

**Guidelines for Applicants
for
Energy Facility Site Certificates**

Oregon Energy Facility Siting Council

**Prepared by
Oregon Department of Energy**

July 2008

Table of Contents

Part 1 – INTRODUCTION AND OVERVIEW 1

- I. Purpose..... 1
- II. Overview of the Site Certificate Process 1

Part 2 – STANDARDS FOR ENERGY FACILITY SITE CERTIFICATES..... 4

- I. The Siting Council’s Standards 4
 - A. The Division 22 Standards..... 4
 - (1) The General Standard of Review 5
 - (2) Organizational Expertise 8
 - (3) Structural Standard..... 9
 - (4) Soil Protection 11
 - (5) Land Use 11
 - (6) Protected Areas 15
 - (7) Retirement and Financial Assurance..... 17
 - (8) Fish and Wildlife Habitat 18
 - (9) Threatened and Endangered Species..... 19
 - (10) Scenic Resources..... 20
 - (11) Historic, Cultural and Archaeological Resources 21
 - (12) Recreation..... 22
 - (13) Public Services 23
 - (14) Waste Minimization 24
 - B. The Division 23 Standards..... 25
 - C. The Division 24 Standards..... 26
 - (1) Specific Standards for Wind Facilities..... 26
 - (2) Specific Standards for Surface Facilities and Transmission Lines 27
 - (3) Carbon Dioxide Emissions Standards..... 27
 - D. Protecting Public Health and Safety 28
- II. Standards and Requirements of Other Agencies 29
 - A. The General Standard of Review 29
 - B. The Role of the Project Order 29
 - C. How the Council Determines Compliance with Requirements of Other Agencies..... 29
 - D. Examples of Requirements Included in the Site Certificate Process 30
 - (1) Noise..... 30
 - (2) Wetlands and Other Waters of the State 30
 - (3) Water Pollution Control Facility (WPCF) 30
 - (4) Water Rights..... 30
 - E. State Requirements that Are Not Included in the Site Certificate Process 30
 - F. Federal Permit Applications 31

Part 3 – THE SITING PROCESS..... 31

- I. Notice of Intent 31
 - A. General NOI Requirements..... 32
 - B. Corridor Selection for Linear Facilities 33

Guidelines for Applicants

C. Fee for a Notice of Intent	33
D. The Project Order.....	34
II. Application for a Site Certificate	34
A. Preliminary Application.....	34
B. Corridor Selection Assessment	34
C. Fee for an Application	35
D. Environmental Impact Statements	35
E. Completeness Review.....	35
F. Filing the Application	36
G. Draft Proposed Order.....	36
H. Public Hearing	36
I. Council Review and the Proposed Order.....	37
J. Contested Case Proceeding.....	37
K. Council Decision.....	38
L. Statutory Time Periods	38
M. Reconsideration and Appeal	39
III. Expedited Review	39
A. Small-Capacity Facilities	39
B. Special Criteria Facilities	40
(1) Request for Expedited Review	41
(2) Preliminary Application and Project Order.....	42
(3) Completeness and the Draft Proposed Order	42
(4) Public Hearing on the Proposed Order.....	43
(5) Contested Case and Final Decision.....	43
Part 4 – Exemptions	43
I. High Efficiency Cogeneration	43
II. Biofuel Production Facilities	44
Figure 1: Standard Site Certificate Process	46
Figure 2: Expedited Review of Small-Capacity Facilities.....	47
Figure 3: Expedited Review of Special Criteria Facilities.....	48

Part 1 – INTRODUCTION AND OVERVIEW

I. Purpose

The Oregon Department of Energy (Department) has prepared these guidelines to help explain Oregon’s energy facility siting process to potential site certificate applicants. Under Oregon statutes, the developer of an energy facility must obtain a site certificate from the Energy Facility Siting Council (Council), a board whose seven members are appointed by the Governor and confirmed by the Oregon Senate. The Department serves as staff to the Council. The Council is also known by its acronym, “EFSC,” and the Department is also known by its acronym, “ODOE.”

These guidelines are informal and are not a substitute for the statutes or administrative rules. The Council will issue a site certificate only if it finds that the facility meets the applicable rules and statutes through the review process described below. Applicants should carefully review the rules and statutes to gain a detailed understanding of the siting requirements.

The site certificate requirement applies to “energy facilities” defined in Oregon Revised Statutes (ORS) 469.300, including electric generating facilities, transmission lines, pipelines and fuel production facilities. The procedures and requirements governing site certificate review are contained in Oregon Administrative Rules (OAR) Chapter 345. To receive a site certificate, a proposed energy facility must meet the siting standards contained in OAR Chapter 345, Divisions 22, 23 and 24. Application requirements and review procedures are described in Divisions 15, 20 and 21.

Part 2 of these Guidelines contains a detailed discussion of the standards. The applicable statutes and rules are available from the Department’s website:
www.oregon.gov/ENERGY/SITING/rules.shtml.

Part 3 describes the application requirements and the site certificate review process.

Part 4 describes facilities that are exempt from the site certificate requirement.

II. Overview of the Site Certificate Process

The Council performs a consolidated review for the siting of energy facilities. As defined by statute, energy facilities include:

- Thermal or combustion turbine electric power plants with generating capacity of 25 megawatts (MW) or more.
- Wind or solar energy facilities with an average electric generating capacity of 35 MW or more (nominal capacity of 105 MW or more).
- Geothermal energy facilities with average electric generating capacity of 35 MW or more (nominal capacity of 38.85 MW or more).
- Transmission lines of 230 kilovolts (kV) or more that are at least 10 miles long.
- Surface facilities related to underground natural gas storage reservoirs.

Guidelines for Applicants

- Liquid fuel pipelines that are at least 6 inches in diameter and at least 5 miles long or more in length.
- Natural gas pipelines (intrastate) that are at least 16 inches in diameter and at least 5 miles long
- Synthetic fuel plants that produce gas, liquid or solid fuel capable of being burned to produce the equivalent of 2 billion Btu per day (except plants that use biomass as the raw material);
- Plants that convert biomass to gas, liquid or solid fuel products if any one of such products is capable of being burned to produce the equivalent of six billion Btu of heat per day.
- A storage facility for liquefied natural gas designed to hold at least 70,000 gallons.
- Radioactive waste disposal sites and certain defined nuclear installations.

The statutory basis for the siting process is contained in ORS 469.300 to 469.563, ORS 469.590 to 469.601 and ORS 469.992. These laws include key provisions that make the site certificate process different from the permitting process in other states and different from the permitting practices of many other state and local agencies in Oregon. These provisions include:

- The requirement that the applicant demonstrate compliance with specific standards adopted by the Council.
- A “one-stop” process in which the Council determines compliance with not only its own standards but those of most other state and local permitting agencies as well.
- Public comment periods at the front end of the process, followed by a more formal “contested case.”
- Appeal for judicial review directly to the Oregon Supreme Court.

The use of specific standards makes the siting decision basically a “yes or no” process. If the facility meets the standards, the Council issues a site certificate. If the facility does not meet one or more of the standards, the Council cannot issue the site certificate. (The Council has authority to waive selected standards, but only under certain conditions that are clearly defined in OAR 345-022-0000.)

In making the siting decision, the Council applies its own standards and the applicable rules and ordinances of other state and local agencies. Once the Council renders its decision, that decision is binding on other state and local agencies. These agencies are bound by ORS 469.401(3) to issue all applicable permits and licenses addressed in the site certificate, subject only to the conditions listed in the site certificate. (The site certificate does not address “federally-delegated permits.” ORS 469.503(3)).

The siting process has two major phases. In the first phase, the applicant submits a Notice of Intent (NOI), which describes the proposed facility in general terms. The NOI allows the Department to gather public comment and enables state and local agencies to identify regulations and ordinances that apply. The NOI does not require as much detail as a site certificate application and need not demonstrate compliance with standards.

Guidelines for Applicants

In the second phase, the applicant submits a site certificate application. The Department reviews the application and coordinates review by other state and local agencies. In preparation of the application, applicants should work directly with state and local agencies to promote better understanding of their projects and to identify information that should be included in the application. These two major phases of the siting process are described in detail below in Part 3.

The Department reviews the application on behalf of the Council, but it is the Council, not the Department, that has the decision-making authority under State law. The Department makes recommendations to the Council in two documents: a Draft Proposed Order (DPO), which the Department issues after the application is complete, and a Proposed Order, which the Department issues after a public hearing on the DPO and after a Council discussion of the DPO. The DPO and the Proposed Order are public documents, and the Department posts them on its website (www.oregon.gov/ENERGY/SITING/announce.shtml).

