any. The hearing officer's recommendations are part of the decision record for the application but are not part of the Council's order.

(4) After the hearing in a contested case proceeding on any matter other than an application for a site certificate or proposed site certificate amendment, the hearing officer shall issue a proposed order stating the hearing officer's findings of fact and conclusions of law. The hearing officer shall serve the proposed order on all parties and limited parties.

(5) Parties and limited parties may file exceptions to the proposed order within the time set by the hearing officer, not to exceed 30 days after the hearing officer issues the proposed order. A party filing exceptions shall serve a copy of the exceptions on all other parties and limited parties. In an exception, the party shall specifically identify the finding of fact, conclusion of law or, in contested case proceedings on an application for a site certificate or a proposed site certificate amendment, recommended site certificate condition to which the party excepts and shall state the basis for the exception.

(6) Parties and limited parties may file responses to exceptions within the time set by the hearing officer, not to exceed 15 days after the time set for filing exceptions. A party filing responses to exceptions shall serve a copy of the responses to exceptions on all other parties and limited parties.

(7) After the period for filing responses to exceptions, the Council shall issue a final order. The Council may adopt, modify or reject the hearing officer's proposed order.

(8) Following a contested case proceeding on an application for a site certificate, the Council, in its final order, shall either grant or deny issuance of a site certificate. If the Council grants issuance of a site certificate, the Council shall issue a site certificate. The site certificate becomes effective upon execution by the Council and by the applicant. However, for purposes of identification, the Department may refer to a site certificate by the date of the Council action.

(9) Following a contested case proceeding on a proposed site certificate amendment, the Council, in its final order, shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate. The amended site certificate becomes effective upon execution by the Council and by the applicant. However, for purposes of identification, the Department may refer to a site certificate by the date of the Council action.

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(10) The Council shall issue a site certificate or amended site certificate in duplicate counterpart originals and each counterpart, upon signing, will have the same effect.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

Procedures for Expedited Review of Certain Energy Facilities

345-015-0300 - Request for Expedited Review of Small Capacity Facilities

(1) In accordance with ORS 469.370(10), any person proposing to construct and operate an energy facility with an average electric generating capacity of less than 100 megawatts who chooses to request expedited review of an application for a site certificate shall submit to the Department of Energy a request for expedited review as described in section (2) with the fee required by the fee schedule established under ORS 469.441, payable to the Oregon Department of Energy. If the proposed energy facility 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, the proposed energy facility is not eligible for expedited review.

(2) In the request for expedited review, the applicant shall include:

- (a) A description of the facility and the proposed site;
- (b) The applicant's name and address;
- (c) A schedule stating when the applicant expects to submit a preliminary application for a site certificate;
- (d) A list of all statutes, rules and ordinances applicable to the facility;
- (e) A statement indicating whether the applicant intends to satisfy the Council's land use standard, OAR 345-022-0030, by obtaining local land use approval pursuant to ORS 469.504(1)(a) or by seeking a Council determination pursuant to ORS 469.504(1)(b); and
- (f) The reason and justification for any request for exception to an analysis area as provided under section (3).

(3) In an expedited review granted under this rule, the Department shall issue a project order following the applicant's submission of a preliminary application for a site certificate. For the purposes of submitting the preliminary application, the analysis areas are the study areas as defined in OAR 345-001-0010, unless the applicant requests an exception in the request for expedited review and the Department approves the exception. The Department may, in the project order, modify the analysis areas. The Department may request additional information from the applicant, as provided in OAR 345-015-0190, before determining the application complete. Submission of the site certificate application and the Department's review of the application in all other respects are the same for expedited review as for other site certificate applications.

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(4) The Council hereby grants any request for expedited review from an applicant proposing a facility meeting the definition in section (1) if the Department determines that the request satisfies the requirements of section (2). The Department shall notify the applicant of its determination.

Stat. Authority: ORS 469.470
Stat. Implemented: ORS 469.370

345-015-0310 - Request for Expedited Review of Special Criteria Facilities

(1) Any person who proposes to construct and operate a special criteria facility, as defined in section (2), and who chooses to request expedited review of an application for a site certificate must submit to the Department a request for expedited review as described in section (3) with the fee required by the fee schedule established under ORS 469.441, payable to the Oregon Department of Energy.

(2) "Special criteria facility" means a facility that meets the criteria stated in ORS 469.373(1).

(3) In the request for expedited review, the applicant must provide documentation that the proposed facility is a special criteria facility, as defined in section (2), and:

- (a) A description of the facility and the proposed site;
- (b) The applicant's name and address;
- (c) A schedule stating when the applicant expects to submit an application for a site certificate; and
- (d) A list of all statutes, rules and ordinances applicable to the facility;

(4) Within 14 days after receiving the request for expedited review, the Department must determine, on a preliminary, non-binding basis, whether the proposed facility qualifies for expedited review under this rule and must notify the applicant. The Department may decide, on a preliminary, non-binding basis, that the proposed location of associated transmission lines or new natural gas pipelines outside of existing rights of way imposes no significant impact. The Department must provide to the applicant a mailing list of persons including, but not limited to, the agencies listed in ORS 469.373(4).

(5) After the Department has made the determination described in section (4), the applicant may submit a preliminary application for a site certificate, as described in OAR 345-021-0000 and 345-021-0010, subject to the following:

- (a) The applicant must submit, to the Department, two printed copies of the preliminary application, and an electronic version of the preliminary application in a non-copy-protected format acceptable to the Department. The applicant must submit additional printed copies of the preliminary application to the Department upon request; and
- (b) Unless the Department directs otherwise, the applicant must send an electronic copy of the preliminary application to each person on the mailing list described in section (4). The applicant must provide a printed copy of all or part of the preliminary application to any person on the mailing list upon request.

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(6) Within 30 days after receiving a preliminary application for a site certificate, the Department must issue a project order. In the project order, the Department may make changes to the analysis areas. The project order is not a final order. The Council or the Department may amend the project order at any time.

(7) Within 30 days after receiving a preliminary application for a site certificate, the Department must either:

(a) Notify the applicant that the application is complete; or

(b) Notify the applicant that the application is not complete and describe the information needed to complete the application, to the extent known to the Department at the time of the notification.

(8) If additional information is needed to complete the application, the applicant must submit the information to the Department. If follow-up requests for additional information are needed, the Department may specify dates by which the applicant must submit the information. The Department may specify the dates by which the applicant must submit additional information needed to complete the application. At the request of the applicant, the Department may extend the deadline for submission of the information. If the applicant does not submit the information by the deadline specified by the Department, including any allowed extension, the Council may reject the application. The rejection of an application is subject to appeal under ORS 469.403(3).

(9) An application is complete when the Department finds that the applicant has submitted information adequate for the Council to make findings or impose conditions on all applicable Council standards. The Department may find that the application is complete without requiring the applicant to submit all information described under OAR 345-021-0000 and 345-021-0010. The Department must notify the applicant when the Department finds that the application is complete and, if needed, may request the application supplement described in OAR 345-021-0055.

(10) The date of filing is the date the Department receives the application supplement described in OAR 345-021-0055 or, if no supplement is needed, the date the Department notifies the applicant that the application is complete.

(11) After a determination that an application is complete, the Department may require additional information from the applicant if the Department identifies a need for that information during its review of the application. Submission of such information does not constitute an amendment of the application.

(12) In the notification to the applicant that the application is complete, as described in section (7)(a) or (9), the Department must instruct the applicant send a copy of the notice described in section (13) and a copy of the application supplement, if any, to specified persons including but not limited to the agencies listed in ORS 469.373(4).

(13) The Department must prepare a notice that:

(a) States that the application is complete and specifies the date of filing;

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(b) Requests the agency reports as described in OAR 345-015-0200; and

(c) Includes the statements required by ORS 469.373(4)(a) and (b).

(14) At the time specified in section (15), the Department must issue a public notice, including but not limited to:

(a) A description of the proposed facility and the general location of the energy facility;

(b) The date, time, and location of a public informational meeting on the application;

(c) A statement that the application has been filed;

(d) Addresses of locations where the public may review copies of the application; and

(e) The name, address, email address, and telephone number of the Department's representative to contact for more information.

(15) At least 14 days before the meeting described in section (16), the Department must:

(a) Submit the notice described in section (14) for publication in a newspaper of general circulation available in the vicinity of the proposed facility; and

(b) Send the notice described in section (14) by mail or email to all persons on:

(A) The Council's general mailing list as defined in OAR 345-011-0020;

(B) Any special mailing list set up for the proposed project; and

(C) The list of property owners provided in Exhibit F of the application.

(D) The land management agencies or organizations with jurisdiction over the protected areas identified in the application;

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(16) The Department must hold a public informational meeting on the application.

(17) Within 90 days after the date of filing, the Department must issue a draft proposed order including, but not limited to:

(a) A description of the proposed facility;

(b) A list of the permits, licenses and certificates that are addressed in the application and that are required for the construction or operation of the proposed facility;

(c) A list of the statutes, rules and local ordinances that are the standards and criteria for approval of any permit, license or certificate addressed in the application and that are required for the construction or operation of the proposed facility; and

(d) Proposed findings regarding compliance with the applicable standards and criteria for approval of a site certificate and specifying conditions that are required for the facility to comply.

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(18) The Council must review the draft proposed order. In accordance with ORS 469.370(3), when the Council meets to review a draft proposed order, the Council may not permit the applicant, reviewing agencies, or the public to comment on any issue that may be the basis for a contested case.

(19) After the Council's review as described in section (18), the Department must issue a proposed order.

(20) At the time specified in section (21), the Department must issue a public notice, including but not limited to:

- (a) A description of the facility and its general location;
- (b) The name, address, email address, and telephone number of the Department's representative to contact for more information;
- (c) A statement that the Department has issued a proposed order and that copies of the application and proposed order are available for inspection at no cost and will be provided at reasonable cost;
- (d) The date, time and location of a public hearing on the proposed order;
- (e) A statement that the record for public comment on the application will close at the conclusion of the hearing and that failure to raise an issue in person or in writing prior to the close of the record with sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes consideration of the issue in a contested case or by a court on judicial review of the Council's decision;
- (f) A statement that to raise an issue with sufficient specificity, a person must present facts that support the person's position on the issue; and
- (g) A statement that the hearing is the only opportunity for the public to make a factual record for review and that persons having objection to the proposed order must appear at the hearing in person or in writing and present factual evidence, including any expert testimony, and legal argument.

(21) At least 20 days before the hearing described in section (22), the Department must:

- (a) Submit the notice described in section (20) for publication in a newspaper of general circulation available in the vicinity of the proposed facility; and
- (b) Send the notice described in section (20) by mail or email to all persons on:
 - (A) The Council's general mailing list as defined in OAR 345-011-0020; and
 - (B) Any special mailing list set up for the proposed project; ~~and~~
 - (C) The list of property owners provided in Exhibit F of the application; and

(D) The land management agencies or organizations with jurisdiction over the protected areas identified in the application.

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(22) The Council must hold at least one public hearing on the proposed order in the area affected by the proposed facility according to the procedures described in OAR 345-015-0320.

(23) Before the conclusion of the hearing described in section (22), the applicant may either:

(a) Request an opportunity to present additional written evidence, arguments or testimony regarding the application; or

(b) Request a contested case hearing on the application. Not later than 7 days after making a request in the public hearing, the applicant must submit the request to the Council in writing, including evidence sufficient to show good cause for the contested case hearing.

(24) Except as described in section (27), following the close of the record of the public hearing, the Department must issue a draft final order for the Council. In preparing the draft final order, the Department must take into account the entire record, including the summary prepared by the hearing officer described in OAR 345-015-0320.

(25) Except as described in section (27), within six months after the date of filing, the Council must make its decision on the record and the draft final order. The Council must:

(a) Grant the site certificate;

(b) Grant the site certificate with conditions;

(c) Deny the site certificate; or

(d) Determine that the proposed facility is not a special criteria facility as defined in section (2) and is not eligible for expedited review under this rule.

(26) The Council must issue a site certificate for the proposed facility if the Council determines that the proposed facility, with any required conditions to the site certificate, will comply with:

(a) The requirements for expedited review as specified in this rule;

(b) The standards adopted by the Council pursuant to ORS 469.501(1)(a), (c) to (e), (g), (h) and (L) to (o);

(c) The requirements of ORS 469.503(3); and

(d) The requirements of ORS 469.504(1)(b).

(27) If the applicant requests a contested case hearing as described in section (23)(b), the Council, after considering the request in a public meeting, may grant the request if the Council finds that the applicant has shown good cause for a contested case hearing.

(28) If the Council grants the request for a contested case hearing, the Department must issue a notice of a contested case on the proposed order as described in OAR 345-015-0014. The Council must then consider the application under the same contested case procedures used for a nonexpedited application for a site certificate.

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(29) If, as described in section (25), the Council determines that the proposed facility is not a special criteria facility and is not eligible for expedited review under this rule, then the Council must consider the application under the same review procedures used for a nonexpedited application from the point of the applicant's submission of an application. The Department must treat the application before the Council at the time of the determination as a preliminary application for the purpose of review under OAR 345-015-0190, except that within 30 days after the Council's determination, the Department must determine whether the application is complete. The Department must notify the applicant as described in OAR 345-015-0190(1) and the Department must issue an amended project order that includes the Council standards that were not applicable under expedited review. For the purpose of the land use standard, the applicant must obtain a Council determination as described under OAR 345-022-0030(2)(b), and the Council must apply the applicable substantive criteria in effect on the date the application was originally submitted under section (5).

(30) The applicant may withdraw its request for expedited review under this rule at any time and request that the Council consider its application under the same review procedures used for a nonexpedited application. After such a request, the Department must treat the application as a preliminary application for the purpose of review under OAR 345-015-0190 as described in section (29). For the purpose of the land use standard, the applicant must obtain a Council determination as described under OAR 345-022-0030(2)(b), and the Council must apply the applicable substantive criteria in effect on the date the application was originally submitted under section (5).

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.373

345-015-0320 - Public Hearing Procedures for Special Criteria Facilities

(1) The Council shall appoint a hearing officer to conduct the public hearing described in OAR 345-015-0310(22). The Council may appoint a Council member, an employee of the Department of Energy or other person.

(2) The duties of the hearing officer are to:

- (a) Ensure a full, fair and impartial hearing.
- (b) Facilitate presentation of evidence.
- (c) Comply with statutory time limits on Council decisions.
- (d) Maintain order.
- (e) Assist the Council in making its decision.
- (f) Prepare a summary of the evidence presented on the record of the public hearing addressing the factual and legal issues raised in the hearing, including findings related to the credibility of witnesses, as necessary. The hearing officer shall submit the summary and the record of the hearing to the Council within 7 days after the close of the record.

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(3) During the public hearing, the Department shall present the following information either orally or by written handout:

- (a) A description of the proposed facility.
- (b) A description of the Council standards, including those standards on which the Council may base site certificate conditions.
- (c) An explanation of the application process, including the means and opportunities for the general public to participate in the process.

(4) At the commencement of the public hearing, the hearing officer shall state that:

- (a) The record for public comment on the application will close at the conclusion of the hearing and that failure to raise an issue in person or in writing prior to the close of the record with sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes consideration of the issue in a contested case or by a court on judicial review of the Council's decision.
- (b) To raise an issue with sufficient specificity, a person must present facts that support the person's position on the issue.
- (c) The hearing is the only opportunity for the public to make a factual record for review and that persons having objection to the proposed order must appear at the hearing in person or in writing and present factual evidence, including any expert testimony, and legal argument.

