



Marcia Grail, Chair ■ Kent Howe, Vice-Chair ■ Jordan Truitt ■ Cynthia Condon ■ Perry Chocktoot ■ Ann Beier ■ Richard Devlin

Energy Facility Siting Council Meeting Minutes Friday, March 24, 2023, 8:30 a.m.

- A. Consent Calendar (Action Item & Information Item)¹
- B. West End Solar Project: Final Order on Application for Site Certificate with Potential for Material Change Hearing. Public Notice of Hearing to Adopt Final Order (ORS 469.370(7)) (Action Item)²
- C. 2023 Legislative Session Update (Information Item)³
- D. Oregon Trail Solar: Final Order on Request for Amendment 1 to the Site Certificate (Action Item)⁴
- E. Public Comment (Information Item)⁵
- F. Initiation of Rulemaking Alignment Phase 1 (Action Item)⁶
- G. Mist Underground Natural Gas Storage Facility: Request to amend Habitat Mitigation Plan (Action Item)⁷
- H. Coyote Springs Cogeneration: Request to amend Ecological Monitoring Program (Action Item)⁸
- I. Wheatridge Renewable Energy Facility II: Laurent's Milkvetch Update (Information Item)⁹
- J. Lone Pine to Whetstone Transmission Line (Action Item)¹⁰

The meeting materials presented to Council are available online at:

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

Call to Order: Chair Grail called the meeting to order on Friday, March 24, 2023, at 8:31 a.m.

Roll Call: Chair Marcy Grail, Vice-Chair Kent Howe, Council Members, Jordan Truitt, Cynthia Condon, Perry Chocktoot, Ann Beier, and Richard Devlin were present.

Oregon Department of Energy representatives present were Assistant Director for Siting/Council Secretary Todd Cornett; Senior Policy Advisor Sarah Esterson; Government Relations Coordinator Christy Splitt; Senior Siting Analysts Chase McVeigh-Walker and Kathleen Sloan; Siting Analyst Liz Bobe; Operations and Policy Analyst Wally Adams; and Fiscal Analyst Sisily Fleming. Oregon Department of Justice Senior Assistant Attorney General Patrick Rowe counsel to EFSC was also present.

Agenda Modifications were not requested.

¹ Audio/Video for Agenda Item A = 00:04:03 - 2023-3-24-EFSC-Meeting-Audio/Video

² Audio/Video for Agenda Item B = 00:35:30 - 2023-3-24-EFSC-Meeting-Audio/Video

³ Audio/Video for Agenda Item C = 01:28:00 - 2023-3-24-EFSC-Meeting-Audio/Video

⁴ Audio/Video for Agenda Item D = 02:06:00 - 2023-3-24-EFSC-Meeting-Audio/Video

⁵ Audio/Video for Agenda Item E = 02:40:38 - 2023-3-24-EFSC-Meeting-Audio/Video

⁶ Audio/Video for Agenda Item F = 02:47:08 - 2023-3-24-EFSC-Meeting-Audio/Video

⁷ Audio/Video for Agenda Item G = 03:36:06 - 2023-3-24-EFSC-Meeting-Audio/Video

⁸ Audio/Video for Agenda Item H = 04:18:44 - 2023-3-24-EFSC-Meeting-Audio/Video

⁹ Audio/Video for Agenda Item I = 04:39:00 - 2023-3-24-EFSC-Meeting-Audio/Video

¹⁰ Audio/Video for Agenda Item J = 05:07:45 - 2023-3-24-EFSC-Meeting-Audio/Video

- A. Consent Calendar (Action Item & Information Item)¹¹** – Approval of January 19-20, 2023, meeting minutes; Council Secretary Report; and other routine Council business.

Consideration of the January 19-20, 2023, Meeting Minutes

Vice Chair Howe motioned that the Council adopt the January 19-20, 2023, meeting minutes as presented.

Council Member Beier seconded the motion.

Motion carried unanimously.

Council Secretary Report

Secretary Cornett offered the following comments during his report to the Council.

Council Member Updates

- Council Member Truitt’s current term ends September 22, 2023, and a replacement is being sought. April 19, 2023 is the deadline to provide candidates for consideration to Executive Appointment.