In the standard review process, there are three opportunities for the public to participate in the siting process in person. The first opportunity is an informal public informational meeting on the NOI. Although the informational meeting is optional, the Department ordinarily holds the meeting in a location close to the proposed site. The purpose of the meeting is to listen to public comment and to give the applicant a chance to address the public's concerns in an informal setting.

The second opportunity for public participation is a mandatory public hearing that the Department schedules after issuing the DPO. The purpose of the public hearing is to take public comment on the DPO. If any member of the public has a concern about anything in the DPO, the person must raise the issue at the hearing or by submitting a written comment by the deadline stated in the public hearing notice. If the issue has not been raised at the public hearing stage, it cannot be raised later in the contested case proceeding or in an appeal of the Council's order. Although the public hearing is less formal than the contested case proceeding, an independent Hearing Officer presides and the hearing is recorded.

The third and most complex opportunity for public participation is the contested case. Oregon law requires a contested case proceeding before the Council can issue a site certificate (ORS 469.370). The Hearing Officer presides and follows the procedures of the Oregon Administrative Procedures Act (ORS Chapter 183) and the procedures required by the Council rules (OAR 345-015-0012 through 345-015-0085). The contested case proceeding occurs after the Department has issued the Proposed Order and before the Council makes its final decision on the application.

Applicants should plan on the site certificate process taking anywhere from twelve months to two and a half years from NOI submittal to the Council's Final Order. The time varies, but applicants can shorten the time by having a well-thought-out proposal, by disclosing any potential issues early in the process and by submitting a Preliminary Application that responds thoroughly to the application requirements described in OAR 345-021-0000, 345-021-0010 and the Project Order. The quality of the NOI, the quality of the application and the potential for contested case issues are the most significant variables that determine how long the process takes. The Department's website includes a more detailed discussion of the time requirements (www.oregon.gov/ENERGY/SITING/time.shtml).

The certificate holder must comply with the terms and conditions of the site certificate. The Council can change the terms and conditions of the site certificate by amendment. The certificate

holder can request an amendment of the site certificate by following the procedure described in OAR 345-027-0030 through 345-027-0100. An amendment request must demonstrate that the facility will continue to meet all the applicable standards. The amendment process is much shorter than the certification process and includes a contested case only if someone requests one and only if the Council determines that a contested case proceeding is warranted.

Part 2 – STANDARDS FOR ENERGY FACILITY SITE CERTIFICATES

The Siting Council applies two important classes of standards and requirements:

- The Siting Council’s own standards.
- Standards, permits and statutory requirements of other agencies.

I. The Siting Council’s Standards

The Council’s standards are designed to protect natural resources, ensure public health and safety and protect against adverse environmental impacts. The Council’s standards are adopted through a rulemaking procedure. The standards that apply to issuing a site certificate are contained in OAR Chapter 345, Divisions 22, 23 and 24.

A. The Division 22 Standards

There are 14 standards in OAR Chapter 345, Division 22. These standards apply to all types of energy facilities. They ask three fundamental questions:

- Does the applicant have the appropriate abilities to build this energy facility?
- Is the site suitable?
- Would the facility have adverse impacts on the environment and the community?

Note that the Council does not choose the site, and, with certain exceptions, the applicant need not submit alternative sites. Instead, the applicant describes the site and the Council determines its acceptability by applying the standards. In describing the site, applicants should include everything within the “site boundary,” which is defined by OAR 345-001-0010 as “the perimeter of the site of a proposed energy facility, its related or supporting facilities, all temporary laydown and staging areas and all corridors and micrositing corridors proposed by the applicant.” For certain standards, applicants will need to assess potential impacts within an “analysis area.” Analysis areas are described in the Department’s Project Order for the proposed facility. For the purposes of the NOI and for a Preliminary Application submitted before the Department has issued a Project Order, applicants should refer to the Council’s “study area” definition in OAR 345-001-0010 for the “default” analysis areas (see the definition of “analysis area” in OAR 345-001-0010).

The Division 22 standards may be organized in three groups - standards that concern the applicant, standards that concern the suitability of the site and standards that concern impacts from construction and operation. One Division 22 standard stands alone — the General Standard of Review. The General Standard addresses overall compliance of the proposed facility with applicable statutory requirements and standards, including not only the Council’s standards but those of other state and local agencies as well. Grouped this way, the Division 22 standards are as follows:

Guidelines for Applicants

The General Standard of Review (OAR 345-022-0000)

Standards Concerning the Applicant:

- Organizational Expertise (OAR 345-022-0010)
- Retirement and Financial Assurance (OAR 345-022-0050)

Standards that Concern the Suitability of the Site:

- Structural Standard (OAR 345-022-0020)
- Soil Protection (OAR 345-022-0022)
- Land Use (OAR 345-022-0030)
- Protected Areas (OAR 345-022-0040)
- Scenic Resources (OAR 345-022-0080)

Standards that Concern Impacts From Construction and Operation:

- Fish and Wildlife Habitat (OAR 345-022-0060)
- Threatened and Endangered Species (OAR 345-022-0070)
- Historic, Cultural and Archaeological Resources (OAR 345-022-0090)
- Recreation (OAR 345-022-0100)
- Public Services (OAR 345-022-0110)
- Waste Minimization (OAR 345-022-0120)

(1) The General Standard of Review

345-022-0000

(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 ORS 469.570 and 469.590 to 469.619, and the standards adopted by the Council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh the damage to the resources protected by the 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 standards adopted under ORS 469.501 if the Council determines that the overall public benefits of the facility outweigh the damage to

Guidelines for Applicants

the resources protected by the 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 Council standards or has shown, to the satisfaction of the Council, that there is no reasonable way to meet the Council standards through mitigation or avoidance of the damage to the protected resources. The applicant has the burden to show that the overall public benefits outweigh the damage to the resources, and the burden increases proportionately with the degree of damage to the resources. The Council shall weigh overall public benefits and damage to the resources as follows:

(a) The Council shall evaluate the damage to the resources by considering factors including, but not limited to, the following:

- (A) The uniqueness and significance of the resource that would be affected;
- (B) The degree to which current or future development may damage the resource, if the proposed facility is not built;
- (C) Proposed measures to reduce the damage by avoidance of impacts;
- (D) The magnitude of the anticipated damage to the resource, taking into account any proposed mitigation.

(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 damage to resources 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; or
- (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.

(4) In making determinations regarding compliance with statutes, rules and ordinances normally administered by other agencies or compliance with

Guidelines for Applicants

requirements of the Council statutes if other agencies have special expertise, the Department of Energy shall consult with such other agencies during 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.

What this standard accomplishes:

Through this standard, the Council incorporates applicable statutes, regulations and permits of other agencies into the site certificate process. Except for statutes and rules involving federally-delegated programs, the site certificate is binding upon other state and agencies as to the siting decision. If another state agency would normally issue a permit, license or certificate that addresses the site or some aspect of the proposed energy facility, the decision to issue that permit is made by the Council. It is part of the site certificate.

Once the Council issues a site certificate, any permit decision addressed in the site certificate obligates the responsible agency to issue the permit “upon submission by the applicant of the proper applications and payment of the proper fees, but without hearings or other proceedings” (ORS 469.401). Such permits must be issued “subject only to conditions set forth in the site certificate or amended site certificate” (ORS 469.401). The responsible agency retains enforcement authority over the permit, license or certificate addressed in the site certificate.

The binding nature of the site certificate does not apply to matters not included in the site certificate, such as “employee health and safety, building code compliance, wage and hour or other labor regulations, local government fees and charges or other design or operational issues that do not relate to siting the facility” (ORS 469.401).

The General Standard of Review contains an important provision that is rarely used by the Council. Referred to as the Council’s “balancing authority,” paragraphs (2) and (3) of the rule allow the Council to waive certain Council standards under special circumstances. If an applicant must rely on the Council’s balancing authority to obtain a site certificate, the applicant must provide sufficient information for the Council to make a finding that the “overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet” (ORS 469.501 and 469.503). Before the Council will even consider using the balancing authority, the applicant must meet a high threshold by demonstrating that the proposed facility cannot meet Council standards through mitigation or avoidance of the damage to the protected resources.

Although Oregon law gives the Council the authority to waive standards, the Council will not use this authority unless there are exceptional circumstances. Applicants are strongly advised not to rely on the Council’s balancing authority in proposing the siting of an energy facility. The current rule language describing the Council’s balancing authority has never been applied to approve a site certificate.