(5) Any person may present information regarding the pending application without administration of an oath.

(6) The hearing officer shall record all presentations made during the public hearing, and the presentations are part of the decision record for the application. The hearing officer shall maintain a record of all exhibits received and any rulings made during the course of the hearing.

(7) If the applicant requests an opportunity to present written evidence, arguments or testimony as described in OAR 345-015-0310, the hearing officer shall leave the record open for that purpose only for a specified period not to exceed 14 days after the date of the hearing or any continuance.

(8) The hearing officer is authorized to carry out the duties assigned in this rule, including but not limited to:

- (a) Adopting special rules of procedure to govern the proceeding.
- (b) Setting reasonable time limits for oral presentations.
- (c) Receiving evidence and ruling on offers of proof.
- (d) Requiring persons to submit written testimony in lieu of oral testimony if the hearing officer determines that a reasonable opportunity for oral presentation has been provided.
- (e) Asking questions of commenters.

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(f) Requiring expert witnesses to submit a statement of qualifications in writing

(g) Continuing the hearing during a period not exceeding 7 days from the commencement of the hearing. Notwithstanding this time limit, the hearing officer shall leave the record open for the purpose described in section (7).

(h) Continuing the hearing beyond any continuance allowed under subsection (g) for the limited purpose of allowing the applicant reasonable time to review written material submitted to the record before making the request described in section (7).

(i) Taking any other action consistent with the statutes governing expedited review of special criteria facilities and the applicable Council's rules.

(9) A request by the applicant for a contested case as provided in OAR 345-015-0310(23)(b) does not suspend the public hearing, and the hearing officer shall continue to accept evidence from interested persons until the close of the hearing.

(10) Notwithstanding the provisions of OAR 137-003-0055(1), following the issuance of a notice of the public hearing, the hearing officer shall enter into the record the substance of any significant contact with the applicant, the Department of Energy staff or a commenter from that point forward concerning facts in the record.

(11) The Council may remove a hearing officer if it determines that the hearing officer is not competent, is biased or is otherwise unable to conduct the proceeding.

(12) If any person engages in conduct that interferes with the hearing officer's duty in connection with any aspect of a public hearing or fails to obey an order of the hearing officer, the hearing officer may suspend the hearing or order such person excluded from the hearing temporarily or permanently. If the hearing officer issues an order permanently excluding a person from further participation in a public hearing, the hearing officer shall issue the order in writing and shall state in the order the grounds for the order. The order is final unless the person subject to the order submits an appeal to the Council within seven days after the date of the order.

(13) Upon the request of a governing body of a city, county or tribe, the Department of Energy shall offer, and the hearing officer shall receive in evidence, a certified copy of a resolution of the governing body. The hearing officer shall receive such resolutions subject to rebuttal as to the authenticity of the resolution or the circumstances surrounding its procurement. The hearing officer shall receive such resolutions only for the purpose of showing the expression of official action of the resolving body with respect to matter contained in the resolution. Such resolutions are not proof of facts related to the subject of the resolution.

Stat. Authority: ORS 469.373, ORS 469.470
Stat. Implemented: ORS 469.370

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Exemptions from Council Jurisdiction

345-015-0350 - Council Determination of Exemption

The Council shall, upon request, determine whether a proposed facility or proposed expansion of a facility is exempt from the requirement to obtain a site certificate. A site certificate is not required for:

(1) A facility for which no site certificate has been issued that, on August 2, 1993, had operable electric generating equipment for a modification that uses the same fuel type and increases electric generating capacity, if the site is not enlarged and:

(a) The ability of the facility to use fuel for electricity production under peak steady state operating conditions is not more than 200 million Btu per hour (higher heating value) greater than it was on August 2, 1993; or

(b) The facility expansion is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon.

(2) Construction or expansion of any interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory Commission or successor agency.

(3) A high efficiency cogeneration facility, as defined in OAR 345-001-0010.

(4) A small generating plant or an expansion to a small generating plant, as defined in OAR 345-001-0210, if the Council finds that the accumulated effects do not have a magnitude similar to a single generating plant with an average electric generating capacity of 35 megawatts or more, as described in OAR 345-001-0210(3).

(5) An energy facility as defined in ORS 469.300(11)(a)(G), if the facility meets the requirements of ORS 469.320(2)(f).

(6) A standby generation facility as defined under ORS 469.320.

Stat. Authority: ORS 469.470
Stat. Implemented: ORS 469.320

345-015-0360 - Contents of Request for Exemption

(1) Any person wishing to construct and operate a facility exempt from Council jurisdiction shall submit a request for exemption to the Department of Energy before beginning construction. A person shall not construct or expand a facility as defined in OAR 345-001-0010 unless the Council has granted an exemption as described in OAR 345-015-0370 or has issued a site certificate or an amendment to an existing site certificate.

(2) In a request for an exemption under OAR 345-015-0350(1)(a) for a modification of a facility for which no site certificate has been issued that will not increase the ability of the facility to use fuel for electricity production under peak steady state operating conditions to more than 200 million Btu per hour (higher

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heating value) greater than it was on August 2, 1993, the person shall provide the following information in support of the request:

- (a) A detailed description of the proposed upgrade or expansion;
- (b) The proposed and current facility fuel use;
- (c) The proposed and current nominal electric generating capacity;
- (d) The proposed and current related or supporting facilities and site boundary;
- (e) The proposed and current heat rate; and
- (f) Verification that the facility had operable electric generating equipment on August 2, 1993.

(3) In a request for an exemption under OAR 345-015-0350(1)(b) for modification of a facility for which no site certificate has been issued that is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon, the person shall provide the following information in support of the request:

- (a) The information described in subsections (2)(a) through (f) of this rule;
- (b) Identification and discussion of the portion of the short-term plan of action of an energy resource plan that calls for the facility expansion; and
- (c) The Public Utility Commission of Oregon Order acknowledging the plan described in subsection (b).

(4) In a request for an exemption under OAR 345-015-0350(2) for construction or expansion of an interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory Commission, the person shall provide a certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission for the proposed pipeline or associated underground natural gas storage facility, or other comparable evidence that the proposed pipeline or storage facility is within that agency's jurisdiction.

(5) In a request for an exemption based on a very efficient use of fuel (high efficiency cogeneration) under OAR 345-015-0350(3), the person shall provide the following information in support of the request:

- (a) Detailed information on proposed fuel use, power plant design, steam or heat output to the thermal host and proposed electric output;
- (b) Detailed information on the current facility, including fuel to be displaced, current steam or heat use and current electric output if any;
- (c) A detailed engineering assessment of fuel efficiency, showing that the proposed facility is a high efficiency cogeneration facility under the definition in OAR 345-001-0010. The person shall provide calculations in sufficient detail to facilitate independent review by the Department. The person shall state the underlying assumptions necessary to support the calculation including assumptions concerning the energy content of fuel displaced; and

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(d) A description of the facility, including the thermal host, the proposed energy facility, the location by address as well as township and range and any associated linear equipment needed.

(6) In a request for an exemption of a small generating plant or expansion of a small generating plant, as defined in OAR 345-001-0210, the person shall include the following information:

(a) A description of the proposed small generating plant or proposed expansion to a small generating plant and a description of related or supporting facilities;

(b) Identification of the person or persons who will construct, operate and own the plant;

(c) An analysis of the factors described in OAR 345-001-0210(3); and

(d) Any other information the Department of Energy determines the Council needs to make the finding described in OAR 345-001-0210(3).

(7) In a request for an exemption under OAR 345-015-0350(5) for a plant that converts biomass to a liquid fuel, the person shall include the following information:

(a) A description of the proposed plant, including, but not limited to, the location, acreage and annual production capacity of the proposed plant and the type of liquid fuel the plant will produce;

(b) A description of the feedstock verifying that the facility will use only the types of feedstock described in ORS 469.320(2)(f);

(c) The identity of the affected local government that has given land use approval under the applicable acknowledged comprehensive plan and land use regulations and copies of all land use approval documents the local government has issued;

(d) The statewide planning goals or rules of the Land Conservation and Development Commission that are directly applicable to the facility and evidence to support a finding by the Council that the facility complies with those goals and rules;

(e) A description of the expected electrical loads and fuel needs of the facility and a statement verifying that the facility requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate; and

(f) A statement verifying that the plant will produce synthetic fuel, at least 90 percent of which will be used in an industrial or refueling facility located within one mile of the facility or will be transported from the facility by rail or barge and evidence that adequate rail and barge facilities are available to serve the proposed site.

(8) In a request for an exemption under OAR 345-015-0350(7) for a standby generation facility, the person shall include the following information:

(a) A description of the proposed standby generation facility.

(b) Identification of the person or persons who will construct, operate and own the plant.

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(c) Verification that the facility has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and that the facility complies with all statewide planning goals and applicable rules of the Land Conservation and Development Commission.

(d) Verification, as described in ORS 469.320(2), that the standby generators have been approved by the Department of Environmental Quality as having complied with all applicable air and water quality requirements.

(e) Verification, as described in ORS 469.320(2), that the standby generators are electrically incapable of being interconnected to the transmission grid.

Stat. Authority: ORS 469.470
Stat. Implemented: ORS 469.320

345-015-0370 - Consideration of Request for Exemption

(1) Except as described in section (2), within 45 days after receipt of a request for exemption, the Department of Energy shall review the request for exemption for completeness and provide the requestor with either a notice of filing of the request for exemption or a request for additional information. When the Department finds the submitted request for exemption is complete, the Department shall issue a notice of filing. Within 60 days after issuing the notice of filing, the Department shall review the request, prepare a proposed order for Council action and bring the matter before the Council for action.

(2) When submitting a request for exemption, the requestor shall submit the fee established by the Council as described in ORS 469.441. The requestor is liable for reimbursement of any review expenses beyond the initial fee that are incurred by the Department of Energy and Council relating to the review and decision by the Council.

Stat. Authority: ORS 469.470
Stat. Implemented: ORS 469.320, ORS 469.421, ORS 469.441

345-015-0380 - Loss of Exemption

(1) In accordance with ORS 469.320(6), any person operating a facility for which the Council previously granted an exemption under ORS 469.320(2)(c) and that has experienced a substantial loss of steam host resulting in a substantial loss in fuel use efficiency must submit an application for a site certificate within 12 months of the loss.

(2) Any person proposing to enlarge the site of a facility previously determined to be exempt under 469.320(2)(a) must submit an application for a site certificate.

(3) Any person submitting an application for a site certificate under section (1) or (2) may request expedited review as described in OAR 345-015-0300 or OAR 345-015-0310 if the average electric generating capacity of the energy facility is less than 100 megawatts.

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(4) Any person operating a plant that the Council has determined exempt under OAR 345-015-0350(5) must apply for a site certificate before making any change in the operation of the plant such that the plant would no longer meet the requirements of ORS 469.320(2)(f).

Stat. Authority: ORS 469.373, ORS 469.470
Stat. Implemented: ORS 469.320

Confidentiality and Inadmissibility of Mediation Communications

345-015-0500 - Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)-(10) of this rule do not apply to:

- (a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or
- (b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;
- (c) Mediation in which the only parties are public bodies;
- (d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or
- (e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation;

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

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(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)-(d), (j)-(l) or (o)-(p) of section (9) of this rule; or

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)-(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate."

Agreement to Participate in a Confidential Mediation

The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or nondiscoverable and inadmissible to the extent authorized by OAR 345-015-0500(7) and this agreement. This agreement relates to the following mediation:

a) _____ (Identify the mediation to which this agreement applies)

b) To the extent authorized by OAR 345-015-0500(7), mediation communications in this mediation are: (check one or more)

- _____ confidential and may not be disclosed to any other person
not admissible in any subsequent administrative proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative proceeding
- _____ not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative, judicial or arbitration proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative, judicial or arbitration proceeding

c)

Name of Agency

Signature of Agency's authorized representative (when agency is a party)
or Agency employee acting as the mediator (when Agency is mediating
the dispute)

Date

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(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

- (A) A request for mediation, or
- (B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation, or
- (C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712, or
- (D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

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(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege, or

(B) Attorney work product prepared in anticipation of litigation or for trial, or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency, or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation, or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the chair of the Council determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Authority: ORS 36.224

Stat. Implemented: ORS 36.224, ORS 36.228, ORS 36.230, ORS 36.232

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Insert Noticing Table Here?

Commented [JT*027]: We are considering putting a noticing table at the end of Div. 15 if the RAC feels like it is helpful.

Commented [JT*028R27]: This would summarize all the various noticing requirements for the various stages. Each of those instances can reference back to this table.

DRAFT

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DIVISION 20 - NOTICE OF INTENT

345-020-0006 - Submission of a Notice of Intent

(1) The purpose of the notice of intent (NOI) is to notify the Department of Energy and the Council of a proposed facility and to provide information about the site and the characteristics of the facility sufficient for the preparation of the project order described in OAR 345-015-0160. Any person who intends to apply for a site certificate for a facility shall submit an NOI to the Department with the fee required by the fee schedule established under ORS 469.441, payable to the Oregon Department of Energy.

(2) Notwithstanding section (1), an applicant granted expedited review under OAR 345-015-0300 or 345-015-0310 need not submit an NOI.

(3) The applicant must submit, to the Department, two printed copies of the NOI, and an electronic version of the NOI in a non-copy-protected format acceptable to the Department. The applicant must submit additional printed copies of the NOI to the Department upon request. The applicant must prepare and distribute additional copies of the NOI as required by OAR 345-020-0040.

Commented [JT*029]: Pulled from 345-020-0011(4) for clarity and consistency.