Project Updates

- Cascade Renewable Transmission Line (CRTL)
The Notice of Intent for the CRTL, a proposed transmission line to be mostly located in the bed of the Columbia River from The Dalles to Portland, has been determined to contain all of the required information. Senior Siting Analyst Christopher Clark is coordinating public meetings within the vicinity of the project and will issue the public notice and inform the Council of the meeting dates should they wish to attend. The meeting will also be recorded and posted to the project page on the Department’s website following the meeting.
- Wheatridge Renewable Energy I & Wheatridge Renewable Energy II
Amendments to the Wildlife Monitoring and Mitigation Plans related to post construction fatality monitoring surveys were recently approved by the Department for both the Wheatridge Renewable Energy Facility I and Wheatridge Renewable Energy Facility II. These amendments increased the search interval frequency to allow for additional data collection to inform related correction factors. He explained that bat carcasses are placed in survey areas to determine the ability to locate them later and identify predation factors.

Council Member Condon asked about the placement and tracking of the carcasses for the surveys.

Ms. Esterson provided that while the carcass locations are tracked, they are unknown to the survey team. She explained that the team’s ability to locate them is assessed in this way to further inform

¹¹ Audio/Video for Agenda Item A = 00:04:03 - 2023-3-24-EFSC-Meeting-Audio/Video

the correction factor, adding that a low ability to locate would result in a higher correction factor to be applied to future data.

- Compliance Updates
Council was briefed on incidents reported at the following facilities:
Leaning Juniper Wind Power Facility IIB – Transformer Failure (3/18/23)
Montague Solar Facility – Fire in electrical equipment (3/6/23)
Leaning Juniper Wind Power Facility IIA – Wind Turbine Fire (2/18/23)
Reed Research Reactor – Negative Pressure fan failure (1/12/23)

Prior Meeting Follow Ups

- Analysis related to the bond template language was provided in response to Council Member Condon’s questions posed from the January Council meeting concluding that additional changes are not needed to current template language.

Council Member Condon appreciated the information and suggested that comfort letters provided from developers to meet the standard also include an acknowledgement from the financial institutions to comply with the provisions of the template language.

Future Meetings

The next Council meeting is anticipated to be in May and Council availability will be solicited in the coming weeks. Council Member Condon’s availability was noted as tentative.

- B. West End Solar Project, Final Order on Application for Site Certificate with Potential for Material Change Hearing. Public Notice of Hearing to Adopt Final Order (ORS 469.370(7)) (Action Item)¹²** – Kellen Tardaewether, Senior Siting Analyst. Council reviewed the Proposed Order on the ASC for the West End Solar Project and will either adopt, modify or reject the Proposed Order as the Final Order. The West End Solar Project is a 324-acre solar photovoltaic energy generation facility proposed in Umatilla County. More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#).

During the presentation, the following discussion occurred:

Council Member Beier applauded the efforts of the applicant and staff for their work and analysis of the soils standard and the Goal 3 exception. She stated that the level of regional analysis was beyond the basic land use framework and appreciated the detailed information in the record to substantiate the findings.

Vice Chair Howe read the following comments into the record regarding the Goal 3 Reasons Exceptions:

I would like to make a few comments limited to the concerns I have been raising regarding the Goal 3 Reasons Exception requirements for this application.

¹² Audio/Video for Agenda Item B = 00:35:30 - 2023-3-24-EFSC-Meeting-Audio/Video

The Goal 3 Exception requirements set a high threshold in order to remove land from Oregon's finite Agricultural Inventory. The definition of farm use includes "planting, growing, harvesting, and managing crops, land, and livestock to make a profit." Council indicated our concern about lowering the threshold for an Exception that we would be held to in future applications. We felt the earlier record was incomplete or unclear. I feel with the additional clarification provided by Ms. Tardaewether and Ms. Esterson, the record has now been clarified to justify a Goal 3 Exception for this project. If you can bear with me for a couple of minutes I would like to elaborate.