What the Council looks for in determining compliance:

If the proposed facility will need a permit, license or certificate that is ordinarily issued by another state or local agency, the site certificate application must contain all information ordinarily required by that other agency before issuing the permit. Applicants should contact the responsible agency to find out what the requirements are for a particular permit. If the agency

Guidelines for Applicants

uses a standard application, the site certificate applicant should provide the information required by the other agency's permit application as part of the site certificate application.

During its review of the site certificate application, the Department will contact the appropriate staff at the other agency responsible for issuing the permit, license or certificate and will request comments on the completeness of the information and on the substance of the permit request. The Department will ask the other agency to recommend site certificate conditions that will cover conditions that the agency would impose in the permit to be issued by that agency. In some cases, the site certificate will incorporate a draft permit in the form used by the responsible agency.

Applicants should provide the information needed to show compliance with this standard in Exhibit E of the site certificate application and by attaching the documentation described in OAR 345-021-0000, paragraphs (7) and (8).

(2) Organizational Expertise

345-022-0010

(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.

(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.

Guidelines for Applicants

What this standard accomplishes:

This standard helps ensure that the applicant has the abilities and resources to successfully build, operate and retire the facility in a way that will comply with applicable rules. In addition, the Council looks for the ability to comply with the site certificate conditions and to restore the site to a useful, non-hazardous condition. Applicants typically make commitments to mitigate and minimize the impacts of the proposed facility, and the rule requires that they show they have the ability to keep those commitments. By meeting this standard, applicants demonstrate the ability to do an effective and conscientious job of mitigating impacts and meeting the commitments they make to the Council and to the community.

The standard has a “third party permit” clause because some applicants do not apply for all the permits needed for their proposed facility. Instead, they arrange to use permits obtained by third parties, or they enter into agreements to use permits already held by third parties. For example, a cogeneration facility may use water permits already held by its steam host. This standard ensures that those permits will be available when they are needed.

What the Council looks for in determining compliance:

The Council looks at the applicant’s experience with similar types of projects. The Council also looks at the applicant’s regulatory history and any other evidence of technical, managerial and organizational expertise the applicant offers. The Council will accept ISO 9000 or ISO 14000 certification as one form (but not necessarily the only form) of objective evidence that the applicant can complete the project in compliance with all regulatory requirements and commitments. Applicants should provide the information needed to show compliance with this standard in Exhibits A, D and E of the site certificate application.

(3) Structural Standard

345-022-0020

(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 site as to Maximum Considered Earthquake Ground Motion identified at International Building Code (2003 edition) Section 1615 and maximum probable ground motion, taking into account ground failure and amplification for the site specific soil profile under the maximum credible and maximum probable seismic events; and

(b) The applicant can design, engineer, and construct the facility to avoid dangers to human safety presented by seismic hazards affecting the site that are expected to result from maximum probable ground motion events. As used in this rule “seismic hazard” includes ground shaking, ground failure, landslide, liquefaction, lateral spreading, tsunami inundation, fault displacement, and subsidence;

(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 presented by the hazards identified in subsection (c).

Guidelines for Applicants

(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.

What this standard accomplishes:

The Structural Standard protects public health and safety, including the safety of facility workers, from seismic hazards. In many cases, compliance with the Oregon Building Code will accomplish that, and a commitment from the applicant to secure all needed building permits and meet the Oregon Building Code is all that is required.

For some types of facilities, there is no building code, and some sites may have specific geological features or seismic hazards that go beyond the seismic zones in the Oregon Building Code. For this reason, the structural standard is largely a site characterization standard. Before the Council finds that the site is suitable, the applicant must do enough site-specific work to identify potential faults or other hazards and to assess the extent of the hazard. This is especially useful in parts of the state where detailed geological exploration and mapping have never been done.

In addition to characterizing the seismic hazards, the applicant must also study the site for hazards that do not require an earthquake as an initiating event, such as landslide potential.

What the Council looks for in determining compliance:

The Council looks for a thorough, site-specific assessment of maximum ground motion in the maximum credible seismic event. The Council requires applicants to base the assessment of seismic hazards on appropriate on-site investigation, not merely on available literature. Predictions of ground acceleration must take into account the specific soil and rock conditions underlying the site. Likewise, the applicant's assessment of the site's potential for non-earthquake related hazards must be based on actual site examination. The Council looks for evidence that the applicant has fully characterized the site in terms of stability. If there are unstable or erosion-prone soils, the Council looks for evidence that the applicant will use proper engineering techniques to compensate. In our experience, most conscientious design engineers do this kind of work prior to construction. The Council uses this information to determine if a site is suitable for the proposed facility.

The Council will consult with the Oregon Department of Geology and Mineral Industries (DOGAMI) in reviewing the application for compliance with the Structural Standard. Applicants should contact DOGAMI before submitting a Preliminary Application and request guidance regarding appropriate on-site investigation and preparing geotechnical reports. Guidance from DOGAMI is especially worthwhile if the proposed site is in an area that may have elevated seismic hazards.

Applicants should provide the information needed to show compliance with this standard in Exhibit H of the site certificate application, with attachments as needed.

Guidelines for Applicants

By statute, the Council cannot use the Structural Standard to deny a site certificate for a “special criteria facility” (see discussion below at page 40) or for a facility that would produce power from wind, solar or geothermal energy (ORS 469.373 and 469.501). Nevertheless, the Council may impose site certificate conditions based on this standard for those types of energy facilities.

(4) Soil Protection

345-022-0022

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.

What this standard accomplishes:

While the Structural Standard is aimed at hazards affecting the site and the facility, the Soil Protection Standard requires the applicant to consider problems such as erosion and drainage that could also affect land in the surrounding area. Some counties have erosion and drainage control ordinances as part of their land use requirements. In these counties, the information required under this standard will also apply to the Land Use Standard. In addition, this standard addresses the potential impacts on soils in the surrounding area from cooling tower drift and other forms of chemical deposition.

What the Council looks for in determining compliance:

Like the structural standard, this standard requires the applicant to describe the site in detail and in a site-specific way. Applicants should include information on the soil types that exist within the site boundary and their potential for erosion. The Council will expect to see measures that either prevent or mitigate the impacts on soils or evidence that the impacts are insignificant. Applicants should provide the information needed to show compliance with this standard in Exhibit I of the site certificate application.

(5) Land Use

345-022-0030

(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

Guidelines for Applicants

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:

(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[11](a)(C) to (E) or for a related or supporting facility that does not pass through more than one local government

Guidelines for Applicants

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.

What this standard accomplishes:

Although this standard is long and detailed, its purpose is simply to ensure that the proposed facility will comply with the land use planning goals adopted by the Land Conservation and Development Commission (LCDC) in OAR Chapter 660, Division 15, in conformance with Oregon law (ORS Chapter 197). The procedure for the Council's determination of compliance with the land use planning goals is governed by ORS 469.504. Applicants can choose whether to have the local government make the decision on land use compliance ("Path A") or have the Council make the land use decision ("Path B"). Applicants must choose Path A or Path B when they submit the Preliminary Application (ORS 469.504(4) and OAR 345-021-0010(1)(k)). Once the applicant has made that choice, the applicant may not amend the application to choose a different land use path.

Path A

Under Path A, the applicant must apply to the local government for the applicable land use permit. Using the procedures adopted by local ordinance, the local government will determine whether the proposed use of land for construction and operation of the facility complies with the local government's acknowledged comprehensive plan and land use regulations. The applicant must complete the local land use process before the Council issues the site certificate, and the Department will not issue a Draft Proposed Order before receiving documentation of the local land use decision.

If the local land use decision occurs before the applicant submits a Notice of Intent (or before the applicant submits a Preliminary Application, in the case of expedited review), then the local land use decision is subject to appeal to the Land Use Board of Appeals (LUBA). The Oregon Court of Appeals has jurisdiction for judicial review of LUBA decisions, and Court of Appeals decisions are reviewable by the Oregon Supreme Court. If the local land use decision occurs later (after the submission date of the NOI or Preliminary Application), then any appeal of the land use decision must follow the procedures for appeal of the site certificate decision as set forth in ORS 469.403.

If the proposed facility site extends across more than one local land use jurisdiction, the applicant must obtain the necessary land use approvals from each jurisdiction. If any local

Guidelines for Applicants

jurisdiction denies a land use permit, the applicant cannot apply for Council land use approval under Path B. In other words, the applicant's election of Path A is final when the applicant submits the Preliminary Application.