Statutory/Other Authority: ORS 469.370 & 469.470
Statutes/Other Implemented: ORS 469.330

345-020-0011 - Contents of a Notice of Intent

(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:

(a) **Exhibit A.** Information about the applicant and participating persons, including:

(A) The name and address of the applicant including all co-owners of the proposed facility, the name, mailing address, email address and telephone number of the contact person for the NOI, and if there is a contact person other than the applicant, the name, title, mailing address, email address and telephone number of that person;

(B) The contact name, mailing address, email address and telephone number of all participating persons, other than individuals, including but not limited to any parent corporation of the applicant, persons upon whom the applicant will rely for third-party permits or approvals related to the facility, and persons upon whom the applicant will rely in meeting any facility standard adopted by the Council;

(C) If the applicant is a corporation:

(i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the NOI;

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- (ii) The date and place of its incorporation;
 - (iii) A copy of its articles of incorporation and its authorization for submitting the NOI; and
 - (iv) In the case of a corporation not incorporated in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon;
- (D) If the applicant is a wholly owned subsidiary of a company, corporation or other business entity, in addition to the information required by paragraph (C), the full name and business address of each of the applicant's full or partial owners;
- (E) If the person submitting the NOI is an association of citizens, a joint venture or a partnership:
- (i) The full name, official designation, mailing address, email address and telephone number of the person responsible for submitting the NOI;
 - (ii) The name, business address and telephone number of each person participating in the association, joint venture or partnership and the percentage interest held by each;
 - (iii) Proof of registration to do business in Oregon;
 - (iv) A copy of its articles of association, joint venture agreement or partnership agreement and a list of its members and their cities of residence; and
 - (v) If there are no articles of association, joint venture agreement or partnership agreement, the applicant must state that fact over the signature of each member;
- (F) If the applicant is a public or governmental entity:
- (i) The full name, official designation, mailing address, email address and telephone number of the person responsible for submitting the NOI; and
 - (ii) Written authorization from the entity's governing body to submit an NOI;
- (G) If the applicant is an individual, the individual's mailing address, email address and telephone number; and
- (H) If the applicant is a limited liability company:
- (i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the NOI;
 - (ii) The date and place of its formation;
 - (iii) A copy of its articles of organization and its authorization for submitting the NOI; and
 - (iv) In the case of a limited liability company not registered in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon.
- (b) **Exhibit B.** Information about the proposed facility, including:
- (A) A description of the proposed energy facility, including as applicable:

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- (i) For electric power generating plants, the nominal electric generating capacity and the average electrical generating capacity, as defined in ORS 469.300;
 - (ii) Major components, structures and systems, including a description of the size, type and configuration of equipment used to generate, store, transmit, or transport electricity, useful thermal energy, or fuels;
 - (iii) Methods for waste management and waste disposal, including, to the extent known, the amount of wastewater the applicant anticipates, the applicant's plans for disposal of wastewater and storm water, and the location of disposal;
 - (iv) For thermal power plants, combustion turbine power plants, or other facilities designed to generate electricity from any gas, liquid, or solid fuels:
 - (I) A discussion of the source, quantity and availability of all fuels proposed to be used in the facility to generate electricity or useful thermal energy;
 - (II) If the facility will generate electric power from natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material, a discussion of methods the facility will use to ensure that the facility does not emit greenhouse gasses into the atmosphere, and a description of any equipment the facility will use to capture, sequester, or store greenhouse gases;
 - (III) A discussion of the methods for the disposal of waste heat generated by the facility;
 - (v) For transmission lines, approximate transmission line voltage, load carrying capacity and type of current;
 - (vi) For pipelines, approximate operating pressure and delivery capacity in thousand cubic feet per day;
 - (vii) For surface facilities related to underground gas storage, estimated daily injection and withdrawal rates, horsepower compression required to operate at design injection or withdrawal rates, operating pressure range and fuel type of compressors;
 - (viii) For facilities to store liquefied natural gas, the approximate volume, maximum pressure, liquefaction and gasification capacity in thousand cubic feet per hour;
- (B) A description of major components, structures and systems of each related or supporting facility; and
- (C) The approximate dimensions of major facility structures and visible features.
- (c) **Exhibit C.** A description of the location of the proposed energy facility site and the proposed site of each related or supporting facility and all areas that might be temporarily disturbed during construction of the facility, including the approximate land area of each.
- (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

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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), (o) and (q) that is available from existing maps, aerial photographs, and a search of readily available literature.

(e) **Exhibit E.** Identification of all federal, state and local government permits related to the siting of the proposed facility, a legal citation of the statute, rule or ordinance governing each permit, and the name, address, email address and telephone number of the agency or office responsible for each permit. For each permit, the applicant must provide a preliminary analysis of whether the permit should or should not be included in and governed by the site certificate.

(f) **Exhibit F.** A list of the names and mailing addresses of property owners, as described in this rule:

(A) The list must include all owners of record, as shown on the most recent property tax assessment roll, of property located:

(i) Within 100 feet of property which is the subject of the NOI, where the subject property is wholly or in part within an urban growth boundary;

(ii) Within 250 feet of property which is the subject of the NOI, where the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(iii) Within 500 feet of property which is the subject of the NOI, where the subject property is within a farm or forest zone; and

(B) In addition to incorporating the list in the NOI, the applicant must submit the list to the Department in an electronic format acceptable to the Department.

(g) **Exhibit G.** A map or maps showing:

(A) The proposed locations of the energy facility site, all related or supporting facility sites and all areas that might be temporarily disturbed during construction of the facility in relation to major roads, water bodies, cities and towns, important landmarks and topographic features;

(B) The proposed locations of the corridors the applicant has identified under subsection (d) in relation to major roads, water bodies, cities and towns, important landmarks and topographic features;

(C) The study areas for the proposed facility as defined in OAR 345-001-0010;

(D) The topography of the study areas including streams, rivers, lakes, major roads and contour lines;

(E) All protected areas in the study area as defined in OAR 345-001-0010 for impacts to protected areas;

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(F) The location of any potential waters of the state or waters of the United States that are on or adjacent to the site; and

(G) For energy generation facilities, the approximate locations of any other energy generation facilities that are known to the applicant to be permitted at the state or local level within the study area as defined in OAR 345-001-0010 for impacts to public services.

(h) **Exhibit H.** If the proposed facility is a non-generating energy facility for which the applicant must demonstrate need under OAR 345-023-0005, identification of the rule in division 23 of this chapter under which the applicant intends to demonstrate need and a summary statement of the need and justification for the proposed facility.

(i) **Exhibit I.** A statement indicating whether the applicant intends to satisfy the Council's land use standard, OAR 345-022-0030, by obtaining local land use approval under ORS 469.504(1)(a) or by seeking a Council determination under ORS 469.504(1)(b).

(j) **Exhibit J.** Identification of potential significant 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 resources, recreation opportunities, land use, and wildfire risk.

(k) **Exhibit K.** Information about significant potential adverse impacts of construction and operation of the proposed facility on the ability of communities in the study area to provide the services listed in OAR 345-022-0110.

(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 of OAR 345-001-0010(26); and

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

(m) **Exhibit M.** Information about anticipated water use during construction and operation of the proposed facility, including:

(A) A description of each source of water and the applicant's estimate of the amount of water the facility will need from each source;

(B) If a new water right is required, the approximate location of the points of diversion and the estimated quantity of water to be taken at each point; and

(C) For operation, the source of cooling water and the estimated consumptive use of cooling water, based on annual average conditions.

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(n) **Exhibit N.** If the proposed facility would emit carbon dioxide, an estimate of the gross carbon dioxide emissions that are reasonably likely to result from the operation of the facility and a statement of the means by which the applicant intends to comply with the applicable carbon dioxide emissions standard under OAR 345-024-500.

(o) **Exhibit O.** Identification, by legal citation, of all state statutes and administrative rules and local government ordinances containing standards or criteria that the proposed facility must meet for the Council to issue a site certificate, other than statutes, rules and ordinances identified in Exhibit E, and identification of the agencies administering those statutes, administrative rules and ordinances. The applicant must analyze and describe any problems the applicant foresees in satisfying the requirements of any such statute, rule or ordinance.

(p) **Exhibit P.** A schedule stating when the applicant expects to submit a preliminary application for a site certificate.

(q) **Exhibit Q.** Evidence of consultation with the Legislative Commission on Indian Services to identify each appropriate tribe to consult with regarding the proposed facility's possible effects on Indian historic and cultural resources.

(2) Documents prepared in connection with an environmental assessment or environmental impact statement for the proposed facility under the National Environmental Policy Act of 1970, if any, may contain some of the information required by section (1) of this rule. The applicant may copy relevant sections of such documents into the appropriate exhibits of the NOI. The applicant may otherwise submit full copies of those documents and include, in the appropriate exhibits of the NOI, cross-references to the relevant sections of those documents. The applicant may use such documents only to avoid duplication. The applicant must include additional information in the NOI as needed to meet the requirements of section (1) of this rule.

(3) The applicant must include a table of contents in the NOI identifying the location of each exhibit required by this rule.

~~(4) The applicant must submit, to the Department, two printed copies of the NOI, and an electronic version of the NOI in a non-copy-protected format acceptable to the Department. The applicant must submit additional printed copies of the NOI to the Department upon request. The applicant must prepare and distribute additional copies of the NOI as required by OAR 345-020-0040.~~

~~(5)~~ (4) The applicant or the applicant's representative must attend all public informational meetings on the NOI as described in OAR 345-015-0130 to discuss the proposed facility and to answer questions from the public. If the applicant has identified one or more proposed corridors in Exhibit D of the NOI as required by section (1)(d), the applicant may present adjustments to the proposed corridor(s) at any public informational meeting. An adjustment is any change that is outside the boundaries of the corridors proposed in the NOI and may include an entirely new corridor.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.330

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345-020-0016 - Amendment of Notice of Intent

(1) The applicant may amend the notice of intent (NOI). The applicant must submit, to the Department, two printed copies of the amended NOI, and an electronic version of the amended NOI in a non-copy-protected format acceptable to the Department. The applicant must prepare and submit additional copies of the amended NOI as required by OAR 345-020-0040.

~~(2) The Department must inform the public, in the manner described in OAR 345-015-0110, of any amendment that:~~

~~(a) Significantly changes the proposed site boundary or location of the proposed energy facility or related or supporting facility;~~

~~(b) Significantly increases:~~

~~(A) The estimated quantity of fuel that will be used or produced by the proposed facility, or changes the proposed fuel type or source;~~

~~(B) The generating capacity of the proposed energy facility;~~

~~(C) The voltage of a proposed transmission line;~~

~~(D) The capacity or operating pressure of a proposed pipeline; or~~

~~(E) The estimated gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed facility, or the proposed means of compliance with any applicable carbon dioxide standard emissions standard;~~

~~(c) Increases water consumption or disposal by more than 5 percent; or~~

~~(d) Changes the source of water.~~

Commented [JT*030]: Moved to 345-015-0110.

~~(2)~~ Submission of an amended NOI does not extend the expiration date of the NOI. The applicant, however, may petition the Council to extend the duration of the NOI as provided in OAR 345-020-0060.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.330

345-020-0040 – Distribution of a Notice of Intent

~~(1) After receiving the notice of intent (NOI), the Department must, in coordination with the applicant, determine a distribution date and compile a distribution list that includes, but is not limited to, the reviewing agencies for the proposed facility.~~

~~(2) The Department must mail or email the memorandum described under OAR 345-015-0120 to each person on the distribution list before the distribution date.~~

~~(3) Unless the Department directs otherwise, the applicant must mail or email an electronic copy of the NOI to each person on the distribution list on or before the distribution date.~~

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~~(4) The applicant must provide copies of the NOI or access to copies to any other person requesting copies.~~

Commented [JT*031]: Deleted, but we are adding a few bits from this to 345-015-0120.

345-020-0060 - Expiration of a Notice of Intent

(1) A notice of intent (NOI) expires two years after the applicant submits the NOI unless, not less than 45 days before the expiration date, the applicant submits a petition to the Council to extend the expiration date. If the Council finds that the petition shows good cause, the Council may extend the expiration date for a period of up to one year. The applicant's submission of a timely petition for an extension under this rule stays the expiration of the NOI until the Council's decision to grant or deny the extension.

(2) If the applicant does not submit an application for a site certificate for the facility described in an NOI before the expiration of the NOI or any extension period granted by the Council, the applicant must submit a new NOI to satisfy ORS 469.330.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.330

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DIVISION 21 - APPLICATION FOR SITE CERTIFICATE

345-021-0000 - General Requirements

(1) Except for facilities that the Council has determined exempt as described in OAR 345-015-0350 to 345-015-0370 or for which a separate site certificate is not required according to ORS 469.320(5), a person may not construct or expand a facility unless the Council has granted a site certificate or an amendment to an existing site certificate.

Commented [JT*O32]: Possibly moving to Division 1.

(2) An applicant may not submit an application for a site certificate before the Department has issued a project order for the proposed facility as described in OAR 345-015-0160. The applicant may submit a draft application before the issuance of a project order. The applicant must submit the application before the expiration of the notice of intent.

(3) For an expedited review granted under OAR 345-015-0300 or 345-015-0310, section (32) does not apply and the applicant may submit an application for a site certificate any time after the Department determines the request for expedited review satisfies the requirements for expedited review as described in those rules.

Commented [JT*O33]: Numbering error.

(4) If the applicant submits a written request for waiver or modification of requirements in OAR 345-021-0010 to the Department, the Department may waive or modify those requirements that the Department determines are not applicable to the proposed facility.

(5) For any state or local government agency permits, licenses or certificates proposed by the applicant to be included in and governed by the site certificate, the applicant must include within the site certificate application all information that would otherwise be required by the state or local government agency in an application for such permit, license or certificate.

(6) For any federally-delegated permits that are needed for construction or operation of the proposed facility, the applicant must submit to the Department one copy of each federally-delegated permit application. The applicant may submit the site certificate application before submitting a copy of a federally-delegated permit application if the applicant submits a schedule of the date by which the applicant intends to submit the federally-delegated permit application. The Department may not find the site certificate application to be complete before receiving copies of all federally-delegated permit applications and a letter or other indication from each agency responsible for issuing a federally-delegated permit stating that the agency has received the permit application, identifying any additional information the agency is likely to need from the applicant and estimating the date when the agency will complete its review and issue a permit decision.

(7) If the proposed facility is a non-generating facility for which the applicant must demonstrate need under OAR 345-023-0005, in addition to the application for a site certificate described in 345-021-0010, the applicant must submit, to the Department, two copies of each energy resource plan or combination of plans on which the applicant relies to demonstrate need under OAR 345-023-0020, unless the applicant chooses to incorporate copies of the plans as part of the application for a site certificate. The applicant must submit the plans to the Department with the site certificate application. The Department

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may not find the site certificate application to be complete before receiving copies of the plans. The plans described in this section are part of the decision record for the Department's proposed order, described in OAR 345-015-0230.

(8) The applicant must submit an application for a site certificate to the Department with 25 percent of the fee the Department determines necessary for review of the application under ORS 469.421(3), payable to the Oregon Department of Energy. The applicant must pay the balance of the fee periodically, as specified by the Department.

(9) Until the Department determines the application to be complete as described in OAR 345-015-0190 or 345-015-0310, it is a preliminary application. For the purpose of determining the applicable substantive criteria under ORS 469.504(1)(b)(A), the date the preliminary application is received by the Department is the date the application is submitted.

Statutory/Other Authority: ORS 469.373 & 469.470

Statutes/Other Implemented: ORS 469.350, 469.370 & 469.421

345-021-0010 - Contents of an Application

(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.

(a) **Exhibit A.** Information about the applicant and participating persons, including:

(A) The name and address of the applicant including all co-owners of the proposed facility, the name, mailing address, email address and telephone number of the contact person for the application, and if there is a contact person other than the applicant, the name, title, mailing address, email address and telephone number of that person;

(B) The contact name, mailing address, email address and telephone number of all participating persons, other than individuals, including but not limited to any parent corporation of the applicant, persons upon whom the applicant will rely for third-party permits or approvals related to the facility, and, if known, other persons upon whom the applicant will rely in meeting any facility standard adopted by the Council;

(C) If the applicant is a corporation:

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- (i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the application;
 - (ii) The date and place of its incorporation;
 - (iii) A copy of its articles of incorporation and its authorization for submitting the application; and
 - (iv) In the case of a corporation not incorporated in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon;
- (D) If the applicant is a wholly owned subsidiary of a company, corporation or other business entity, in addition to the information required by paragraph (C), the full name and business address of each of the applicant's full or partial owners;
- (E) If the applicant is an association of citizens, a joint venture or a partnership:
- (i) The full name, official designation, mailing address, email address and telephone number of the person responsible for submitting the application;
 - (ii) The name, business address and telephone number of each person participating in the association, joint venture or partnership and the percentage interest held by each;
 - (iii) Proof of registration to do business in Oregon;
 - (iv) A copy of its articles of association, joint venture agreement or partnership agreement and a list of its members and their cities of residence; and
 - (v) If there are no articles of association, joint venture agreement or partnership agreement, the applicant must state that fact over the signature of each member;
- (F) If the applicant is a public or governmental entity:
- (i) The full name, official designation, mailing address, email address and telephone number of the person responsible for submitting the application; and
 - (ii) Written authorization from the entity's governing body to submit an application;
- (G) If the applicant is an individual, the individual's mailing address, email address and telephone number; and
- (H) If the applicant is a limited liability company:
- (i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the application;
 - (ii) The date and place of its formation;
 - (iii) A copy of its articles of organization and its authorization for submitting the application; and

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(iv) In the case of a limited liability company not registered in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon.