There are 3 categories of agricultural land: high value, arable, and non-arable. The LCDC solar rules were designed to incentivize development on non-arable lands so the threshold for a successful application on non-arable land was lowered. I feel EFSC is likely to see more applications on arable lands and Council needs to be clear that we must have sound reasons for taking arable lands out of agricultural production.

A Goal 3 Exception is required if more than 12 acres of the project will be sited on high-value farmland soils, or more than 20 acres of the project will be sited on arable soils. The West End Solar Facility project exceeds both of these limitations. If the property is not already developed or "committed" because of surrounding development, then the Goal 3 Rule allows the Council to consider reasons to justify an exception to the statewide policy embodied in Goal 3 on the basis of 1) locational dependency, 2) minimal direct impacts to agriculture within the subject tracts, 3) minimal indirect impacts to agriculture within the surrounding area, and 4) minimal impacts to other resources protected by Council standards.

1) Locational dependency

The proposed site would not require new transmission lines. Neither the applicant nor Umatilla County have identified Goal 5 resources within the site boundary. Construction and operation of the proposed facility will not impact any NRHP eligible historic, cultural, or archeological resources, nor impact any important recreational opportunities nor any wetlands or waters of the state, and is located directly off a primary road, South Edwards, which feeds directly to US-395. And the proposed site would not require new transmission lines. Therefore, I find that with an interconnection agreement on which approval is conditioned, locational dependency is one of the four reasons justifying a Goal 3 Exception.

2) Minimal direct impacts to agriculture within the subject tracts

Arthur Prior, owner of Tract 1, has not used the land for cultivation because of the lack of available water and marginal production capacity. Dry-land wheat farming is not economically feasible on Tract 1 given the limited acreage of arable soils (102 acres), the lack of existing or ability to obtain a water right, the low potential for dryland crop yield and the high costs of wheat cultivation. Sixty-three percent of the tract is Adkins fine sandy loam soil that is extremely limiting for dryland cultivation and can actually be detrimental due to risk of wind erosion. Tract 1 has no irrigation water, and the Stage Gulch Critical Groundwater Area does not allow acquisition of new groundwater rights.

Steve and Wanda Scott, owners of Tract 2, have demonstrated their property is not viable for farm use without a water right. Tract 2 is within the Stage Gulch Critical Groundwater Area and does not allow acquisition of new groundwater rights. They cultivated dryland wheat in 2013 and 2015 producing 14 bushels/ac and 11 bushels/ac, respectively. They received \$5.55/bushel for a total revenue of \$8,097. However, the cost of producing the 2015 crop was \$16,370, which resulted in a loss of \$8,273. Therefore, the land is left fallow because of lack of profitability, and they can't secure water rights for irrigation.

I, therefore, find that the direct impact on agriculture within the subject tracts would be minimal.

3) Minimal indirect impacts to agriculture within the surrounding area

The proposed facility will not require relocating access roads or farm infrastructure on neighboring properties. The site is not currently nor in the last 50 years has it been used for or in support of agricultural activity. I, therefore, find that the indirect impact to agricultural goods and services within the county would be minimal or none.

4) Minimal impacts to other resources

Neither the applicant nor Umatilla County have identified Goal 5 resources within the site boundary. The construction and operation of the proposed facility will not impact any NRHP-eligible historic, cultural, or archeological resources. Construction and operation of the proposed facility will not impact any important recreational opportunities nor impact any Goal 5 wetlands or waters of the state.

The habitat is suitable for Washington Ground Squirrel (WGS) and Laurence's milkvetch, state listed threatened and endangered species and plants. However, surveys conducted in 2020 and 2021 at the site identified no presence of these species.

If any WGS colonies or borrows are identified during the preconstruction surveys, Threatened and Endangered Species Condition 2 would then require avoidance of the identified WGS habitat.

Therefore, I believe the Council can find that: 1) locational dependency, 2) minimal direct impacts to agriculture within subject tracts, 3) minimal indirect impacts to agriculture within surrounding area; and 4) minimal impacts to other resources protected by Council standards are four reasons that cumulatively justify taking an exception to the statewide policy embodied in Goal 3.