Path B

Under Path B, the Council makes the decision on compliance with the statewide planning goals. To carry out a Path B analysis, the Council must appoint a "Special Advisory Group" (ORS 469.480). By statute, the Special Advisory Group (SAG) is the governing body of any local government within whose jurisdiction the facility is proposed to be located. After receiving the Preliminary Application, the Department will contact the SAG and request the local government's "applicable substantive criteria." Applicable substantive criteria are 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 applicant submits a Preliminary Application to the Department (ORS 469.504(1)(b)(A) and OAR 345-021-0000).

Before submitting a Preliminary Application, applicants should contact the local government's land use planning department for information about the applicable substantive criteria that would apply to the proposed facility. Applicants should also address whether there are any Land Conservation and Development Commission (LCDC) rules and goals or any land use statutes directly applicable to the facility under ORS 197.646. LCDC rules or other state laws apply directly to the facility if local comprehensive land use plans and ordinances have not been updated to conform to current law. Applicants should provide a detailed land use analysis in Exhibit K of the site certificate application.

The Department reviews the site certificate application and makes recommendations to the Council on whether the proposed facility complies with the applicable substantive criteria and any directly applicable state land use laws. If the facility meets these requirements, then the Council may conclude that the facility complies with the statewide planning goals. If the facility does not comply with one or more of the criteria, then further analysis is required. The Department will assess whether the facility otherwise complies with the applicable statewide planning goals or whether an exception to any applicable statewide planning goal is justified. In deciding whether an exception is justified, the Council applies the criteria in ORS 469.504(2). The statutory exception criteria are included in OAR 345-022-0030(4).

Paragraph (5) of the Council's Land Use Standard addresses conflicts between the applicable substantive criteria recommended by the SAG and state statutes or administrative rules. The Council must resolve such conflicts consistent with the public interest, but the Council cannot override any state statute.

Paragraph (6) of the Land Use Standard addresses the special case in which an energy facility has a site that lies in more than one jurisdiction or in more than three zones in any one jurisdiction. This paragraph applies to jurisdictional transmission lines, solar collecting facilities and pipelines. In these special cases, the Council can choose to evaluate the proposed facility against the recommended applicable substantive criteria, against the statewide planning goals directly or against a combination of the applicable substantive criteria and statewide planning goals, subject to the requirements of ORS 469.504(5).

Guidelines for Applicants

Under ORS 469.403, the Oregon Supreme Court has exclusive jurisdiction for judicial review of the Council's land use decision.

What the Council looks for in determining compliance:

Applicants should include the information necessary to show compliance with the Land Use Standard in Exhibit K of the site certificate application. Applicants must state their choice of Path A or Path B in the Preliminary Application. If the applicant chooses Path A, the applicant must provide documentation of the local land use decision. If the applicant chooses Path B, the application must include information about the proposed facility in sufficient detail to support Council findings on compliance with each applicable substantive criterion contained in the local ordinances or comprehensive land use plan. If the proposed facility affects land use in more than one jurisdiction, the application should separately address the applicable substantive criteria of each jurisdiction.

Local ordinances often require that a proposed use be compatible with the primary land use in the affected zone. It is not sufficient for applicants to assert that the proposed facility would be compatible or that it would have minimal impact on adjacent uses. The application should describe the existing uses on or near the site and the proposed facility's likely impact and then provide facts that show why the proposed use is compatible.

If it appears that the proposed facility might not comply with one or more of the applicable substantive criteria, then the application should provide an analysis of compliance with the applicable statewide planning goals. If it appears that the proposed facility might need an exception to a planning goal, the application should provide an analysis of the exception criteria in ORS 469.504(2) and explain why an exception is justified.

(6) Protected Areas

345-022-0040

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

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

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

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

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

Guidelines for Applicants

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

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

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

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

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

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

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

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

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

Coastal Oregon Marine Experiment Station, Astoria

Mid-Columbia Agriculture Research and Extension Center, Hood River

Agriculture Research and Extension Center, Hermiston

Columbia Basin Agriculture Research Center, Pendleton

Columbia Basin Agriculture Research Center, Moro

North Willamette Research and Extension Center, Aurora

East Oregon Agriculture Research Center, Union

Malheur Experiment Station, Ontario

Eastern Oregon Agriculture Research Center, Burns

Eastern Oregon Agriculture Research Center, Squaw Butte

Central Oregon Experiment Station, Madras

Central Oregon Experiment Station, Powell Butte

Central Oregon Experiment Station, Redmond

Central Station, Corvallis

Coastal Oregon Marine Experiment Station, Newport

Southern Oregon Experiment Station, Medford

Klamath Experiment Station, Klamath Falls;

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

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

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

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

Guidelines for Applicants

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

(3) The provisions of section (1) do not apply to transmission lines or natural gas pipelines routed within 500 feet of an existing utility right-of-way containing at least one transmission line with a voltage rating of 115 kilovolts or higher or containing at least one natural gas pipeline of 8 inches or greater diameter that is operated at a pressure of 125 psig.

What this standard accomplishes

This standard prohibits construction of energy facilities within protected areas, including national and state parks, national monuments and other areas deemed by the Council to have special scenic, natural or environmental value. It also ensures that energy facilities will have no significant adverse impact if sited near protected areas. The standard provides exceptions for special cases (primarily transmission lines or pipelines) where there is no better alternative.

What the Council looks for in determining compliance:

Applicants should identify and map the locations of all protected areas in the analysis area. Applicants should show that the proposed energy facility and its related or supporting facilities would not be built within a protected area. Applicants should provide evidence that the proposed facility would have no significant adverse impact on any protected area, either because the facility is inherently low in impact or because the applicant proposes mitigation. The applicant should address not just direct impacts but also downstream impacts such as air and water quality. If exceptionally high air and water quality are essential to the protected area, the Council may require detailed information about the facility's potential impacts, even if the facility will have Air Contaminant Discharge or National Pollutant Discharge Elimination System (NPDES) permits. Applicants should provide the information needed to show compliance with this standard in Exhibit L of the site certificate application.

(7) Retirement and Financial Assurance

OAR 345-022-0050

To issue a site certificate, the Council must find that:

(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.

What this standard accomplishes:

This standard ensures that the applicant can restore the site at the end of the facility's useful life. It also protects against the risk that a large construction project will stop in a partially

Guidelines for Applicants

completed state, leaving an abandoned construction site and no funds for site restoration. A mandatory site certificate condition makes the site certificate holder responsible for clean-up of any hazardous material generated by the facility and for restoration of the site to a useful condition (OAR 345-027-0020(9)).

The standard requires applicants to demonstrate the ability to obtain financial assurance (a bond or letter of credit) in an amount sufficient to cover the cost of site restoration. The applicant does *not* have to show adequate funding to build the facility, but needs only show that it can obtain a bond or letter of credit in an amount sufficient to restore the site.

A mandatory site certificate condition requires the certificate holder to obtain financial assurance satisfactory to the Council before beginning construction of the facility and to maintain the financial assurance during the life of the facility. Additional conditions provide for annual adjustment of the financial assurance amount to account for inflation or changes in the facility. The financial assurance is not to be used by the certificate holder in meeting its own obligation to restore the site; rather, its purpose is to provide funds needed for the State to restore the site if the certificate holder fails to meet its obligation.

What the Council looks for in determining compliance:

The applicant must explain how it proposes to restore the site. The Council will decide whether the proposed restoration would leave the site in a useful, non-hazardous condition. The applicant must estimate site restoration costs. The applicant must explain the basis for the cost estimate why the estimate is reasonable. The cost estimate must address whether a difference in cost would occur if construction or operation ends prematurely compared with the case where the facility operates until the end of its useful life.

The Department will review the applicant's cost estimate using a standard cost estimating procedure (Facility Retirement Cost Estimating Guide) and will recommend to the Council a financial assurance amount based on a reasonable estimate of retirement costs using "highest-cost" assumptions. The site certificate conditions may allow a reduction of the financial assurance amount based on the final design configuration of the facility. Nevertheless, the applicant must provide evidence that it can obtain financial assurance in the amount that the Department recommends as sufficient to cover the cost of site restoration based on "highest-cost" assumptions. Applicants should provide the information needed to show compliance with this standard in Exhibits M and W of the application.

In considering whether the applicant can meet paragraph (2) of the standard, the Council will consider the financial strength of the proposed issuer of the bond or letter of credit. The Council, for example, may consider ratings by major rating services such as Standard & Poor's or Moody's.