(b) **Exhibit B.** Information about the proposed facility, construction schedule and temporary disturbances of the site, including:

(A) A description of the proposed energy facility, including as applicable:

(i) For electric power generating plants, the nominal electric generating capacity and the average electrical generating capacity, as defined in ORS 469.300;

(ii) Major components, structures and systems, including a description of the size, type and configuration of equipment used to generate, store, transmit, or transport electricity, useful thermal energy, or fuels;

(iii) A site plan and general arrangement of buildings, equipment and structures;

(iv) Fuel and chemical storage facilities, including structures and systems for spill containment;

(v) Equipment and systems for fire prevention and control;

(vi) For thermal power plants, combustion turbine power plants, or other facilities designed to generate electricity from gas, liquid, or solid fuels:

(I) A discussion of the source, quantity and availability of all fuels proposed to be used in the facility to generate electricity or useful thermal energy;

(II) If the facility will generate electric power from natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material, a discussion of methods the facility will use to ensure that the facility does not emit greenhouse gases into the atmosphere, and a description of any equipment the facility will use to capture, sequester, or store greenhouse gases;

(III) A description of energy flows within the facility, including power cycle and steam cycle diagrams, as appropriate;

(IV) A description of equipment and systems for disposal of waste heat generated by the facility;

(IV) The fuel chargeable to power heat rate of the energy facility;

(vii) For surface facilities related to underground gas storage, estimated daily injection and withdrawal rates, horsepower compression required to operate at design injection or withdrawal rates, operating pressure range and fuel type of compressors;

(viii) For facilities to store liquefied natural gas, the volume, maximum pressure, liquefaction and gasification capacity in thousand cubic feet per hour;

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(B) A description of major components, structures and systems of each related or supporting facility;

(C) The approximate dimensions of major facility structures and visible features;

(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, a corridor selection assessment explaining how the applicant selected the corridors for analysis in the application. In the assessment, the applicant must evaluate the corridor adjustments the Department has described in the project order, if any. The applicant may select any corridor for analysis in the application and may select more than one corridor. However, if the applicant selects a new corridor, then the applicant must explain why the applicant did not present the new corridor for comment at an informational meeting under OAR 345-015-0130. In the assessment, the applicant must discuss the reasons for selecting the corridors, based upon evaluation of the following factors:

- (i) Least disturbance to streams, rivers and wetlands during construction;
- (ii) Least percentage of the total length of the pipeline or transmission line that would be located within areas of Habitat Category 1, as described by the Oregon Department of Fish and Wildlife;
- (iii) Greatest percentage of the total length of the pipeline or transmission line that would be located within or adjacent to public roads and existing pipeline or transmission line rights-of-way;
- (iv) Least percentage of the total length of the pipeline or transmission line that would be located within lands that require zone changes, variances or exceptions;
- (v) Least percentage of the total length of the pipeline or transmission line that would be located in a protected area as described in OAR 345-022-0040;
- (vi) Least disturbance to areas where historical, cultural or archaeological resources are likely to exist;
- (vii) Greatest percentage of the total length of the pipeline or transmission line that would be located to avoid seismic, geological and soils hazards;
- (viii) Least percentage of the total length of the pipeline or transmission line that would be located within lands zoned for exclusive farm use;

(E) If the proposed energy facility is a pipeline or transmission line or has, as a related or supporting facility, a transmission line or pipeline of any size:

- (i) The length of the pipeline or transmission line;
- (ii) The proposed right-of-way width of the pipeline or transmission line, including to what extent new right-of-way will be required or existing right-of-way will be widened;

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(iii) If the proposed transmission line or pipeline corridor follows or includes public right-of-way, a description of where the transmission line or pipeline would be located within the public right-of-way, to the extent known. If the applicant proposes to locate all or part of a transmission line or pipeline adjacent to but not within the public right-of-way, describe the reasons for locating the transmission line or pipeline outside the public right-of-way. The applicant must include a set of clear and objective criteria and a description of the type of evidence that would support locating the transmission line or pipeline outside the public right-of-way, based on those criteria;

(iv) For pipelines, the operating pressure and delivery capacity in thousand cubic feet per day and the diameter and location, above or below ground, of each pipeline;

(v) For transmission lines, the rated voltage, load carrying capacity, and type of current and a description of transmission line structures and their dimensions; and

(F) A construction schedule including the date by which the applicant proposes to begin construction and the date by which the applicant proposes to complete construction. Construction is defined in OAR 345-001-0010. The applicant must describe in this exhibit all work on the site that the applicant intends to begin before the Council issues a site certificate. The applicant must include an estimate of the cost of that work. For the purpose of this exhibit, “work on the site” means any work within a site or corridor, other than surveying, exploration or other activities to define or characterize the site or corridor, that the applicant anticipates or has performed as of the time of submitting the application.

(c) **Exhibit C.** Information about the location of the proposed facility, including:

(A) A map or maps showing the proposed locations of the energy facility site, all related or supporting facility sites and all areas that might be temporarily disturbed during construction of the facility in relation to major roads, water bodies, cities and towns, important landmarks and topographic features, using a scale of 1 inch = 2000 feet or smaller when necessary to show detail;

(B) A description of the location of the proposed energy facility site, the proposed site of each related or supporting facility and areas of temporary disturbance, including the total land area (in acres) within the proposed site boundary, the total area of permanent disturbance, and the total area of temporary disturbance. If a proposed pipeline or transmission line is to follow an existing road, pipeline or transmission line, the applicant must state to which side of the existing road, pipeline or transmission line the proposed facility will run, to the extent this is known; and

(C) For energy generation facilities, a map showing the approximate locations of any other energy generation facilities that are known to the applicant to be permitted at the state or local level within the study area as defined in OAR 345-001-0010 for impacts to public services;

(d) **Exhibit D.** Information about the organizational expertise of the applicant to construct and operate the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0010, including:

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- (A) The applicant's previous experience, if any, in constructing and operating similar facilities;
 - (B) The qualifications of the applicant's personnel who will be responsible for constructing and operating the facility, to the extent that the identities of such personnel are known when the application is submitted;
 - (C) The qualifications of any architect, engineer, major component vendor, or prime contractor upon whom the applicant will rely in constructing and operating the facility, to the extent that the identities of such persons are known when the application is submitted;
 - (D) The past performance of the applicant, including but not limited to the number and severity of any regulatory citations in constructing or operating a facility, type of equipment, or process similar to the proposed facility;
 - (E) If the applicant has no previous experience in constructing or operating similar facilities and has not identified a prime contractor for construction or operation of the proposed facility, other evidence that the applicant can successfully construct and operate the proposed facility. The applicant may include, as evidence, a warranty that it will, through contracts, secure the necessary expertise;
 - (F) If the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program, a description of the program; and
 - (G) If the applicant relies on mitigation to demonstrate compliance with any standards of Division 22 or 24 of this chapter, evidence that the applicant can successfully complete such proposed mitigation, including past experience with other projects and the qualifications and experience of personnel upon whom the applicant will rely, to the extent that the identities of such persons are known at the date of submittal.
- (e) **Exhibit E.** Information about permits needed for construction and operation of the facility, including:
- (A) Identification of all federal, state and local government permits related to the siting of the proposed facility, a legal citation of the statute, rule or ordinance governing each permit, and the name, mailing address, email address and telephone number of the agency or office responsible for each permit;
 - (B) A description of each permit, the reasons the permit is needed for construction or operation of the facility and the applicant's analysis of whether the permit should or should not be included in and governed by the site certificate;
 - (C) For any state or local government agency permits, licenses or certificates that are proposed to be included in and governed by the site certificate, evidence to support findings by the Council that construction and operation of the proposed facility will comply with the statutes, rules and standards applicable to the permit. The applicant may show this evidence:
 - (i) In Exhibit J for permits related to wetlands; or

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- (ii) In Exhibit O for permits related to water rights;
- (D) For federally-delegated permit applications, evidence that the responsible agency has received a permit application and the estimated date when the responsible agency will complete its review and issue a permit decision;
- (E) If the applicant relies on a state or local government permit or approval issued to a third party, identification of any such third-party permit and for each:
 - (i) Evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit;
 - (ii) Evidence that the third party has, or has a reasonable likelihood of obtaining, the necessary permit;
 - (iii) An assessment of the impact of the proposed facility on any permits that a third party has obtained and on which the applicant relies to comply with any applicable Council standard;
- (F) If the applicant relies on a federally-delegated permit issued to a third party, identification of any such third-party permit and for each:
 - (i) Evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit;
 - (ii) Evidence that the responsible agency has received a permit application;
 - (iii) The estimated the date when the responsible agency will complete its review and issue a permit decision; and
- (G) The applicant's proposed monitoring program, if any, for compliance with permit conditions.
- (f) **Exhibit F.** A list of the names and mailing addresses of property owners, as described in this subsection:
 - (A) The list must include all owners of record, as shown on the most recent property tax assessment roll, of property located:
 - (i) Within 100 feet of property which is the subject of the application, where the subject property is wholly or in part within an urban growth boundary;
 - (ii) Within 250 feet of the property which is the subject of the application, where the subject property is outside an urban growth boundary and not within a farm or forest zone; or
 - (iii) Within 500 feet of the property which is the subject of the application, where the property is within a farm or forest zone;

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(B) The applicant must submit an updated list of property owners as requested by the Department before the Department issues notice of any public hearing on the application for a site certificate as described in OAR 345-015-0220; and

(C) In addition to incorporating the list in the application, the applicant must submit the list to the Department in an electronic format approved by the Department.

(g) **Exhibit G.** A materials analysis including:

(A) An inventory of substantial quantities of industrial materials flowing into and out of the proposed facility during construction and operation;

(B) The applicant's plans to manage hazardous substances during construction and operation, including measures to prevent and contain spills; and

(C) The applicant's plans to manage non-hazardous waste materials during construction and operation.

(h) **Exhibit H.** Information from reasonably available sources regarding the geological and soil stability within the analysis area, providing evidence to support findings by the Council as required by OAR 345-022-0020, including:

(A) A geologic report meeting the Oregon State Board of Geologist Examiners geologic report guidelines. Current guidelines must be determined based on consultation with the Oregon Department of Geology and Mineral Industries, as described in paragraph (B) of this subsection;

(B) A summary of consultation with the Oregon Department of Geology and Mineral Industries regarding the appropriate methodology and scope of the seismic hazards and geology and soil-related hazards assessments, and the appropriate site-specific geotechnical work that must be performed before submitting the application for the Department to determine that the application is complete;

(C) A description and schedule of site-specific geotechnical work that will be performed before construction for inclusion in the site certificate as conditions;

(D) For all transmission lines, and for all pipelines that would carry explosive, flammable or hazardous materials, a description of locations along the proposed route where the applicant proposes to perform site specific geotechnical work, including but not limited to railroad crossings, major road crossings, river crossings, dead ends (for transmission lines), corners (for transmission lines), and portions of the proposed route where geologic reconnaissance and other site specific studies provide evidence of existing landslides, marginally stable slopes or potentially liquefiable soils that could be made unstable by the planned construction or experience impacts during the facility's operation;

(E) An assessment of seismic hazards, in accordance with standard-of-practice methods and best practices, that addresses all issues relating to the consultation with the Oregon Department of Geology and Mineral Industries described in paragraph (B) of this subsection, and an

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explanation of how the applicant will design, engineer, construct, and operate the facility to avoid dangers to human safety and the environment from these seismic hazards. Furthermore, an explanation of how the applicant will design, engineer, construct and operate the facility to integrate disaster resilience design to ensure recovery of operations after major disasters. The applicant must include proposed design and engineering features, applicable construction codes, and any monitoring and emergency measures for seismic hazards, including tsunami safety measures if the site is located in the DOGAMI-defined tsunami evacuation zone; and

(F) An assessment of geology and soil-related hazards which could, in the absence of a seismic event, adversely affect or be aggravated by the construction or operation of the facility, in accordance with standard-of-practice methods and best practices, that address all issues relating to the consultation with the Oregon Department of Geology and Mineral Industries described in paragraph (B) of this subsection. An explanation of how the applicant will design, engineer, construct and operate the facility to adequately avoid dangers to human safety and the environment presented by these hazards, as well as:

(i) An explanation of how the applicant will design, engineer, construct and operate the facility to integrate disaster resilience design to ensure recovery of operations after major disasters; and

(ii) An assessment of future climate conditions for the expected life span of the proposed facility and the potential impacts of those conditions on the proposed facility.

(i) **Exhibit I.** Information from reasonably available sources regarding soil conditions and uses in the analysis area, providing evidence to support findings by the Council as required by OAR 345-022-0022, including:

(A) Identification and description of the major soil types in the analysis area;

(B) Identification and description of current land uses in the analysis area, such as growing crops, that require or depend on productive soils;

(C) Identification and assessment of significant potential adverse impact to soils from construction, operation and retirement of the facility, including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills;

(D) A description of any measures the applicant proposes to avoid or mitigate adverse impact to soils; and

(E) The applicant's proposed monitoring program, if any, for adverse impact to soils during construction and operation.

(j) **Exhibit J.** Information based on literature and field study, as appropriate, about waters of this state, as defined under ORS 196.800, including:

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(A) A description of all areas within the site boundary that might be waters of this state and a map showing the location of these features;

(B) An analysis of whether construction or operation of the proposed facility would adversely affect any waters of this state;

(C) A description of the significance of potential adverse impacts to each feature identified in (A), including the nature and amount of material the applicant would remove from or place in the waters analyzed in (B);

(D) If the proposed facility would not need a removal-fill authorization, an explanation of why no such authorization is required for the construction and operation of the proposed facility;

(E) If the proposed facility would need a removal-fill authorization, information to support a determination by the Council that the Oregon Department of State Lands should issue a removal-fill permit, including information in the form required by the Department of State Lands under OAR Chapter 141 Division 85; and

(F) A description of proposed actions to mitigate adverse impacts to the features identified in (A) and the applicant's proposed monitoring program, if any, for such impacts.