Therefore, Madam Chair, I move that the Council approve the Application for Site Certificate for the West End Solar Project, based on the recommended findings of fact, conclusions of law, and conditions of approval as presented in the Proposed Order and issue a Final Order and site certificate, as presented, and recommended by staff.

Chair Grail, Council Member Chocktoot and Assistant Attorney General (AAG) Patrick Rowe thanked Council Member Beier and Vice Chair Howe for their comments and reiterated the importance of articulating their findings and conclusions.

Vice Chair Howe motioned that the Council approve the application for site certificate for the West End Solar Project based on the recommended findings of fact, conclusion of law and conditions of approval as presented in the proposed order and issue a final order and site certificate as presented by staff.

Council Member Condon seconded the motion.

Motion carried unanimously.

- C. Legislative Session Overview (Information Item)¹³** – Christy Splitt, Government Relations Coordinator. The Council received an overview of the 2023 legislative session. More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#).

Council Member Devlin asked about the likelihood of bills being passed to a joint committee or to the rules committee to keep them on the docket and avoid the deadlines, to which Ms. Splitt affirmed a high likelihood.

- D. Oregon Trail Solar Facility, Final Order on Request for Amendment 1 of the Site Certificate (Action Item)¹⁴** – Kathleen Sloan, Senior Siting Analyst. Council will review the Proposed Order on Request for Amendment 1 (RFA1) of the Oregon Trail Solar Site Certificate and will either adopt, modify, or reject the Proposed Order as the Final Order. The Oregon Trail Solar Facility is an approved, but not constructed, wind/solar photovoltaic energy generation facility to include up to 16 wind turbines or up to 400 acres of solar facility components, in Gilliam County.

During the presentation, the following discussion occurred:

Council Member Chocktoot asked whether Phase 1 and Phase 2 archeologic evaluations were completed under the Historic, Cultural and Archaeological Resources standard.

Ms. Sloan stated that Phase 1 evaluations were completed but stated that the condition was developed in conjunction with the Confederated Tribes of Umatilla to allow flexibility between the Tribe and certificate holder on survey frequency and locations.

Council Member Condon, regarding donation funds expended in Recommended Land Use Condition 120 (c), should be clarified by adding the word “completely”, and the change was noted by Secretary Cornett for Council’s consideration.

Council Member Beier appreciated the work by staff in crafting clear conditions of expectations for the Wildfire Mitigation Plan.

¹³ Audio/Video for Agenda Item C = 01:28:00 - 2023-3-24-EFSC-Meeting-Audio/Video

¹⁴ Audio/Video for Agenda Item D = 02:06:00 - 2023-3-24-EFSC-Meeting-Audio/Video

Council Member Condon noted that under Final Recommended Amended Condition 67 (a) the word 'nacelle' should be plural.

Council Member Condon motioned for Council to approve the Proposed Order as presented as staff with the following changes and issue the Final Order and Amended Site Certificate:

Condition 120 (c): Add the word completely - 'unless donation funds are **completely** expended'
Condition 67(a) – Change nacelle to nacelles

Council Member Beier seconded the motion.

Motion carried unanimously.

E. Public Comment Period (Information Item)¹⁵ – This time was reserved for the public to address the Council regarding any item within Council jurisdiction that is not otherwise closed for comment.

No comments were offered, and the public comment period closed at 11:27 am.

F. Initiation of Rulemaking Alignment Phase 1 (Action Item)¹⁶ – Tom Jackman, Rulemaking Coordinator. The Council will consider staff's recommendation to initiate phase 1 proposed revisions to the Council's rules in Divisions 15, 20, 21 and potentially others to improve the consistency of rules and the application process.

During the presentation, the following discussion occurred:

Council Member Condon, regarding the consolidation and redirection of language in Division 20 and 21 to Division 15, asked whether there is companion condition which requires an applicant to respond to the condition.

Mr. Jackman explained that a response is not required from the applicant related to the public noticing and this change provides clarity for the roles of both the Department and applicant.

Chair Grail commented on the importance of clarifying and eliminating confusion in the rules and appreciated staff's efforts for recognizing the issues.