(8) Fish and Wildlife Habitat

345-022-0060

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 the fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025 in effect as of September 1, 2000.

Guidelines for Applicants

What this standard accomplishes:

This standard applies the Oregon Department of Fish and Wildlife (ODFW) Habitat Mitigation Policy to the proposed facility. The ODFW policy defines six habitat categories and establishes mitigation goals and standards within each category. The applicant must propose mitigation of the habitat impacts. Mitigation must be consistent with ODFW standards. Applicants can find the definitions of the ODFW habitat categories and the applicable mitigation goals and standards in OAR 635-415-0025.

Category 1 habitat is essential and irreplaceable. Applicants must show that the proposed energy facility would avoid any impact to Category 1 habitat. If a proposed site includes Category 1 habitat, the applicant should contact ODFW before submitting the Preliminary Application.

What the Council looks for in determining compliance:

The applicant should complete appropriate site-specific studies to characterize the fish and wildlife habitat within the analysis area. Applicants should describe and map habitat by category. Maps should be prepared in sufficient detail (at a scale of 1 inch = 2000 feet or smaller) to show the areas that would be affected by the proposed facility. In some cases, the proper designation of habitat category will depend on the species that use the habitat. For this reason, the applicant should identify any State-listed Sensitive Species (fish or other wildlife) and any State-listed Candidate plant species that may occur within the analysis area. Surveys for these species must be done in the appropriate season of the year to detect the species.

The applicant should propose measures to avoid or minimize impact on high-value habitat. For habitat impacts that cannot be avoided, the applicant should propose a habitat mitigation plan. The ODFW mitigation standards require “reliable in-kind or out-of-kind, in-proximity or off-proximity” habitat mitigation measures, depending on the habitat category affected by the proposed facility (see the ODFW definitions of these terms in OAR 635-415-0005). The habitat mitigation plan may require setting aside and improving other land for fish and wildlife habitat to make up for the habitat affected by the facility.

The Department reviews this part of the application in consultation with ODFW. Historically, the Council gives high weight to ODFW’s comments and recommendations. Applicants are encouraged to consult with ODFW and should not wait until they submit their application to initiate relevant biological surveys. If the site is known to include areas of important habitat value, the applicant should perform site surveys and provide wildlife and habitat information during the NOI phase. Applicants should include the information needed to show compliance with this standard primarily in Exhibit P of the site certificate application. The application should include related information about threatened and endangered species in Exhibit Q and about wetlands and other waters in Exhibit J.

(9) Threatened and Endangered Species

345-022-0070

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:

Guidelines for Applicants

(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.

What this standard accomplishes:

Through the Threatened and Endangered Species Standard (often abbreviated as the “T&E Standard”), the Council seeks to protect plant and animal species identified as threatened or endangered by the State of Oregon. The Oregon Department of Fish and Wildlife is the agency responsible for listing Oregon’s threatened and endangered fish and wildlife species. The Oregon Department of Agriculture is the agency responsible for listing Oregon’s threatened and endangered plant species.

The T&E Standard addresses State-listed plant or animal species, but applicants should, in addition, identify any federally-listed threatened and endangered species that may occur within the analysis area and any federal “Candidate” species or “Species of Concern.” Certificate holders must comply with all applicable federal laws, including laws that protect plant and wildlife species.

What the Council looks for in determining compliance:

The applicant should complete the appropriate studies in the analysis area to identify special-status species that could occur in the area. If the proposed facility could adversely affect State or federally-listed animal species, the applicant should consult with ODFW and the U.S. Fish and Wildlife Service for guidance on appropriate mitigation measures. For plant species, the applicant should contact the Oregon Department of Agriculture. If a potential risk to the survival or recovery of a threatened or endangered species exists, the applicant must redesign or relocate the facility to avoid that risk or take appropriate mitigation measures. Applicants should include the information needed to show compliance with this standard in Exhibit Q of the site certificate application.

(10) Scenic Resources

345-022-0080

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

(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).

Guidelines for Applicants

However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

What this standard accomplishes:

This standard protects scenic resources that local governments, tribes or federal land management agencies have identified as significant or important.

What the Council looks for in determining compliance:

To decide whether the proposed facility would comply with the Scenic Resources Standard, the Council must first determine whether the applicable land use or land management plans within the analysis area identify significant or important scenic resources and values. The Council must then decide whether the proposed facility could be visible from areas addressed by those plans and, if so, whether the visual impact of the proposed facility would result in significant adverse impact to the identified scenic resources and values.

Applicants should identify applicable land use and land management plans for the lands within the analysis area. The application should address any scenic resources identified in such plans and should include the relevant text of the plans. Ideally, applicants can show that the proposed facility would have no impact on important scenic values, either because of distance or because the facility is inherently low in visual impact. Failing that, the Council looks for evidence that the applicant will mitigate scenic impacts. Applicants should provide the information needed to show compliance with this standard in Exhibit R of the site certificate application.

By statute, the Council cannot use the Scenic Resources Standard to deny a site certificate for a “special criteria facility” (see discussion below at page 40). Nevertheless, the Council may impose site certificate conditions based on this standard for those energy facilities.

(11) Historic, Cultural and Archaeological Resources

345-022-0090

(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.

Guidelines for Applicants

What this standard accomplishes:

This standard protects the public interest in preserving places that have historic, cultural or archeological significance. This standard protects sites of historic or religious importance to Native American tribes in Oregon. The standard protects historic and cultural artifacts and prevents permanent loss of the archaeological record unique to particular sites in the state.

What the Council looks for in determining compliance:

The Council reviews the application to see whether the applicant has conducted appropriate surveys at the proposed site to identify and avoid places of historic, cultural or archaeological significance. Typically, a site certificate condition will require ground-disturbing activities to stop if previously unidentified archaeological or cultural resources are discovered during construction, until a qualified archaeologist can examine the site. Oregon law requires this site certificate condition (ORS 358.920).

If construction of the proposed facility could adversely affect an historic, cultural or archaeological site or resource, the applicant should contact the State Historic Preservation Officer (SHPO) for guidance on appropriate mitigation measures. If the project involves construction on an archaeological site, then the applicant may need an archaeological permit from the SHPO.

Applicants should provide non-confidential information needed to show compliance with this standard in Exhibit S of the site certificate application. Information concerning the location of archaeological sites or objects may be exempt from public disclosure under ORS 192.502(4) or ORS 192.501(11). The applicant should submit any reports containing such information as confidential submissions that are separate from the site certificate application. Applicants should clearly mark these documents as “confidential” and should request that the Department and the Council keep the information confidential to the extent permitted by law.

By statute, the Council cannot use the Historic, Cultural and Archaeological Resources Standard to deny a site certificate for a “special criteria facility” (see discussion below at page 40) or for a facility that would produce power from wind, solar or geothermal energy (ORS 469.373 and 469.501). Nevertheless, the Council may impose site certificate conditions based on this standard for those types of energy facilities.

(12) Recreation

345-022-0100

(1) Except for facilities described in section (2), to issue a site certificate, the Council must find that the design, construction and operation of a facility, taking into account mitigation, are not likely to result in a significant adverse impact to important recreational opportunities in the analysis area as described in the project order. The Council shall consider the following factors in judging the importance of a recreational opportunity:

- (a) Any special designation or management of the location;
- (b) The degree of demand;
- (c) Outstanding or unusual qualities;
- (d) Availability or rareness;
- (e) Irreplaceability or irretrievability of the opportunity.

Guidelines for Applicants

(2) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

What this standard accomplishes:

This standard ensures that a proposed facility will not have adverse impacts to significant recreational opportunities in the analysis area.

What the Council looks for in determining compliance:

The Council must decide whether construction or operation of the proposed facility would adversely affect important recreational opportunities at the site or in the surrounding area, considering the factors listed in the standard. The applicant must identify the recreational opportunities in the analysis area. The applicant should describe the recreational opportunities in the area by providing information on the factors listed in the rule. The applicant must describe the impact the facility could have on those recreational activities. Applicants should provide the information needed to show compliance with the Recreation Standard in Exhibit T of the site certificate application.

The Council will determine whether a recreational opportunity is “important” and whether the impact of the proposed facility would be significant. The Council may impose site certificate conditions to avoid or reduce the impact. A site certificate condition might require the certificate holder to develop alternate recreational opportunities in the area. In assessing the importance of a recreational opportunity, the Council will consider comments from the local land use authority.