(k) **Exhibit K.** Information about the proposed facility's compliance with the statewide planning goals adopted by the Land Conservation and Development Commission, providing evidence to support a finding by the Council as required by OAR 345-022-0030. The applicant must state whether the applicant elects to address the Council's land use standard by obtaining local land use approvals under ORS 469.504(1)(a) or by obtaining a Council determination under ORS 469.504(1)(b). An applicant may elect different processes for an energy facility and a related or supporting facility but may not otherwise combine the two processes. Once the applicant has made an election, the applicant may not amend the application to make a different election. In this subsection, "affected local government" means a local government that has land use jurisdiction over any part of the proposed site of the facility. In the application, the applicant must:

(A) Include a map showing the comprehensive plan designations and land use zones in the analysis area;

(B) If the applicant elects to obtain local land use approvals:

(i) Identify the affected local governments from which land use approvals will be sought;

(ii) Describe the land use approvals required in order to satisfy the Council's land use standard;

(iii) Describe the status of the applicant's application for each land use approval;

(iv) Provide an estimate of time for issuance of local land use approvals;

(C) If the applicant elects to obtain a Council determination on land use:

(i) Identify the affected local governments;

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(ii) Identify the applicable substantive criteria from the affected local government’s acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and that are in effect on the date the application is submitted and describe how the proposed facility complies with those criteria;

(iii) Identify all Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3) and describe how the proposed facility complies with those rules, goals and statutes;

(iv) If the proposed facility might not comply with all applicable substantive criteria, identify the applicable statewide planning goals and describe how the proposed facility complies with those goals;

(v) If the proposed facility might not comply with all applicable substantive criteria or applicable statewide planning goals, describe why an exception to any applicable statewide planning goal is justified, providing evidence to support all findings by the Council required under ORS 469.504(2); and

(D) If the proposed facility will be located on federal land:

(i) Identify the applicable land management plan adopted by the federal agency with jurisdiction over the federal land;

(ii) Explain any differences between state or local land use requirements and federal land management requirements;

(iii) Describe how the proposed facility complies with the applicable federal land management plan;

(iv) Describe any federal land use approvals required for the proposed facility and the status of application for each required federal land use approval;

(v) Provide an estimate of time for issuance of federal land use approvals; and

(vi) If federal law or the land management plan conflicts with any applicable state or local land use requirements, explain the differences in the conflicting requirements, state whether the applicant requests Council waiver of the land use standard described under paragraph (B) or (C) of this subsection and explain the basis for a waiver.

(L) **Exhibit L.** Information about the potential impacts of the proposed facility 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 all protected areas within the analysis area identifying:

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

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- (ii) The basis for protection by reference to a specific subsection of OAR 345-001-0010(26); 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; 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.
- (m) **Exhibit M.** Information about the applicant’s financial capability, providing evidence to support a finding by the Council as required by OAR 345-022-0050(2). Nothing in this subsection requires the disclosure of information or records protected from public disclosure by any provision of state or federal law. The applicant must include:
- (A) An opinion or opinions from legal counsel stating that, to counsel's best knowledge, the applicant has the legal authority to construct and operate the facility without violating its bond indenture provisions, articles of incorporation, common stock covenants, or similar agreements;
 - (B) The type and amount of the applicant’s proposed bond or letter of credit to meet the requirements of OAR 345-022-0050; and
 - (C) Evidence that the applicant has a reasonable likelihood of obtaining the proposed bond or letter of credit in the amount proposed in paragraph (B), before beginning construction of the facility.
- (n) **Exhibit N.** If the proposed facility is a non-generating facility for which the applicant must demonstrate need under OAR 345-023-0005, information about the need for the facility, providing evidence to support a finding by the Council as required by OAR 345-023-0005, including:
- (A) Identification of the rule in Division 23 of this chapter under which the applicant chooses to demonstrate need;
 - (B) If the applicant chooses to demonstrate need for the proposed facility under OAR 345-023-0020(1), the least-cost plan rule:

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- (i) Identification of the energy resource plan or combination of plans on which the applicant relies to demonstrate need;
 - (ii) The name, address and telephone number of the person responsible for preparing each energy resource plan identified in subparagraph (i);
 - (iii) For each plan reviewed by a regulatory agency, the agency's findings and final decision, including:
 - (I) For a plan reviewed by the Oregon Public Utility Commission, the acknowledgment order; or
 - (II) For a plan reviewed by any other regulatory agency, a summary of the public process including evidence to support a finding by the Council that the agency's decision process included a full, fair and open public participation and comment process as required by OAR 345-023-0020(1)(L), and the location of and means by which the Department can obtain a complete copy of the public record;
 - (iv) Identification of the sections of the short-term action plan that call for the acquisition of the proposed facility or, as defined in OAR 345-001-0010, a facility substantially similar to the proposed facility;
 - (v) The attributes of the proposed facility that qualify it as one called for in the short-term action plan of the energy resource plan or combination of plans identified in subparagraph (i) or a demonstration that, as defined in OAR 345-001-0010, a facility substantially similar to the proposed facility is called for in the plan;
- (C) In addition to the information described in paragraph (B), if the applicant chooses to demonstrate need for the proposed facility under OAR 345-023-0020(1), the least-cost plan rule, and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon:
- (i) The names, addresses and telephone numbers of members of any public advisory groups that participated in the preparation and review of each plan identified in paragraph (B);
 - (ii) A discussion of how the plan or combination of plans conforms to the standards in OAR 345-023-0020(1)(a) through (L) including citations to relevant portions of the plan documents or other supporting evidence;
 - (iii) The expected annual emissions in tons of nitrogen oxides, PM-10 particulate, sulfur dioxide, carbon dioxide and mercury and a discussion of other environmental impacts, as compared to resources in the applicable energy resource plan;
- (D) In addition to the information described in paragraphs (B) and (C), if the applicant chooses to demonstrate need for a proposed natural gas pipeline or storage facility for liquefied natural gas under OAR 345-023-0020(1), the least-cost plan rule, and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon, the applicant must include the

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information described in paragraph (G) of this subsection if the energy resource plan or combination of plans does not contain that information. If the energy resource plan or combination of plans contains the information described in paragraph (G), the applicant must provide a list of citations to the sections of the energy resource plan that contain the information;

(E) In addition to the information described in paragraphs (B) and (C), if the applicant chooses to demonstrate need for a proposed electric transmission line under OAR 345-023-0020(1), the least-cost plan rule and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon, the applicant must include the information described in paragraph (F) of this subsection if the energy resource plan or combination of plans does not contain that information. If the energy resource plan or combination of plans contains the information described in paragraph (F), the applicant must provide a list of citations to the sections of the energy resource plan that contain the information;

(F) If the applicant chooses to demonstrate need for a proposed electric transmission line under OAR 345-023-0030, the system reliability rule:

(i) Load-resource balance tables for the area to be served by the proposed facility. In the tables, the applicant must include firm capacity demands and existing and committed firm resources for each of the years from the date of submission of the application to at least five years after the expected in-service date of the facility;

(ii) Within the tables described in subparagraph (i), a forecast of firm capacity demands for electricity and firm annual electricity sales for the area to be served by the proposed facility. The applicant must separate firm capacity demands and firm annual electricity sales into loads of retail customers, system losses, reserve margins and each wholesale contract for firm sale. In the forecast, the applicant must include a discussion of how the forecast incorporates reductions in firm capacity demand and firm annual electricity sales resulting from:

(I) Existing federal, state or local building codes, and equipment standards and conservation programs required by law for the area to be served by the proposed facility;

(II) Conservation programs provided by the energy supplier, as defined in OAR 345-001-0010;

(III) Conservation that results from responses to price; and

(IV) Retail customer fuel choice;

(iii) Within the tables described in subparagraph (i), a forecast of existing and committed firm resources used to meet the demands described in subparagraph (ii). The applicant must include, as existing and committed firm resources, existing generation and transmission facilities, firm contract resources and committed new resources minus expected resource

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retirements or displacement. In the forecast, the applicant must list each resource separately;

(iv) A discussion of the reasons each resource is being retired or displaced if the forecast described in subparagraph (iii) includes expected retirements or displacements;

(v) A discussion of the annual capacity factors assumed for any generating facilities listed in the forecast described in subparagraph (iii);

(vi) A discussion of the reliability criteria the applicant uses to demonstrate the proposed facility is needed, considering the load carrying capability of existing transmission system facilities supporting the area to be served by the proposed facility;

(vii) A discussion of reasons why the proposed facility is economically reasonable compared to the alternatives described below. In the discussion, the applicant must include a table showing the amounts of firm capacity and firm annual electricity available from the proposed facility and each alternative and the estimated direct cost, as defined in OAR 345-001-0010, of the proposed facility and each alternative. The applicant must include documentation of assumptions and calculations supporting the table. The applicant must evaluate alternatives to construction and operation of the proposed facility that include, but are not limited to:

(I) Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;

(II) Construction and operation of electric generating facilities as a substitute for the proposed facility;

(III) Direct use of natural gas, solar or geothermal resources at retail loads as a substitute for use of electricity transmitted by the proposed facility;

(IV) Adding standard sized smaller or larger transmission line capacity;

(viii) The earliest and latest expected in-service dates of the facility and a discussion of the circumstances of the energy supplier, as defined in OAR 345-001-0010, that determine these dates; and

(G) If the applicant chooses to demonstrate need for a proposed natural gas pipeline or a proposed facility for storing liquefied natural gas under OAR 345-023-0040, the economically reasonable rule:

(i) Load-resource balance tables for the area to be served by the proposed facility. In the tables, the applicant must include firm demands and resource availability for each of the years from the date of submission of the application to at least five years after the expected in-service date of the proposed facility. In the tables, the applicant must list flowing supply and storage supply separately;

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(ii) Within the tables described in subparagraph (i), a forecast of firm capacity demands for the area to be served by the proposed facility. The applicant must separate firm capacity demands into firm demands of retail customers, system losses and each wholesale contract for firm sale. The applicant must accompany the tables with load duration curves of firm capacity and interruptible demands for the most recent historical year, the year the facility is expected to be placed in service and the fifth year after the expected in-service date. In the forecast of firm capacity demands, the applicant must include a discussion of how the forecast incorporates reductions in firm capacity demand resulting from:

- (I) Existing federal, state or local building codes and equipment standards and conservation programs required by law for the area to be served by the proposed facility;
- (II) Conservation programs provided by the energy supplier, as defined in OAR 345-001-0010;
- (III) Conservation that results from responses to price; and
- (IV) Retail customer fuel choice;

(iii) Within the tables described in subparagraph (i), a forecast of existing and committed firm resources used to meet the demands described in subparagraph (ii). The applicant must include, as existing and committed firm capacity resources, existing pipelines, storage facilities, and scheduled and budgeted new facilities minus expected resource retirements or displacement. In the forecast, the applicant must list each committed resource separately;

(iv) A discussion of the reasons each resource is being retired or displaced if the forecast described in subparagraph (iii) includes expected retirements or displacements;

(v) A discussion of the capacity factors assumed for any storage facilities listed in the forecast described in subparagraph (iii);

(vi) A discussion of the reliability criteria the applicant uses to demonstrate the proposed facility is needed, considering the capacity of existing gas system facilities supporting the area to be served by the proposed facility;

(vii) A discussion of reasons why the proposed facility is economically reasonable compared to the alternatives described in subparagraphs (viii) or (ix). In the discussion, the applicant must include a table showing the amounts of firm capacity available from the proposed facility and each alternative and the estimated direct cost, as defined in OAR 345-001-0010, of the proposed facility and each alternative. The applicant must include documentation of assumptions and calculations supporting the table;

(viii) In an application for a proposed natural gas pipeline, an evaluation of alternatives to construction and operation of the proposed facility including, but not limited to:

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- (I) Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;
 - (II) Installation of propane storage systems, facilities to store liquefied natural gas and underground gas storage reservoirs as a substitute for the proposed facility;
 - (III) Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility;
 - (IV) Adding standard sized smaller or larger pipeline capacity;
- (ix) In an application for a proposed liquefied natural gas storage facility, an evaluation of alternatives to construction and operation of the proposed facility including, but not limited to:
- (I) Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;
 - (II) Installation of propane storage systems, natural gas pipelines and underground gas storage facilities as a substitute for the proposed facility;
 - (III) Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility;
 - (IV) Adding smaller or larger liquefied natural gas storage capacity; and
- (x) The earliest and latest expected in-service date of the facility and a discussion of the circumstances of the energy supplier, as defined in OAR 345-001-0010, that determine these dates.
- (o) **Exhibit O.** Information about anticipated water use during construction and operation of the proposed facility. The applicant must include:
- (A) A description of the use of water during construction and operation of the proposed facility;
 - (B) A description of each source of water and the applicant's estimate of the amount of water the facility will need during construction and during operation from each source under annual average and worst-case conditions;
 - (C) A description of each avenue of water loss or output from the facility site for the uses described in (A), the applicant's estimate of the amount of water in each avenue under annual average and worst-case conditions and the final disposition of all wastewater;
 - (D) For thermal power plants, a water balance diagram, including the source of cooling water and the estimated consumptive use of cooling water during operation, based on annual average conditions;
 - (E) If the proposed facility would not need a groundwater permit, a surface water permit or a water right transfer, an explanation of why no such permit or transfer is required for the construction and operation of the proposed facility;

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(F) If the proposed facility would need a groundwater permit, a surface water permit or a water right transfer, information to support a determination by the Council that the Water Resources Department should issue the permit or transfer of a water use, including information in the form required by the Water Resources Department under OAR Chapter 690, Divisions 310 and 380; and

(G) A description of proposed actions to mitigate the adverse impacts of water use on affected resources.

(p) **Exhibit P.** Information about the fish and wildlife habitat and the fish and wildlife species, other than the species addressed in subsection (q) that could be affected by the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0060. The applicant must include:

(A) A description of biological and botanical surveys performed that support the information in this exhibit, including a discussion of the timing and scope of each survey;

(B) Identification of all fish and wildlife habitat in the analysis area, classified by the general fish and wildlife habitat categories as set forth in OAR 635-415-0025 and the sage-grouse specific habitats described in the Greater Sage-Grouse Conservation Strategy for Oregon at OAR 635-140-0000 through 635-140-0025 (core, low density, and general habitats), and a description of the characteristics and condition of that habitat in the analysis area, including a table of the areas of permanent disturbance and temporary disturbance (in acres) in each habitat category and subtype;

(C) A map showing the locations of the habitat identified in (B);

(D) Based on consultation with the Oregon Department of Fish and Wildlife (ODFW) and appropriate field study and literature review, identification of all State Sensitive Species that might be present in the analysis area and a discussion of any site-specific issues of concern to ODFW;

(E) A baseline survey of the use of habitat in the analysis area by species identified in (D) performed according to a protocol approved by the Department and ODFW;

(F) A description of the nature, extent and duration of potential adverse impacts on the habitat identified in (B) and species identified in (D) that could result from construction, operation and retirement of the proposed facility;

(G) A description of any measures proposed by the applicant to avoid, reduce, or mitigate the potential adverse impacts described in (F) in accordance with the general fish and wildlife habitat mitigation goals and standards described in OAR 635-415-0025 and a description of any measures proposed by the applicant to avoid, minimize, and provide compensatory mitigation for the potential adverse impacts described in (F) in accordance with the sage-grouse specific habitat mitigation requirements described in the Greater Sage-Grouse Conservation Strategy for

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Oregon at OAR 635-140-0000 through 635-140-0025, and a discussion of how the proposed measures would achieve those goals and requirements; and

(H) A description of the applicant's proposed monitoring plans to evaluate the success of the measures described in (G).