Vice Chair Howe expressed concern on the size of the proposed Rulemaking Advisory Committee, stating that fifteen members could be burdensome.

Mr. Jackman validated the concern and expressed confidence in the ability to manage input given the limited scope, adding that clear expectations have been provided in member solicitations.

Council Member Condon asked, given the non-substantive scope of the proposed changes, whether requiring the RAC to have fifteen members could pose an issue based on interest and participation.

¹⁵ Audio/Video for Agenda Item E = 02:40:38 - 2023-3-24-EFSC-Meeting-Audio/Video

¹⁶ Audio/Video for Agenda Item F = 02:47:08 - 2023-3-24-EFSC-Meeting-Audio/Video

Secretary Cornett and Mr. Jackman informed Council that the membership number is not a requirement, and that the Department may still move forward after comments are solicited and not received.

Vice Chair Howe appreciated the phased approach of the rulemaking and stated that it alleviated his previous concerns.

Council Member Chocktoot shared his support for the concepts and expressed his satisfaction in being a part of the process.

Secretary Cornett offered Council Members, noting the high demand for their time, the opportunity to participate on the RAC should they wish, and invited them to reach out to him in the future if there was interest.

Vice Chair Howe motioned Council initiate rulemaking on Phase 1 of the application process review rulemaking with the scope and objective provided by staff and approve the creation of the rulemaking advisory committee as presented in the staff report the Council delegate authority to appoint specific members to the rulemaking advisory committee to the Department.

Council Member Devlin seconded the motion.

Motion carried unanimously.

G. Mist Underground Natural Gas Storage Facility, Request to Amend Habitat Mitigation Plan (Action Item)¹⁷ – Chase McVeigh-Walker, Senior Siting Analyst. Council received a presentation on the Site Certificate’s Habitat Mitigation Plan, implemented from 2017 to 2021, and reviewed a request to amend the plan to incorporate new enhancement actions necessary to address success issues. Mist Underground Natural Gas Storage Facility is an operational underground natural gas storage facility located in Columbia County.

During the presentation, the following discussion occurred:

Chair Grail asked, regarding Northwest Natural’s request to amend language under the long-term monitoring and maintenance obligations to “Every 3-years for the life of the facility or lesser frequency based on successful reporting and the probability of success”, how the determination of “success” would be made.

Mr. McVeigh-Walker validated the concern explaining that staff’s recommended language is more specific and includes consultation between the Department and ODFW for determining frequency; however, Northwest Natural’s proposal is available for Council consideration.

AAG Rowe stated that he understood Northwest Natural’s concern to be that, while it was implicit the frequency of the long-term monitoring and maintenance obligation would only reduce if ODOE and

¹⁷ Audio/Video for Agenda Item G = 03:36:06- 2023-3-24-EFSC-Meeting-Audio/Video

ODFW agreed that successful reporting and probability of success had been achieved, the Department's proposed language does not clearly state that. Northwest Natural's proposed language attempted to identify the criteria in which it could be reduced while removing the reference to ODOE and ODFW. He explained that the Council could choose to adopt the Department's or Northwest Natural's recommendation or choose a hybrid of the two.

Chair Grail expressed preference of clear direction for determination.

Council Member Beier supported AAG Rowe's suggestion to use a hybrid approach in combining the proposed language.

Council Member Condon noted that the Department's currently proposed language does combine the recommendations.

Vice Chair Howe motioned for the Council to approve the Amended habitat mitigation plan for the Mist Underground Storage Facility as presented and recommended by staff.

Council Member Chocktoot seconded the motion.

Council Member Condon questioned whether the motion is needed to include additional basis for the decision.

Secretary Cornett explained that the motion language includes reference to the staff report and presentation which detail the reasons for approval which staff believes is sufficient, however he noted Council's privilege to craft the motion as they desired.

AAG Rowe agreed that reference to the staff report and presentation was sufficient to document the reasons for approval and noted that if Council's decision were impacted by information outside of the recommendations identifying that information in the motion would be necessary.

Motion carried unanimously.