By statute, the Council cannot use the Recreation Standard to deny a site certificate for a “special criteria facility” (see discussion below at page 40). Nevertheless, the Council may impose site certificate conditions based on this standard for those energy facilities.

(13) Public Services

345-022-0110

(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.

(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.

Guidelines for Applicants

What this standard accomplishes:

This standard seeks to prevent adverse impacts on the ability of communities within the analysis area to deliver critical services. The standard is limited to analysis of the facility's impact on the services identified in the standard.

What the Council looks for in determining compliance:

Applicants should identify the providers of public services (sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools) in the analysis area. The Council looks for an assessment of the proposed facility's needs for water and for disposal of wastewater, stormwater and solid waste during construction and operation. In addition, the applicant should address all temporary or permanent impacts on housing, traffic safety, police and fire protection, health care, and schools, based on the expected population increases in local communities resulting from construction and operation of the facility. If it appears that the proposed facility could have significant impacts on public services, the applicant should propose mitigation. In assessing whether the impacts would be significant, the Council will consider any comments from affected local governments, fire or police departments, school districts and health care agencies. Applicants should provide the information to show compliance with this standard in Exhibit U of the site certificate application.

By statute, the Council cannot use the Public Services Standard to deny a site certificate for a "special criteria facility" (see discussion below at page 40) or for a facility that would produce power from wind, solar or geothermal energy (ORS 469.373 and 469.501). Nevertheless, the Council may impose site certificate conditions based on this standard for those types of energy facilities.

(14) Waste Minimization

345-022-0120

(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.

Guidelines for Applicants

What this standard accomplishes:

This standard ensures that the applicant will reduce solid waste and wastewater generated by construction and operation of the proposed facility. The standard requires the certificate holder to recycle wastes, if possible, or otherwise dispose of wastes properly. The Council has applied this standard to encourage developers to use state of the art techniques to reduce their consumptive use of water, especially in Eastern Oregon.

What the Council looks for in determining compliance:

The Council looks for an evaluation of the types of waste products produced during construction and operation of the proposed facility and for an estimate of amounts or volume of waste products. The applicant must propose appropriate methods to handle the waste through collection, storage and disposal. Applicants are encouraged to reduce the amount of waste generated and dispose of waste in a responsible manner. Applicants should provide the information needed to show compliance with this standard in Exhibits O and V of the site certificate application.

By statute, the Council cannot use the Waste Minimization Standard to deny a site certificate for a “special criteria facility” (see discussion below at page 40) or for a facility that would produce power from wind, solar or geothermal energy (ORS 469.373 and 469.501). Nevertheless, the Council may impose site certificate conditions based on this standard for those types of energy facilities.

B. The Division 23 Standards

Division 23 contains the Council’s “need” standards. Applicants for electric transmission lines, gas pipelines or liquefied natural gas (LNG) storage facilities with capacity of 3 million gallons or more must demonstrate that there is a need for the proposed facility. By statute, the Council may not adopt a “need” or “cost-effectiveness” standard for electric generating plants (ORS 469.501).

Division 23 contains three methods for demonstrating that a facility is needed. Under the “Least-Cost Plan” rule (OAR 345-023-0020), applicants can comply with the standard by showing that the proposed facility’s capacity is identified in a Least Cost Plan acknowledged by the Oregon Public Utilities Commission (OPUC). If there is no OPUC-acknowledged Least Cost Plan, applicants can demonstrate compliance with the standard if the proposed facility’s capacity is identified in a short term action plan of an energy resource plan adopted by a public utility district or other governmental body that makes or implements energy policy. The energy resource plan must meet the criteria listed in OAR 345-023-0020(1)(a) through (L).

Applicants for transmission line facilities have other options for demonstrating compliance with the need standard. Applicants can show that a transmission line is needed by using the “System Reliability Rule” (OAR 345-023-0030) or by demonstrating that the transmission line is proposed to be located within a National Interest Electric Transmission Corridor.

Applicants for jurisdictional pipelines or storage facilities for liquefied natural gas can demonstrate need using the Least-Cost Plan Rule or the “Economically Reasonable Rule” (OAR 345-023-0040).

Each of the methods for demonstrating need involves detailed analysis. The issues of system reliability and energy supply and demand are complex. Applicants are encouraged to discuss these questions with the Department before submitting a Preliminary Application.

C. The Division 24 Standards

OAR Chapter 345 Division 24 has additional standards for specific types of facilities. Generally, the standards in Division 24 protect public health and safety.

(1) Specific Standards for Wind Facilities

345-024-0010

Public Health and Safety Standards for Wind Energy Facilities

To issue a site certificate for a proposed wind energy facility, the Council must find that the applicant:

- (1) Can design, construct and operate the facility to exclude members of the public from close proximity to the turbine blades and electrical equipment.
- (2) Can design, construct and operate the facility to preclude structural failure of the tower or blades that could endanger the public safety and to have adequate safety devices and testing procedures designed to warn of impending failure and to minimize the consequences of such failure.

345-024-0015

Siting Standards for Wind Energy Facilities

To issue a site certificate for a proposed wind energy facility, the Council must find that the applicant can design and construct the facility to reduce cumulative adverse environmental effects in the vicinity by practicable measures including, but not limited to, the following:

- (1) Using existing roads to provide access to the facility site, or if new roads are needed, minimizing the amount of land used for new roads and locating them to reduce adverse environmental impacts.
- (2) Using underground transmission lines and combining transmission routes.
- (3) Connecting the facility to existing substations, or if new substations are needed, minimizing the number of new substations.
- (4) Designing the facility to reduce the risk of injury to raptors or other vulnerable wildlife in areas near turbines or electrical equipment.
- (5) Designing the components of the facility to minimize adverse visual features.
- (6) Using the minimum lighting necessary for safety and security purposes and using techniques to prevent casting glare from the site, except as otherwise required by the Federal Aviation Administration or the Oregon Department of Aviation.

What these standards accomplish:

OAR 345-024-0010 ensures that wind energy facilities will be built and operated with safeguards to protect the public from risks of electrocution or of coming in contact with turbine blades. Unlike some types of generating facilities that can be secured from public access by means of perimeter fencing, wind energy facilities consist of groups of individual generating

Guidelines for Applicants

devices (wind turbines) spread out over a large geographic area. Although wind facilities are typically located on private property, the facilities often involve multiple landowners and sites that are crossed by public roads. Although fencing is usually impractical, applicants should design the facility to avoid risks to public safety.

OAR 345-024-0015 addresses the issue of cumulative impacts of wind energy facilities. As the number of wind turbines on the landscape has grown in recent years, especially in the Columbia Plateau region of Oregon and Washington, questions have been raised about whether the cumulative effect of multiple wind facilities could have adverse impacts that might not be adequately addressed by analysis of the impacts of a single facility. Currently, there are few analytical studies of cumulative effects and limited available data from region. At this time, therefore, the nature, extent and significance of cumulative effects of operating wind energy projects are highly speculative issues. Nevertheless, the Council has adopted OAR 345-024-0015 to ensure that applicants will include an assessment of cumulative effects in the site certificate application that is based on the best available information at the time the application is submitted. As more becomes known about cumulative impacts, the Council will be better able to evaluate wind facility applications and adopt appropriate site certificate conditions. If needed, the Council may amend this standard in the future.

What the Council looks for in determining compliance:

Applicants should provide the information needed to demonstrate compliance with OAR 345-024-0010 and OAR 345-024-0015 in Exhibit DD of the site certificate application. Applicants may choose to cross-reference other parts of the application for relevant information, such as Exhibits B (facility description), P (habitat impacts) and R (visual impacts). Applicants should describe proposed facility features designed to avoid or reduce the risks to public safety addressed in OAR 345-024-0010. In addressing OAR 345-024-0015, applicants should include an analysis of cumulative impacts, taking into account current available information about other wind energy projects in the region. Applicants should include citations to recent studies evaluating cumulative impacts and, if requested, provide copies of these studies to the Department. Applicants are encouraged to consult with the Oregon Department of Fish and Wildlife and the U.S. Fish and Wildlife Service, because historically these agencies have expressed concerns about cumulative impacts of wind energy development.

(2) Specific Standards for Surface Facilities and Transmission Lines

In OAR 345-024-0030, the Council has adopted safety standards that apply to surface facilities related to underground gas storage reservoirs. Specifically, the standards include setback distances from homes. In OAR 345-024-0090, the Council has adopted standards to protect the public from exposure to electric fields that exist around electric transmission lines and from the risk of shock from currents that may be induced in ungrounded structures below or near transmission lines. Applicants should provide the information needed to demonstrate compliance with these standards in Exhibit DD of the site certificate application.