(q) **Exhibit Q.** Information about threatened and endangered plant and animal species that may be affected by the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0070. The applicant must include:

(A) Based on appropriate literature and field study, identification of all threatened or endangered species listed under ORS 496.172(2) and ORS 564.105(2) that may be affected by the proposed facility;

(B) For each species identified under (A), a description of the nature, extent, locations and timing of its occurrence in the analysis area and how the facility might adversely affect it;

(C) For each species identified under (A), a description of measures proposed by the applicant, if any, to avoid or reduce adverse impact;

(D) For each plant species identified under (A), a description of how the proposed facility, including any mitigation measures, complies with the protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3);

(E) For each plant species identified under paragraph (A), if the Oregon Department of Agriculture has not adopted a protection and conservation program under ORS 564.105(3), a description of significant potential impacts of the proposed facility on the continued existence of the species and on the critical habitat of such species and evidence that the proposed facility, including any mitigation measures, is not likely to cause a significant reduction in the likelihood of survival or recovery of the species;

(F) For each animal species identified under (A), a description of significant potential impacts of the proposed facility on the continued existence of such species and on the critical habitat of such species and evidence that the proposed facility, including any mitigation measures, is not likely to cause a significant reduction in the likelihood of survival or recovery of the species; and

(G) The applicant's proposed monitoring program, if any, for impacts to threatened and endangered species.

(r) **Exhibit R.** An analysis of potential visual impacts of the proposed facility, if any, on significant or important scenic resources within the analysis area, providing evidence to support a finding by the Council under OAR 345-022-0080, including:

(A) An inventory of scenic resources identified as significant or important in a land use management plan adopted by one or more local, tribal, state, regional, or federal government or agency applicable to lands within the analysis area for scenic resources. The applicant

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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) 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 potential 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:

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

(ii) 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 potential significant adverse visual impacts; and

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

(s) **Exhibit S.** Information about historic, cultural and archaeological resources. Information concerning the location of archaeological sites or objects may be exempt from public disclosure under ORS 192.345(11). The applicant must submit such information separately, clearly marked as "confidential," and shall request that the Department and the Council keep the information confidential to the extent permitted by law. The applicant must include information in Exhibit S or in confidential submissions providing evidence to support a finding by the Council as required by OAR 345-022-0090, including:

(A) Historic and cultural resources within the analysis area that have been listed, or would likely be eligible for listing, on the National Register of Historic Places;

(B) For private lands, archaeological objects, as defined in ORS 358.905(1)(a), and archaeological sites, as defined in ORS 358.905(1)(c), within the analysis area;

(C) For public lands, archaeological sites, as defined in ORS 358.905(1)(c), within the analysis area;

(D) The significant potential impacts, if any, of the construction, operation and retirement of the proposed facility on the resources described in paragraphs (A), (B) and (C) and a plan for protection of those resources that includes at least the following:

(i) A description of any discovery measures, such as surveys, inventories, and limited subsurface testing work, recommended by the State Historic Preservation Officer or the

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National Park Service of the U.S. Department of Interior for the purpose of locating, identifying and assessing the significance of resources listed in paragraphs (A), (B) and (C);

(ii) The results of the discovery measures described in subparagraph (i), together with an explanation by the applicant of any variations from the survey, inventory, or testing recommended;

(iii) A list of measures to prevent destruction of the resources identified during surveys, inventories and subsurface testing referred to in subparagraph (i) or discovered during construction; and

(E) The applicant's proposed monitoring program, if any, for impacts to historic, cultural and archaeological resources during construction and operation of the proposed facility.

(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 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 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.

(u) **Exhibit U.** Information about significant potential adverse impacts of construction and operation of the proposed facility on the ability of public and private providers in the analysis area to provide

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the services listed in OAR 345-022-0110, providing evidence to support a finding by the Council as required by OAR 345-022-0110. The applicant must include:

- (A) The important assumptions the applicant used to evaluate potential impacts;
- (B) Identification of the public and private providers in the analysis area that would likely be affected;
- (C) A description of any likely adverse impact to the ability of the providers identified in (B) to provide the services listed in OAR 345-022-0110;
- (D) Evidence that adverse impacts described in (C) are not likely to be significant, taking into account any measures the applicant proposes to avoid, reduce or otherwise mitigate the impacts; and
- (E) The applicant's proposed monitoring program, if any, for impacts to the ability of the providers identified in (B) to provide the services listed in OAR 345-022-0110.

(v) **Exhibit V.** Information about wildfire risk within the analysis area, providing evidence to support findings by the Council as required by OAR 345-022-0115, including but not limited to, a draft Wildfire Mitigation Plan that satisfies the requirements of OAR 345-022-0115(1)(b).

(w) **Exhibit W.** Information about the applicant's plans to minimize the generation of solid waste and wastewater and to recycle or reuse solid waste and wastewater, providing evidence to support a finding by the Council as required by OAR 345-022-0120. The applicant must include:

- (A) A description of the major types of solid waste and wastewater that construction, operation and retirement of the facility are likely to generate, including an estimate of the amount of solid waste and wastewater;
- (B) A description of any structures, systems and equipment for management and disposal of solid waste, wastewater and storm water;
- (C) A discussion of any actions or restrictions proposed by the applicant to reduce consumptive water use during construction and operation of the facility;
- (D) The applicant's plans to minimize, recycle or reuse the solid waste and wastewater described in (A);
- (E) A description of any adverse impact on surrounding and adjacent areas from the accumulation, storage, disposal and transportation of solid waste, wastewater and stormwater during construction and operation of the facility;
- (F) Evidence that adverse impacts described in (D) are likely to be minimal, taking into account any measures the applicant proposes to avoid, reduce or otherwise mitigate the impacts; and
- (G) The applicant's proposed monitoring program, if any, for minimization of solid waste and wastewater impacts.

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(x) **Exhibit X.** Information about site restoration, providing evidence to support a finding by the Council as required by OAR 345-022-0050(1). The applicant must include:

- (A) The estimated useful life of the proposed facility;
- (B) Specific actions and tasks to restore the site to a useful, non-hazardous condition;
- (C) An estimate, in current dollars, of the total and unit costs of restoring the site to a useful, non-hazardous condition;
- (D) A discussion and justification of the methods and assumptions used to estimate site restoration costs; and
- (E) For facilities that might produce site contamination by hazardous materials, a proposed monitoring plan, such as periodic environmental site assessment and reporting, or an explanation why a monitoring plan is unnecessary.

(y) **Exhibit Y.** Information about noise generated by construction and operation of the proposed facility, providing evidence to support a finding by the Council that the proposed facility complies with the Oregon Department of Environmental Quality's noise control standards in OAR 340-035-0035. The applicant must include:

- (A) Predicted noise levels resulting from construction and operation of the proposed facility;
- (B) An analysis of the proposed facility's compliance with the applicable noise regulations in OAR 340-035-0035, including a discussion and justification of the methods and assumptions used in the analysis;
- (C) Any measures the applicant proposes to reduce noise levels or noise impacts or to address public complaints about noise from the facility;
- (D) Any measures the applicant proposes to monitor noise generated by operation of the facility; and
- (E) A list of the names and addresses of all owners of noise sensitive property, as defined in OAR 340-035-0015, within one mile of the proposed site boundary.

(z) **Exhibit Z.** If the proposed facility has an evaporative cooling tower, information about the cooling tower plume, including:

- (A) The predicted size and frequency of occurrence of a visible plume and an assessment of its visual impact;
- (B) The predicted locations and frequency of occurrence of ice formation on surfaces and ground level fogging and an assessment of significant potential adverse impacts, including, but not limited to, traffic hazards on public roads;
- (C) The predicted locations and rates of deposition of solids released from the cooling tower (cooling tower drift) and an assessment of significant potential adverse impacts to soils, vegetation and other land uses;

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- (D) Any measures the applicant proposes to reduce adverse impacts from the cooling tower plume or drift;
 - (E) The assumptions and methods used in the plume analysis; and
 - (F) The applicant’s proposed monitoring program, if any, for cooling tower plume impacts.
- (aa) **Exhibit AA.** If the proposed energy facility is a transmission line or has, as a related or supporting facility, a transmission line of any size:
- (A) Information about the expected electric and magnetic fields, including:
 - (i) The distance in feet from the proposed center line of each proposed transmission line to the edge of the right-of-way;
 - (ii) The type of each occupied structure, including but not limited to residences, commercial establishments, industrial facilities, schools, daycare centers and hospitals, within 200 feet on each side of the proposed center line of each proposed transmission line;
 - (iii) The approximate distance in feet from the proposed center line to each structure identified in (A);
 - (iv) At representative locations along each proposed transmission line, a graph of the predicted electric and magnetic fields levels from the proposed center line to 200 feet on each side of the proposed center line;
 - (v) Any measures the applicant proposes to reduce electric or magnetic field levels;
 - (vi) The assumptions and methods used in the electric and magnetic field analysis, including the current in amperes on each proposed transmission line;
 - (vii) The applicant’s proposed monitoring program, if any, for actual electric and magnetic field levels; and
 - (B) An evaluation of alternate methods and costs of reducing radio interference likely to be caused by the transmission line in the primary reception area near interstate, U.S. and state highways.
- (bb) **Exhibit BB.** Any other information that the Department requests in the project order or in a notification regarding expedited review.
- (cc) **Exhibit CC.** Identification, by legal citation, of all state statutes and administrative rules and local government ordinances containing standards or criteria that the proposed facility must meet for the Council to issue a site certificate, other than statutes, rules and ordinances identified in Exhibit E, and identification of the agencies administering those statutes, administrative rules and ordinances. The applicant must identify all statutes, administrative rules and ordinances that the applicant knows to be applicable to the proposed facility, whether or not identified in the project order. To the extent not addressed by other materials in the application, the applicant must include a

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discussion of how the proposed facility meets the requirements of the applicable statutes, administrative rules and ordinances.

(dd) **Exhibit DD.** If the proposed facility is a facility for which the Council has adopted specific standards, information about the facility providing evidence to support findings by the Council as required by the following rules:

- (A) For wind energy facilities, OAR 345-024-0010 and 345-024-0015;
- (B) For surface facilities related to underground gas storage reservoirs, OAR 345-024-0030, including information required by OAR 345-021-0020; and
- (C) For any transmission line under Council jurisdiction, OAR 345-024-0090.
- (D) For a fossil-fueled power plant or other facility that emits carbon dioxide, OAR 345-024-0500 to 345-024-0720, including the information required by OAR 345-021-0021.

(2) Documents prepared in connection with an environmental assessment or environmental impact statement for the proposed facility under the National Environmental Policy Act of 1970, if any, may contain some of the information required under section (1) of this rule. The applicant may copy relevant sections of such documents into the appropriate exhibits of the site certificate application. The applicant may otherwise submit full copies of those documents and include, in the appropriate exhibits of the site certificate application, cross-references to the relevant sections of those documents. The applicant may use such documents only to avoid duplication. The applicant must include additional information in the site certificate application as needed to meet the requirements of section (1) of this rule.

(3) The applicant must include a table of contents in the preliminary application identifying the location of each exhibit required by this rule.

(4) The applicant must submit, to the Department, an original and a copy of the printed preliminary application, and a non-copy-protected electronic version of the preliminary application in a format acceptable to the Department. The applicant must submit additional printed copies of the preliminary application to the Department upon request. The applicant must prepare and distribute additional copies of the application as required by OAR 345-021-0050.

Statutory/Other Authority: ORS 469.373 & 469.470

Statutes/Other Implemented: ORS 469.350, 469.370, 469.413, 469.501, 469.503 & 469.504

345-021-0020 - Specific Application Requirements for Siting of Surface Facilities Related to Underground Gas Storage Reservoirs

In addition to the requirements of OAR 345-021-0010, in an application for a site certificate for a surface facility related to an underground storage reservoir, the applicant shall include the following information:

- (1) The design rates of natural or synthetic gas injection or withdrawal;
- (2) The compression horsepower required to operate at design injection or withdrawal rates;

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- (3) The fuel type of the compressor;
- (4) The estimated carbon dioxide emissions from the compressor for the projected life of the facility;
and
- (5) The proposed location of all wells.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.350 & 469.503

345-021-0021 – Specific Application Requirements for Facilities that Emit Carbon Dioxide

In addition to the requirements of OAR 345-021-0010, in an application for a site certificate for a fossil-fueled power plant, or other facility that will emit carbon dioxide into the atmosphere, the application must include the following:

- (1) A description of the means by which the applicant will comply with the applicable carbon dioxide emissions standard under OAR 345-024-0500.
- (2) Information about the carbon dioxide emissions that are reasonable likely to result from the operation of the energy facility, including the following:
 - (a) The maximum hourly fuel use at:
 - (A) Net electrical power output at average annual conditions for a base load gas plant; or
 - (B) Nominal electric generating capacity for a non-base load power plant or a base load gas plant with power augmentation technologies;
 - (b) The gross capacity as estimated at the generator output terminals for each generating unit.
 - (A) For a base load gas plant, gross capacity must be estimated based on the average annual ambient conditions for temperature, barometric pressure and relative humidity at the site. For a baseload gas plant with power augmentation, gross capacity for power augmentation mode must be estimated separately based on the average temperature, barometric pressure and relative humidity at the site during the times of year when the facility is intended to operate with power augmentation; or
 - (B) For a non-base load plant, gross capacity must be estimated based on the average temperature, barometric pressure and relative humidity at the site during the times of year when the facility is intended to operate.
 - (c) A table showing a reasonable estimate of all on-site electrical loads and losses greater than 50 kilowatts, including losses from on-site transformers, plus a factor for incidental loads, that are required for the normal operation of the plant when the plant is at its designed full power operation;
 - (d) The maximum number of hours per year and energy content (Btu per year, higher heating value) of alternate fuel use;

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- (e) The total estimated gross carbon dioxide emissions for 30 years, unless an applicant for a non-base load power plant or nongenerating energy facility proposes to limit operation to a shorter time;
- (f) The gross carbon dioxide emissions rate expressed as:
 - (A) Pounds of carbon dioxide per kilowatt-hour of net electric power output for a base load gas plant with power augmentations, the rate for plant operations with and without power augmentation must be reported separately;
 - (B) Pounds of carbon dioxide per horsepower hour for nongenerating facilities for which the output is ordinarily measured in horsepower; or
 - (C) A rate comparable to pounds of carbon dioxide per kilowatt-hour of net electric power output for nongenerating facilities other than those measured in horsepower;
- (g) The total excess carbon dioxide emissions for 30 years, unless an applicant for a non-base load power plant or a nongenerating energy facility proposes to limit operation to a shorter time;
- (h) The excess carbon dioxide emissions rate, using the same measure as required for subsection (f);
- (i) The average annual site conditions, including temperature, barometric pressure and relative humidity, together with a citation of the source and location of the data collection devices;
- (j) For a non-base load power plant (or a base load power plant using power augmentation), the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate, together with a citation of the source and location of the data collection devices;
- (k) The annual fuel input in British thermal units, higher heating value, to the facility for each type of fuel the facility will use, assuming:
 - (A) For a base load gas plant, a 100-percent capacity factor on a new and clean basis and the maximum number of hours annually that the applicant proposes to use alternative fuels;
 - (B) For a non-base load power plant, the applicant's proposed annual hours of operation on a new and clean basis, the maximum number of hours annually that the applicant proposes to use alternative fuels and, if the calculation is based on an operational life of fewer than 30 years, the proposed operational life of the facility;
 - (C) For a nongenerating energy facility, the reasonably likely operation of the facility based on one year, 5-year, 15-year, and 30-year averages, unless an applicant proposes to limit operation to a shorter time;
- (L) For each type of fuel a base load gas plant or a non-base load power plant will use, the estimated heat rate and capacity of the facility measured on a new and clean basis with no thermal energy to cogeneration, consistent with the data supplied in Exhibit B;