H. Coyote Springs Cogeneration, Request to Amend Ecological Monitoring Program (Action Item)¹⁸ – Elizabeth Bobe, Siting Compliance Officer. Council received a presentation on the Site Certificate's Ecological Monitoring Program and reviewed a request to amend the program to support long-term maintenance of tree-planting efforts at Messner Pond. Coyote Springs Cogeneration is an operational 442-MW combined-cycle natural gas facility in Morrow County. More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#).

During the presentation, the following discussion occurred:

Chair Grail asked whether the trees are harvested at the end of a 30-year cycle on mitigation sites.

¹⁸ Audio/Video for Agenda Item H = 04:18:44 - 2023-3-24-EFSC-Meeting-Audio/Video

Ms. Bobe stated that she was unsure.

Council Member Devlin, noting that the Hybrid Poplar is included in the recommended tree species for the mitigation area, explained that Hybrid Poplars require lots of water, have invasive root systems that can damage irrigation systems and are highly susceptible to fungal disease, and inquired about the overall number of Hybrid Poplars intended for the site.

Ms. Bobe stated that the plan did not include the details of percentages of species but could be requested if Council desired.

Council Member Beier noted that the plan does include an irrigation system.

Vice Chair Howe motioned for Council to approve the Amended Ecological Monitoring Program for the Coyote Springs Cogeneration site certificate as recommended and presented by staff.

Council Member Chocktoot seconded the motion.

Motion carried unanimously.

- I. **Wheatridge Renewable Energy Facility II, Laurent’s Milkvetch Mitigation Update (Information Item)¹⁹** – Kate Sloan, Senior Siting Analyst, and Jordan Brown, Lead Conservation Biologist, Native Plan Conservation, Oregon Department of Agriculture. Council received a presentation on the status of mitigation for direct impacts to Threatened and Endangered plant species, Laurent’s milkvetch, resulting from facility construction. Council approved the mitigation (seed collection, seed banking, germination and transplant trials/study) in March 2020. Wheatridge Renewable Energy Facility II is an operational, 200 MW wind facility in Morrow County. More information is located on the [Council Meetings website](#) for additional details pertaining to this [presentation](#).

During the presentation, the following discussion occurred:

Council Member Beier appreciated the presentation and expressed her interest in a future summary from the Oregon Department of Agriculture regarding the success of the transplants.

Ms. Esterson noted the complexity of Habitat Mitigation plans and the Department’s reliance on reviewing agencies to assist in determining compliance with EFSC conditions and expressed gratitude to Mr. Brown for his time and work with the Council and Department.

Council Member Beier stated that information obtained from the studies conducted at this site will provide valuable information moving forward and assist in advancing science.

- J. **Lone Pine to Whetstone Transmission Line, Appointment of Special Advisory Groups (Action Item) *²⁰** – Sarah Esterson, Senior Policy Advisor. Council will review a request to appoint City of

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²⁰ Audio/Video for Agenda Item J = 05:07:45 - 2023-3-24-EFSC-Meeting-Audio/Video

Medford's Planning Commission and Jackson County's Board of Commissioners as the Special Advisory Groups under ORS 469.480(1) for EFSC proceedings related to a 230 kV transmission line, with two proposed routes, to be located within the jurisdictions of the City of Medford and Jackson County.

**Chair Grail recused herself from the Lone Pine to Whetstone project, and Vice Chair Howe acted as Chair for this agenda item.*

Council did not have questions or discussion during the presentation and entertained the following motions.

Council Member Condon motioned for Council to approve the Jackson County Board of Commissioners as a Special Advisory Group to advise the Council in proceedings related to the review of the Application for Site Certificate for the Lone Pine to Whetstone Transmission Line as presented and recommended by staff.

Council Member Beier seconded the motion.

Motion carried unanimously.

Council Member Condon motioned for Council to approve the City of Medford City Council as a Special Advisory Group to advise the Council in proceedings related to the review of the Application for Site Certificate for the Lone Pine to Whetstone Transmission Line as presented and recommended by staff.

Council Member Devlin seconded the motion.

Motion carried unanimously.

Adjournment

Chair Grail adjourned the meeting at 2:28 p.m.