(3) Carbon Dioxide Emissions Standards

In 1997, the Oregon Legislature enacted the nation's first standard to limit greenhouse gas emissions from power plants. ORS 469.503 established an initial carbon dioxide (CO₂) emissions standard applicable to base-load generating plants that are fueled by natural gas. The law gave the Council authority to modify the standard based on improvements in efficiency over time. The

Guidelines for Applicants

Council has authority to adopt CO₂ emissions standards for other types of fossil-fueled power plants. The Council has implemented the CO₂ emissions law through the rules in OAR 345-024-0500 through 345-024-0720.

Under the current rules, there are specific standards for base-load gas plants, non-base load (peaking) power plants and non-generating energy facilities that emit CO₂. For generating plants, the standard for net emissions is a rate of 0.675 pounds of CO₂ per kilowatt-hour of net electric power output. For nongenerating facilities, the standard is a rate of 0.504 pounds of CO₂ per horsepower-hour.

The standard for base-load gas plants applies only to natural gas-fired plants. The Council has not yet set CO₂ emissions standards for base-load power plants using other fossil fuels. The standards for non-base load plants and non-generating facilities apply to all fossil fuels.

Some base-load facilities use power augmentation technologies (such as duct burning) that increase both the generating capacity and heat rate of a base-load gas plant. For the portion of operating hours when power augmentation is in use, the Council treats the facility as if it were a non-base load plant. The calculations used to determine total CO₂ emissions for generating facilities that use power augmentation incorporate both base-load and non-base load methods, and a site certificate for such a facility would contain conditions specific to the two modes of operation.

The calculations for compliance with the standard account for the efficiency of the facility. Generating plants have the option of offsetting part or all of their excess CO₂ emissions through cogeneration (ORS 469.503(2)(c)(A)).

To demonstrate compliance with the CO₂ standard, applicants can either propose CO₂ offset projects that the certificate holder (or a third party) will manage (ORS 469.503(2)(c)(B)), or they can provide funds via the “monetary path” to a “qualified organization” (ORS 469.503(2)(c)(C)). The Council recognizes The Climate Trust as a qualified organization. The Climate Trust takes responsibility for obtaining offsets when an applicant uses the monetary path. Once a site certificate holder has provided adequate funds to The Climate Trust (as determined according to conditions in the site certificate), the certificate holder has met its obligations under the CO₂ standard. Information about The Climate Trust is available at www.climatetrust.org.

Applicants who are planning to build facilities that will emit carbon dioxide should indicate in the NOI the compliance path they plan to take. The calculations to show the required offsets and offset fund amounts are detailed. The Department has spreadsheets for calculating carbon dioxide emissions for different plant configurations. Before submitting a Preliminary Application, applicants should consult with the Department for further information. Applicants should provide the information needed to show compliance with the Carbon Dioxide Emissions Standard in Exhibit Y of the application.

D. Protecting Public Health and Safety

Oregon statutes authorize the Council to have standards protecting public health and safety and require that each site certificate contain conditions for protecting public health and safety. Although there is no standard entitled “public health and safety,” protection of public health and safety is inherent in several of the standards. The Structural Standard, the Soil Protection Standard and the specific standards listed in Division 24 are primarily safety standards or have

Guidelines for Applicants

safety elements. The Public Services standard protects public health and safety by addressing police and fire protection and emergency medical services. In addition, the Council has statutory responsibility to monitor research on the safety of low frequency electric and magnetic fields (ORS 469.480).

Members of the local community can bring up any safety concerns that are not specifically addressed in standards, either by raising them at the public meetings or by commenting in writing. If public comments make a convincing case that a serious public safety concern is inadequately addressed by current standards, the Council can address the concern through conditions or a special rulemaking. In the past, the Council has used its public safety authority broadly to condition site certificates to address issues such as road icing (from cooling tower evaporation), proper storage of chemicals, electric and magnetic fields from transmission lines and emergency planning (related to the Umatilla Army depot).

II. Standards and Requirements of Other Agencies

A. The General Standard of Review

The General Standard of Review, OAR 345-022-0000, requires applicants to comply with all applicable Oregon statutes and rules, including those of agencies other than the Council. The rule requires the Council to consult with the other agencies in determining compliance with this rule. Permits administered by other agencies (such as the water rights normally administered by the Water Resources Department or Removal/Fill permits normally administered by the Department of State Lands) are issued under a finding of compliance with this rule.

B. The Role of the Project Order

How does the Council determine what state statutes and rules are applicable? It relies, in part, on the other agencies. Except when a proposed facility is eligible for expedited review, the review process begins with an NOI, which describes the facility in very general terms. State agencies and affected local governments will review the NOI. This review is not intended to determine compliance, but to identify the applicable statutes, rules and necessary permits. The Department then compiles a list of statutes, rules and permitting requirements of the other agencies and includes the list in the Project Order. The Project Order becomes the basis for the application and for the Council's review.

If an applicable statute or rule is missing from the Project Order, it still applies. The Council or the Department can amend the Project Order at any time (ORS 469.330).

C. How the Council Determines Compliance with Requirements of Other Agencies

The Council relies on staff reports from the responsible agencies in determining whether the applicant has provided adequate information to meet the requirements of those agencies. The Department will request that all affected agencies review the application and provide the Council with the agency reports that are described in OAR 345-015-0200. The Council will normally agree with the recommendations of the responsible agencies unless it has good reason not to.

Although the agencies review the application for compliance with their own rules, the site certificate process is still different from a decentralized one. Three chief differences are:

Guidelines for Applicants

1. If there is a challenge from a member of the public about a requirement of another agency, then the Council runs the contested case and makes the final decision.
2. Procedural matters such as public notice, hearings and review schedule are all governed by Council rules rather than the rules of the other agencies. The timetable for Council review of energy facilities may be different from the timetable for other reviews.
3. Appeals for judicial review go directly to the Oregon Supreme Court.

D. Examples of Requirements Included in the Site Certificate Process

Some of the permits and agency standards that the Council reviews in connection with siting energy facilities include those listed below. These are not all the requirements of other agencies that could fall under Council jurisdiction, but they are the ones the Council has run into most frequently.

(1) Noise

The Department of Environmental Quality (DEQ) has adopted noise standards in OAR Chapter 340. There is no DEQ noise permit, but the DEQ noise standards apply to all industrial facilities. The Council applies the DEQ noise standards in siting energy facilities and requires noise information in Exhibit X of the application.

(2) Wetlands and Other Waters of the State

Some facilities need a Removal/Fill permit from the Department of State Lands (DSL). For these facilities, the Council performs the review using DSL criteria. It does so in consultation with DSL staff and usually accepts DSL's recommendations. Applicants should address the need for a Removal/Fill permit in Exhibits E and J of the application.

(3) Water Pollution Control Facility (WPCF)

The WPCF permit is a DEQ permit that is not federally delegated. The Council reviews WPCF permit information using DEQ's criteria. The Council does this review in consultation with DEQ and usually accepts DEQ's recommendations. Applicants should address the need for a WPCF permit in Exhibits E and V of the application.

(4) Water Rights

If the facility will need a new water right, water right transfer or a temporary water right, the Council will determine whether the water right should be issued based on criteria adopted by the Water Resources Department (WRD). The Council reviews the application in consultation with WRD and usually accepts WRD's recommendations. Applicants should include information about water use and water rights in Exhibits E and O of the application.

E. State Requirements that Are Not Included in the Site Certificate Process

Certain permits are outside Council jurisdiction (ORS 469.401(4)). Permits that the federal government has delegated to a state agency other than the Council are outside the site certificate process. For example, the federal Air Contaminant Discharge and National Pollutant Discharge Elimination System (NPDES) permits are delegated to the Department of Environmental Quality

(DEQ). Although these two classes of permits are separate from the site certificate, ORS 469.505 requires the Council and DEQ to hold hearings jointly when this is feasible.

The siting process excludes permits related to detailed design and operation specifications, such as local building permits and special permits required by county road departments. This is practical, because most applicants cannot proceed with detailed design drawings until the siting decision has been made. For that reason, these agencies issue their permits separately from the Council.