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- (m) For each type of fuel a nongenerating energy facility will use, the estimated efficiency and capacity of the facility with no thermal energy to cogeneration;
- (n) If the facility provides thermal energy for cogeneration to lower its net carbon dioxide emissions rate:
- (A) The estimated annual useful thermal energy available from the facility for non-electric processes, annual useful thermal energy used by non-electric processes, and annual thermal energy rejected as waste heat;
 - (B) For a base load gas plant or non-base load power plant, the estimated annual net electric power output and annual fuel input in British thermal units higher heating value for the facility for each type of fuel the facility will use and the basis of such estimates;
 - (C) A description of the non-electric thermal processes, the names and addresses of the persons intending to use the non-electric thermal energy, and a description and an estimate of the fuel displaced by cogeneration, including supporting assumptions;
 - (D) A description of the products produced and thermal energy needed for production of the primary products made by the persons intending to use the non-electric thermal energy produced by the proposed facility, supported by fuel use and steam production records or estimates, if the production facility is new;
 - (E) The efficiency of each boiler that the thermal energy will displace;
 - (F) For each boiler, the annual fossil fuel displaced in million Btu, higher heating value, by type of fuel that will be displaced by the thermal energy;
 - (G) The annual carbon dioxide offset by the cogeneration host, using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel (higher heating value) and a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel (higher heating value);
 - (H) The cumulative carbon dioxide offset by the steam host through the thirtieth year of facility operation, or for a shorter period if an applicant for a nongenerating facility proposes a shorter operational period;
 - (I) A copy of the contractual agreement between the applicant and the cogeneration host for the use of the thermal energy;
 - (J) A description of the guarantees of offsets that the applicant must provide for cogeneration projects, pursuant to OAR 345-024-0560(1) and 345-024-0600(1);
 - (K) A proposed monitoring and evaluation plan and an independent verification plan, pursuant to paragraphs (o)(S) and (T);
 - (L) A copy of the instrument by which the certificate holder will transfer the offsets to the Council for it to hold in trust;

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(o) If the applicant proposes to offset carbon dioxide emissions as described in OAR 345-024-0550(3), 345-024-0560(2), 345-024-0590(3), 345-024-0600(2), 345-024-0620(3) or 345-024-0630(1):

- (A) A description of each offset project;
- (B) A description of who will implement the offset project, including qualifications and experience;
- (C) Detailed estimates of the of carbon dioxide offset, measured in short tons, that the offset projects will achieve over the life of the project;
- (D) For each offset project, an explanation of how the applicant quantified its carbon dioxide estimates to a degree of certainty acceptable to the Council through a transparent and replicable calculation methodology;
- (E) For each offset project, evidence that the offset project would not likely have been implemented if not for the applicant’s activities or funding;
- (F) For each offset project, a description of a “Baseline” projection that does not include the proposed project and a “Project Case” projection that does. The historic Baseline must use reliable emissions data or pre-project data available for the most recent three years unless the applicant can demonstrate that a different period more closely represents historical operations or unless it can demonstrate that another method provides a more reasonable estimate. The applicant must show how the Baseline projection changes over time if changes from business-as-usual could be reasonably anticipated during the project life;
- (G) For each offset project, a description, in a transparent and realistic manner, of the assumptions and methodologies used to quantify the Baseline and the Project Case projections, including a description of key parameters and data sources. This must include a description of the formulae used to estimate carbon dioxide emissions or sequestration within the project boundary and a net change of carbon dioxide emissions or sequestration that occurs outside of the project boundary that is measurable and attributable to the project activity;
- (H) For projects that avoid conventional electricity generation, a description of a Baseline that calculates the carbon dioxide emissions per kilowatt hour in two steps:
 - (i) For the first five years of operation, a description of the rate based on dispatch data or models or, absent that, a weighted average of all resources in a power pool except zero-fuel-cost or must-run facilities; and
 - (ii) A description of the rate for any subsequent years based on a group of similar facilities built within the prior five years or under construction in the electrical distribution region of the project or the three most recent plants built in the region, whichever rate is lower;
- (I) For projects that avoid conventional electricity generation, a description of avoided transmission and distribution losses, using average grid area or national losses;

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(J) A description of any guarantee for offsets from projects that the applicant proposes pursuant to OAR 345-024-0560(2), 345-024-0600(2), and 345-024-0630(1), if the applicant chooses to offer a guarantee;

(K) A description of the offset project boundary. The boundary must encompass all carbon dioxide emissions under the control of the project that are significant and reasonably attributable to the project activity. If the project is being conducted by one part of a corporation, the boundary must include the emissions and reductions of the whole corporate entity and the carbon dioxide emissions resulting from processes and facilities that are related to the project, with identification of subsidiaries that are affected by the project;

(L) A description of significant risks and risk mitigation strategies, including an estimate of the range of uncertainty around the expected carbon dioxide offsets;

(M) For biological sequestration projects, an assessment of the risk of climate change to natural systems that are sequestering the carbon dioxide, including, if appropriate, the risks from forest fires, pest and other unplanned releases of carbon from sequestration;

(N) A description of whether the offset project will permanently avoid or displace emissions of carbon dioxide. If a project only temporarily sequesters carbon, an indication of the duration of sequestration or storage;

(O) A description of the amount of funding the applicant will provide for each offset project it proposes;

(P) If the applicant anticipates that a project will have funding sources in addition to itself, identification of the sources of those funds, the amount of other funding that is required to implement a project, the amount of funds other parties have committed, and the risks of other funds not being available;

(Q) If the applicant proposes that a project will have funding sources in addition to itself, a description of how ownership of the offsets will be allocated among the several funding sources;

(R) A copy of the instrument by which the certificate holder will transfer all the offsets to the Council for it to hold in trust;

(S) A description of a transparent and replicable methodology for the applicant's monitoring and evaluation plan and for an independent verification plan, including:

- (i) Procedures the applicant and the independent entity will employ;
- (ii) How the applicant will assure funds for ongoing monitoring, evaluation and verification;
- (iii) The time frame and frequency over which the applicant will conduct monitoring and evaluation and over which the independent entity will conduct verification, including the frequency of site visits, if applicable;
- (iv) The reporting procedures and guidelines for the plans; and

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(v) Whether the applicant has identified the independent entity that will perform the verification;

(T) The monitoring and evaluation plan and the verification plan must identify the data needs and data quality with regard to accuracy, comparability, completeness and validity. It must include methodologies to be used for data collection, monitoring, storage, reporting and management, including quality assurance and quality control provisions. It must provide complete calculations used to calculate and estimate carbon dioxide emissions from activity within the project boundary. It must show any formulae and assumptions the applicant used to calculate offset project leakage;

(U) A description of reasonably likely, significant undesirable long-term environmental impacts from the implementation of an offset project; and

(p) If the applicant elects to comply with the applicable carbon dioxide emissions standard by using the monetary path under OAR 345-024-0560(3), 345-024-0600(3) or 345-024-0630(2), the applicant must include:

(A) A statement of the applicant's election to use the monetary path;

(B) The amount of carbon dioxide reduction, in tons, for which the applicant is taking credit by using the monetary path;

(C) The qualified organization to whom the applicant will provide offset funds and funds for the cost of selecting and contracting for offsets. The applicant must include evidence that the organization meets the definition of a qualified organization under OAR 345-001-0010. The applicant may identify an organization that has applied for, but has not received, an exemption from federal income taxation, but the Council will not find that the organization is a qualified organization unless the organization is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on September 18, 2015; and

(D) A statement of whether the applicant intends to provide a bond or letter of credit to secure the funds it must provide to the qualified organization or whether it requests the option of providing either a bond or a letter of credit.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.413, 469.501 & 469.503

~~345-021-0050—Distribution of a Preliminary Application~~

~~(1) Until the Department determines the application to be complete as described in OAR 345-015-0190 or 345-015-0310, it is a preliminary application. After receiving the preliminary application the Department must, in coordination with the applicant, determine a distribution date and compile a distribution list that includes, but is not limited to, the reviewing agencies for the proposed facility.~~

~~(2) The Department must mail or email the memorandum described under OAR 345-015-0180 to each person on the distribution list before the distribution date.~~

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(3) Unless the Department directs otherwise, the applicant must mail or email an electronic copy of the preliminary application to each person on the distribution list on or before the distribution date. The applicant must provide a printed copy of part or all of the preliminary application to a person on the distribution list upon request.

(4) After reviewing the preliminary application, each reviewing agency must submit written comments or recommendations to the Department that:

(a) State whether the reviewing agency needs any additional information from the applicant to review the application under the statutes, administrative rules or ordinances administered by the reviewing agency and describe such information; and

(b) Describe the status of applications for permits, if any, that the applicant has submitted to the reviewing agency and that are necessary for the construction and operation of the proposed facility.

(5) The Department must, as soon as practicable, send the applicant copies of all comments submitted under section (4) that identify a need for additional information.

(6) (a) If the applicant has elected to demonstrate compliance with the Council's land use standard under ORS 469.504(1)(a), each local government with land use jurisdiction over the proposed facility must, in the comments or recommendations submitted to the Department under section (4), describe the status of the local land use proceedings and state the date when the local government expects to issue a final land use decision;

(b) If the applicant has elected to obtain a Council determination of compliance with the Council's land use standard under ORS 469.504(1)(b), each local government with land use jurisdiction over the proposed facility must, in the comments or recommendations submitted to the Department under section (4), include:

(A) A complete list of applicable substantive criteria from the local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and that are in effect on the date the application was submitted. For the purpose of this rule, the application is submitted on the date that the Department receives the preliminary application. "Applicable substantive criteria" means the criteria and standards that the local government would apply in making all land use decisions necessary to site the proposed facility in the absence of a Council proceeding;

(B) A complete list of Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3);

(C) Copies of the criteria listed in (A) and any interpretations of ambiguous terms and matters arising from the local government's land use regulations; and

(c) The local government may submit its recommendations, comments and interpretations as described in subsection (b) in the form of a resolution adopted by the local governing body.

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~~(7) After receiving the preliminary application, the Department must post an announcement on its website to notify the public that a preliminary application has been received. The Department must include the addresses of locations where the public may review copies of the preliminary application in the announcement. The announcement may include the preliminary application or sections of the preliminary application that may be viewed or downloaded. The announcement may include a link to the applicant's website, if any, where the preliminary application may be viewed or downloaded.~~

~~Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.350~~

345-021-0055 – Distribution of a Complete Application

~~(1) After receiving notification from the Department that the application is complete, the applicant must prepare an application supplement that includes all amendments to the preliminary application and all additional information requested by the Department before the determination of completeness.~~

~~(2) The applicant must submit to the Department, two printed copies of the application supplement, and an electronic version of the application supplement in a non-copy protected format acceptable to the Department. The applicant must submit additional printed copies of the application supplement to the Department upon request.~~

~~(3) After receiving the application supplement, the Department must determine a distribution date and prepare a distribution list that includes, but is not limited to, the reviewing agencies for the application.~~

~~(4) The Department must mail or email the notice described under OAR 345-015-0200 to each person on the distribution list before the distribution date.~~

~~(5) Except as described in OAR 345-015-0310, and unless the Department directs otherwise, the applicant must mail or email an electronic copy of the application supplement to each person on the distribution list provided by the Department on or before the distribution date. The applicant must provide a printed copy of all or part of the application supplement to a person on the mailing list upon request.~~

~~(6) If the Department determines it is necessary to present the amendments and additional information described in section (1) of this rule clearly, the Department may require the applicant to provide a complete revision of the preliminary application in place of the application supplement under section (2) and (5) of this rule.~~

~~Statutory/Other Authority: ORS 469.373 & 469.470
Statutes/Other Implemented: ORS 469.350~~

345-021-0080 – Agency Coordination

Each agency with legal authority to implement or enforce state statutes, state administrative rules or local government ordinances that must be satisfied in order for the Council to issue a site certificate for a proposed facility is encouraged to conduct its review of the application for a site certificate and other permit applications for the proposed facility filed with the agency on a time line and in a manner that enables the agency to:

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~~(1) Make recommendations to the Department of Energy and Council about compliance of the applications with the state statutes, administrative rules or ordinances administered by the agency.~~

~~(2) Recommend conditions for inclusion in the site certificate that will ensure compliance with such statutes, rules and ordinances.~~

~~(3) Present testimony and evidence at the contested case hearing on the site certificate application.~~

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.350

345-021-0090 - Amendment of an Application

(1) When the applicant is preparing to submit an amended application, the applicant must notify the Department.

(2) The applicant may amend a preliminary application at any time.

(3) If the applicant submits an amended application after the date of filing as determined under OAR 345-015-0190 or 345-015-0310, the Department may withdraw the filing of the application until the Department has reviewed the amended application for completeness as described under OAR 345-015-0190 or 345-015-0310.

(4) If the applicant submits an amended application after issuance of a contested case notice under OAR 345-015-0014, the Department may, by motion, request that the contested case proceeding be terminated and the Council's hearing officer may issue an order terminating the proceeding. Upon issuance of the order, the Department may withdraw the filing of the application until the Department has reviewed the amended application for completeness as described under OAR 345-015-0190 or 345-015-0310.

(5) The applicant must submit, to the Department, two printed copies of the amended application, and an electronic version of the amended application in a non-copy-protected format acceptable to the Department. The applicant must provide additional printed copies of the amended application to the Department upon request. The applicant must prepare and distribute additional copies of the amended application in the manner described in OAR 345-021-0050.

Statutory/Other Authority: ORS 469.373 & 469.470
Statutes/Other Implemented: ORS 469.350

345-021-0100 - Contested Case Proceeding on the Application -- Burden of Proof

(1) After the issuance of a notice of contested case as described in OAR 345-015-0230, the hearing officer shall conduct a contested case proceeding on the application according to the provisions of OAR chapter 345, division 15.

(2) The applicant has the burden of proving, by a preponderance of the evidence in the decision record, that the facility complies with all applicable statutes, administrative rules and applicable local government ordinances.

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Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.370

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DIVISION 22 - GENERAL STANDARDS FOR SITING FACILITIES

345-022-0000 - General Standard of Review

(1) To issue a site certificate for a proposed facility or to amend a site certificate, the Council shall determine that the preponderance of evidence on the record supports the following conclusions:

(a) The facility complies with the requirements of the Oregon Energy Facility Siting statutes, ORS 469.300 to 469.570 and 469.590 to 469.619, and the standards adopted by the Council pursuant to 469.501 or the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by the applicable standards the facility does not meet as described in section (2);

(b) Except as provided in OAR 345-022-0030 for land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council, the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility. If the Council finds that applicable Oregon statutes and rules, other than those involving federally delegated programs, would impose conflicting requirements, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the Council cannot waive any applicable state statute.

(2) The Council may issue or amend a site certificate for a facility that does not meet one or more of the applicable standards adopted under ORS 469.501 if the Council determines that the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by the applicable standards the facility does not meet. The Council shall make this balancing determination only when the applicant has shown that the proposed facility cannot meet applicable Council standards or has shown, to the satisfaction of the Council, that there is no reasonable way to meet the applicable Council standards through mitigation or avoidance of any adverse effects on a protected resource or interest. The applicant has the burden to show that the overall public benefits outweigh any adverse effects on a resource or interest, and the burden increases proportionately with the degree of adverse effects on a resource or interest. The Council shall weigh overall public benefits and any adverse effects on a resource or interest as follows:

(a) The Council shall evaluate any adverse effects on a resource or interest by considering factors including, but not limited to, the following:

(A) The uniqueness and significance of the resource or interest that would be affected;

(B) The degree to which current or future development may adversely affect the resource or interest, if the proposed facility is not built;

(C) Proposed measures to reduce any adverse effects on a resource or interest by avoidance of impacts;

(D) The magnitude of any anticipated adverse effects on a resource or interest, taking into account any proposed mitigation.

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(b) The Council shall evaluate overall public benefits by considering factors including, but not limited to, the following:

- (A) The overall environmental effects of the facility, considering both beneficial and adverse environmental effects;
- (B) The degree to which the proposed facility promotes Oregon energy policy as described in ORS 469.010 by demonstrating or advancing new efficiency or renewable technology or by expanding electric generating capacity from renewable energy sources;
- (C) Recommendations from any special advisory group designated by the Council under ORS 469.480;
- (D) Evidence that the benefits are likely to occur only if the proposed facility is built;
- (E) For facilities that are subject to a need standard, evidence underlying the Council's decision on compliance with the rules in OAR 345, Division 23, except that the Council shall not find that need for a facility is sufficient, by itself, to outweigh any adverse effects on a resource or interest affected by the proposed facility.

(3) Notwithstanding section (2) of this rule, the Council shall not apply the balancing determination to the following standards:

- (a) The organizational expertise standard described in OAR 345-022-0010;
- (b) The land use standard described in OAR 345-022-0030;
- (c) The retirement and financial assurance standard described in OAR 345-022-0050;
- (d) The need standards described in OAR 345-023-0005;
- (e) The standards for energy facilities that emit carbon dioxide described in OAR 345-024-0500 through 345-024-0720;
- (f) The protected areas standard described in OAR 345-022-0040, if the statutes or administrative rules governing the management of the protected area prohibit location of the proposed facility in that area; or
- (g) The sage-grouse specific habitat mitigation requirements under the Council's fish and wildlife habitat standard described in OAR 345-022-0060, except that the Council may apply the balancing determination to the requirements of 635-140-0025(2)(a) and (b) for indirect impacts on core and low density sage-grouse habitat, as defined in 635-140-0015, which are caused by transmission lines or pipelines as defined in ORS 469.300(11)(a), and by transmission lines or pipelines that are related or supporting facilities to an energy facility as defined in ORS 469.300(24), proposed to be sited entirely outside of core and low density sage-grouse habitat.

(4) In making determinations regarding compliance with statutes, rules and ordinances normally administered by other agencies or compliance with requirements of the Council statutes if other agencies have special expertise, the Department of Energy shall consult with such other agencies during

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the notice of intent, site certificate application and site certificate amendment processes. Nothing in these rules is intended to interfere with the state's implementation of programs delegated to it by the federal government.

345-022-XXXX – Agency Coordination

Each agency with legal authority to implement or enforce state statutes, state administrative rules or local government ordinances that must be satisfied in order for the Council to issue a site certificate for a proposed facility is encouraged to conduct its review of the application for a site certificate and other permit applications for the proposed facility filed with the agency on a time line and in a manner that enables the agency to:

- (1) Make recommendations to the Department of Energy and Council about compliance of the applications with the state statutes, administrative rules or ordinances administered by the agency.
- (2) Recommend conditions for inclusion in the site certificate that will ensure compliance with such statutes, rules and ordinances.
- (3) Present testimony and evidence at the contested case hearing on the site certificate application.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501, ORS 469.503, ORS 469.504, ORS 469.505

345-022-0010 - Organizational Expertise

(1) To issue a site certificate, the Council must find that the applicant has the organizational expertise to construct, operate and retire the proposed facility in compliance with Council standards and conditions of the site certificate. To conclude that the applicant has this expertise, the Council must find that the applicant has demonstrated the ability to design, construct and operate the proposed facility in compliance with site certificate conditions and in a manner that protects public health and safety and has demonstrated the ability to restore the site to a useful, non- hazardous condition. The Council may consider the applicant's experience, the applicant's access to technical expertise and the applicant's past performance in constructing, operating and retiring other facilities, including, but not limited to, the number and severity of regulatory citations issued to the applicant.

(2) The Council may base its findings under section (1) on a rebuttable presumption that an applicant has organizational, managerial and technical expertise, if the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program.

(3) If the applicant does not itself obtain a state or local government permit or approval for which the Council would ordinarily determine compliance but instead relies on a permit or approval issued to a third party, the Council, to issue a site certificate, must find that the third party has, or has a reasonable likelihood of obtaining, the necessary permit or approval, and that the applicant has, or has a reasonable likelihood of entering into, a contractual or other arrangement with the third party for access to the resource or service secured by that permit or approval.

Commented [JT*034]: From: 345-021-0080. Pulled into 22 because this represents a source of requirements applicants have to meet.

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(4) If the applicant relies on a permit or approval issued to a third party and the third party does not have the necessary permit or approval at the time the Council issues the site certificate, the Council may issue the site certificate subject to the condition that the certificate holder shall not commence construction or operation as appropriate until the third party has obtained the necessary permit or approval and the applicant has a contract or other arrangement for access to the resource or service secured by that permit or approval.

Stat. Authority: ORS 469.470, ORS 469.501
Stat. Implemented: ORS 469.501

345-022-0020 - Structural Standard

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that:

- (a) The applicant, through appropriate site-specific study, has adequately characterized the seismic hazard risk of the site.
- (b) The applicant can design, engineer, and construct the facility to avoid dangers to human safety and the environment presented by seismic hazards affecting the site, as identified in subsection (1)(a).
- (c) The applicant, through appropriate site-specific study, has adequately characterized the potential geological and soils hazards of the site and its vicinity that could, in the absence of a seismic event, adversely affect, or be aggravated by, the construction and operation of the proposed facility; and
- (d) The applicant can design, engineer and construct the facility to avoid dangers to human safety and the environment presented by the hazards identified in subsection (c).

(2) The Council may not impose the Structural Standard in section (1) to approve or deny an application for an energy facility that would produce power from wind, solar or geothermal energy. However, the Council may, to the extent it determines appropriate, apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

(3) The Council may not impose the Structural Standard in section (1) to deny an application for a special criteria facility under OAR345-015-0310. However, the Council may, to the extent it determines appropriate, apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

Stat. Authority: ORS 469.470, ORS 469.501
Stat. Implemented: ORS 469.501

345-022-0022 - Soil Protection

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 a significant adverse impact to soils including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills.

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Stat. Authority: ORS 469.470, ORS 469.501
Stat. Implemented: ORS 469.501

345-022-0030 - Land Use

(1) To issue a site certificate, the Council must find that the proposed facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission.

(2) The Council shall find that a proposed facility complies with section (1) if:

(a) The applicant elects to obtain local land use approvals under ORS 469.504(1)(a) and the Council finds that the facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or

(b) The applicant elects to obtain a Council determination under ORS 469.504(1)(b) and the Council determines that:

(A) The proposed facility complies with applicable substantive criteria as described in section (3) and the facility complies with any Land Conservation and Development Commission administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646(3);

(B) For a proposed facility that does not comply with one or more of the applicable substantive criteria as described in section (3), the facility otherwise complies with the statewide planning goals or an exception to any applicable statewide planning goal is justified under section (4); or

(C) For a proposed facility that the Council decides, under sections (3) or (6), to evaluate against the statewide planning goals, the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under section (4).

(3) As used in this rule, the “applicable substantive criteria” are criteria from the affected local government’s acknowledged comprehensive plan and land use ordinances that are required by the statewide planning goals and that are in effect on the date the applicant submits the application. If the special advisory group recommends applicable substantive criteria, as described under OAR 345-021-0050, the Council shall apply them. If the special advisory group does not recommend applicable substantive criteria, the Council shall decide either to make its own determination of the applicable substantive criteria and apply them or to evaluate the proposed facility against the statewide planning goals.

(4) The Council may find goal compliance for a proposed facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development Commission pertaining to the exception process, the Council may take an exception to a goal if the Council finds:

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(a) The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by the rules of the Land Conservation and Development Commission to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goal should not apply;

(B) The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the Council applicable to the siting of the proposed facility; and

(C) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.

(5) If the Council finds that applicable substantive local criteria and applicable statutes and state administrative rules would impose conflicting requirements, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the Council cannot waive any applicable state statute.

(6) If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300(10)(a)(C) to (E) or for a related or supporting facility that does not pass through more than one local government jurisdiction or more than three zones in any one jurisdiction, the Council shall apply the criteria recommended by the special advisory group. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300(11)(a)(C) to (E) or a related or supporting facility that passes through more than one jurisdiction or more than three zones in any one jurisdiction, the Council shall review the recommended criteria and decide whether to evaluate the proposed facility against the applicable substantive criteria recommended by the special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. In making the decision, the Council shall consult with the special advisory group, and shall consider:

(a) The number of jurisdictions and zones in question;

(b) The degree to which the applicable substantive criteria reflect local government consideration of energy facilities in the planning process; and

(c) The level of consistence of the applicable substantive criteria from the various zones and jurisdictions.

Stat. Authority: ORS 469.470
Stat. Implemented: ORS 469.504

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345-022-0040 - Protected Areas

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

(b) 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 the Council determines that other alternative routes or sites have been studied and are unsuitable.

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

(a) A transmission line 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 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.

Stat. Authority: ORS 469.470, ORS 469.501
Stat. Implemented: ORS 469.501

345-022-0050 - Retirement and Financial Assurance

To issue a site certificate, the Council must find that:

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(1) The site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility.

(2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non- hazardous condition.

Stat. Authority: ORS 469.470, ORS 469.501
Stat. Implemented: ORS 469.501

345-022-0060 - Fish and Wildlife Habitat

To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are consistent with:

(1) the general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1) through (6) in effect as of February 24, 2017, and

(2) for energy facilities that impact sage-grouse habitat, the sage-grouse specific habitat mitigation requirements of the Greater Sage-Grouse Conservation Strategy for Oregon at OAR 635-415-0025(7) and OAR 635-140-0000 through -0025 in effect as of February 24, 2017.

Stat. Authority: ORS 469.470, ORS 469.501
Stat. Implemented: ORS 469.501

345-022-0070 - Threatened and Endangered Species

To issue a site certificate, the Council, after consultation with appropriate state agencies, must find that:

(1) For plant species that the Oregon Department of Agriculture has listed as threatened or endangered under ORS 564.105(2), the design, construction and operation of the proposed facility, taking into account mitigation:

(a) Are consistent with the protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3); or

(b) If the Oregon Department of Agriculture has not adopted a protection and conservation program, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species; and

(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as threatened or endangered under ORS 496.172(2), the design, construction and operation of the proposed facility, taking into account mitigation, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species.

Stat. Authority: ORS 469.470, ORS 469.501
Stat. Implemented: ORS 469.501

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345-022-0080 - Scenic Resources

(1) 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.

(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). In issuing such a site certificate, the Council may 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 a current land use management plan adopted by one or more local, tribal, state, regional, or federal government or agency.

(4) The Council shall apply the 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.

Stat. Authority: ORS 469.470, ORS 469.501
Stat. Implemented: ORS 469.501

345-022-0090 - Historic, Cultural and Archaeological Resources

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impacts to:

(a) Historic, cultural or archaeological resources that have been listed on, or would likely be listed on the National Register of Historic Places;

(b) For a facility on private land, archaeological objects, as defined in ORS 358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and

(c) For a facility on public land, archaeological sites, as defined in ORS 358.905(1)(c).

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

(3) 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, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

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Stat. Authority: ORS 469.470, ORS 469.501
Stat. Implemented: ORS 469.501

345-022-0100 - Recreation

(1) 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.

(2) The Council 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.

(3) 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). In issuing such a site certificate, the Council may 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 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.

Stat. Authority: ORS 469.470, ORS 469.501
Stat. Implemented: ORS 469.501

345-022-0110 - Public Services

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to the ability of public and private providers within the analysis area described in the project order to provide: sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

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(3) 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, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

Stat. Authority: ORS 469.470, ORS 469.501
Stat. Implemented: ORS 469.501

345-022-0115 - Wildfire Prevention and Risk Mitigation

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

(a) The applicant has adequately characterized wildfire risk within the analysis area using current data from reputable sources, by identifying:

(A) Baseline wildfire risk, based on factors that are expected to remain fixed for multiple years, including but not limited to topography, vegetation, existing infrastructure, and climate;

(B) Seasonal wildfire risk, based on factors that are expected to remain fixed for multiple months but may be dynamic throughout the year, including but not limited to, cumulative precipitation and fuel moisture content;

(C) Areas subject to a heightened risk of wildfire, based on the information provided under paragraphs (A) and (B) of this subsection;

(D) High-fire consequence areas, including but not limited to areas containing residences, critical infrastructure, recreation opportunities, timber and agricultural resources, and fire-sensitive wildlife habitat; and

(E) All data sources and methods used to model and identify risks and areas under paragraphs (A) through (D) of this subsection.

(b) That the proposed facility will be designed, constructed, and operated in compliance with a Wildfire Mitigation Plan approved by the Council. The Wildfire Mitigation Plan must, at a minimum:

(A) Identify areas within the site boundary that are subject to a heightened risk of wildfire, using current data from reputable sources, and discuss data and methods used in the analysis;

(B) Describe the procedures, standards, and time frames that the applicant will use to inspect facility components and manage vegetation in the areas identified under subsection (a) of this section;

(C) Identify preventative actions and programs that the applicant will carry out to minimize the risk of facility components causing wildfire, including procedures that will be used to adjust operations during periods of heightened wildfire risk;

(D) Identify procedures to minimize risks to public health and safety, the health and safety of responders, and damages to resources protected by Council standards in the event that a wildfire occurs at the facility site, regardless of ignition source; and

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(E) Describe methods the applicant will use to ensure that updates of the plan incorporate best practices and emerging technologies to minimize and mitigate wildfire risk.

(2) The Council may issue a site certificate without making the findings under section (1) if it finds that the facility is subject to a Wildfire Protection Plan that has been approved in compliance with OAR chapter 860, division 300.

(3) This Standard does not apply 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 on or before the effective date of this rule.

Statutory/Other Authority: ORS 469.470 & 469.501
Statutes/Other Implemented: 469.501

345-022-0120 - Waste Minimization

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that, to the extent reasonably practicable:

(a) The applicant's solid waste and wastewater plans are likely to minimize generation of solid waste and wastewater in the construction and operation of the facility, and when solid waste or wastewater is generated, to result in recycling and reuse of such wastes;

(b) The applicant's plans to manage the accumulation, storage, disposal and transportation of waste generated by the construction and operation of the facility are likely to result in minimal adverse impact on surrounding and adjacent areas.

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

(3) 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, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

Stat. Authority: ORS 469.470, ORS 469.501
Stat. Implemented: ORS 469.501

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