F. Federal Permit Applications

By Council rule (OAR 345-021-0000), applicants must provide copies of federal permit applications to the Department along with the application for a site certificate. This requirement applies even though the Council does not have jurisdiction over federal permits. If the proposed facility is a special criteria facility that qualifies for expedited review under ORS 469.373, the applicant need not submit an NPDES permit application that will be obtained by a municipality, but that is the only exception. The Department has found that it often needs the information in federal permit applications to support findings of compliance with Council standards.

Part 3 – THE SITING PROCESS

The Council's standard review process begins when an applicant submits a Notice of Intent (NOI). Figure 1, included at the end of this document, illustrates the standard review process. OAR Chapter 345, Division 20, describes the requirements for an NOI and the steps in the NOI process that are the applicant's responsibility.

The Council's expedited review process begins when an applicant submits a Request for Expedited Review. Oregon statutes require the Council to have a process for expedited review in two situations. ORS 469.370 requires expedited review for small-capacity facilities (energy facilities with an average electric generating capacity of less than 100 MW). Figure 2 illustrates the small-capacity expedited review process. ORS 469.373 requires expedited review for generating facilities that meet certain criteria listed in the statute. Figure 3 illustrates the expedited review process for special criteria facilities. Section III below at page 39 provides additional information about expedited review.

The standard review process and the expedited review processes share many of the same procedural steps. These procedural steps are described in OAR Chapter 345, Division 15. The application requirements for standard and expedited review are the same. Division 21 describes the application requirements and the steps in the application process that are the applicant's responsibility.

I. Notice of Intent

ORS 469.330 requires applicants to submit an NOI. As described in OAR 345-020-0011, the NOI provides information about the facility, the proposed site and the potential impacts. If the proposed facility is eligible for expedited review, an NOI is not required.

The NOI enables the Department and other state agencies to identify the issues and decide if they need additional staff or special consultants. The Department also uses the NOI to gather

Guidelines for Applicants

public comment on the proposed facility. The public and agency comments on the NOI alert the applicant to issues that the applicant can address early in the process.

Applicants should begin informal discussions with the Department before submitting an NOI. These early discussions allow time for planning and identification of issues. Applicants should also begin discussions with local land use agencies and agencies such as DEQ whose permits are outside Council jurisdiction.

In some cases, applicants will need to begin baseline studies of the proposed facility site before submitting the NOI. Some permits that are outside Council jurisdiction also require baseline data that the applicant must gather in advance and over a sufficient period to take into account seasonal and other fluctuations (for instance, a DEQ air quality permit application will typically require 12 months of baseline air quality data). Similarly, water quality in surface or ground waters that undergo seasonal changes would require seasonal data. An isolated body of water, such as in a confined underground aquifer, might be characterized in less time if the water quality is fairly constant. Studies for threatened and endangered species and wildlife habitat typically must be done at specific times of year when qualified investigators can detect the presence of species.

A. General NOI Requirements

OAR 345-020-0011 describes the information that an applicant must include in the NOI. The NOI must describe the project proposed for construction, the proposed site and the potential impacts of development in enough detail for the Department and other agencies to identify the applicable statutes, regulations and local ordinances. Proposed routes for linear facilities, such as gas pipelines or electric transmission lines, should be shown on maps in enough detail for local governments to identify the applicable local land use criteria. NOI Exhibit I must state whether the applicant intends to demonstrate compliance with statewide planning goals via Path A or Path B, although the applicant's choice of the land use path does not become final until the applicant submits the Preliminary Application.

The format of an NOI closely tracks the format of the application itself, and many of the information requirements are the same, although the NOI has less detail. At the NOI stage, the Council does not expect that applicants will have information in the same level of detail as would be needed for the application. Nevertheless, applicants should include as much information as is known about the proposed facility at the time of submitting the NOI.

The applicant must submit an original plus ten copies of the NOI to the Department (OAR 345-020-0011(3)). In addition to the printed copies, the applicant must submit the NOI in electronic format. OAR 345-020-0040 requires the applicant to distribute the NOI to the reviewing agencies (see definition of "reviewing agency" in OAR 345-001-0010), together with a memorandum from the Department, as described in OAR 345-015-0120. If the NOI does not provide enough detail for state agencies to identify their applicable requirements, the Department may request supplemental information in writing.

Exhibit E of the NOI must include a list of permits that the applicant believes are applicable. The applicant should consult with state and local agencies to identify these requirements. Exhibit F of the NOI must include a list of affected property owners. The Department will notify these affected property owners about the proposed facility (OAR 345-015-0110). If the facility includes pipelines or transmission lines then this list must include

Guidelines for Applicants

property owners along each identified corridor (see below). Although it is optional under Council rules, the Department typically will hold at least one public information meeting in a location near the proposed facility after the applicant has submitted an NOI.

B. Corridor Selection for Linear Facilities

If the proposed energy facility is a jurisdictional transmission line or gas pipeline as defined in ORS 469.300 (or if the proposed facility has a related or supporting transmission line or pipeline that would be a jurisdictional facility by itself), Exhibit D of the NOI must identify at least two alternative corridors, or explain why only a single corridor can meet the applicant's needs and satisfy the Council's standards. The NOI must provide all required information (NOI Exhibits E, G, I, J, K, N and P) on each alternative corridor.

During the NOI review, the Department will take comments on corridor selection from the public, interested agencies and local governments. The public can provide these comments either in writing or at the public information meeting for the NOI. If the application describes corridors that are in different locations, the Department may hold separate public information meetings near the different corridors. The applicant must consider the public comments when making its final corridor selection assessment for the application (see OAR 345-021-0010(1)(b)(D)).

If the proposed transmission line or gas pipeline would cross land zoned for exclusive farm use (EFU), then an alternatives analysis may be required under ORS 215.213 or 215.283 to demonstrate that the facility is necessary for public service. In 1999, the legislature adopted specific criteria that a facility must meet to be found "necessary for public service" in an EFU zone (ORS 215.275). The applicant must provide an analysis of these criteria whether the applicant chooses path A or path B, and the "necessary for public service" analysis is in addition to the corridor selection analysis required by the Council.

C. Fee for a Notice of Intent

The applicant must submit payment of the fee specified in the Council's fee schedule when the applicant submits an NOI to the Department. The fee schedule is available from the Department's website (see "Fee Schedule" link at www.oregon.gov/ENERGY/SITING/process.shtml).

Under ORS 469.421, applicants must pay "all expenses incurred by the Energy Facility Siting Council, the State Department of Energy and the Oregon Department of Administrative Services related to the review and decision of the council." The Department will use the NOI fee to pay the actual expenses of NOI review. As provided in the statute, if actual costs are less than the fee paid, the Department will refund the balance to the applicant (in practice, applicants typically prefer to have the Department "roll" the funds over into the account for processing the application). If the actual costs of the NOI review exceed the fee paid at the time of submittal, the Department will invoice the applicant on a monthly basis as expenses are incurred and will notify the applicant as provided under the statute.

Payment should be made to "Oregon Department of Energy," and the stub, memo or ledger section of the check should reference the name of the proposed facility and the name of the applicant and should indicate that the payment is for "NOI review."

D. The Project Order

The Department and other agencies will use the NOI to identify applicable statutes and rules and to identify any special information needed for the site certificate application. The Department compiles this information in the Project Order. In addition, the Project Order defines or modifies the analysis areas for different types of impacts.

The Department typically issues the Project Order within 140 days after receiving the NOI. The applicant cannot submit a Preliminary Application until the Department has issued the Project Order (except under an expedited review, described below in Section III). Applicants may, however, submit the Preliminary Application in draft form before issuance of the Project Order.

II. Application for a Site Certificate

A. Preliminary Application

OAR 345-021-0010 describes the information that an applicant should include in an application for a site certificate (ASC). The Department can modify or supplement these requirements in the Project Order. The application is “preliminary” until the Department determines the application is complete.

The Preliminary ASC must describe, in as much detail as possible, the proposed facility, the proposed site and the potential impacts of construction and operation. The applicant should organize the ASC using the exhibit headings listed in OAR 345-021-0010 and should include information demonstrating how the proposed facility complies with the applicable standards. If the applicant has information that is important to the demonstration of compliance with a standard, the applicant should include that information in the ASC, whether or not it is specifically listed in OAR 345-021-0010 or the Project Order.

As required by OAR 345-021-0010(3), the applicant must submit an original plus ten copies of the Preliminary ASC to the Department. In addition to the printed copies, the applicant must submit the Preliminary ASC in electronic format. As required under OAR 345-021-0050, the applicant must distribute the Preliminary ASC to the reviewing agencies (see definition of “reviewing agency” in OAR 345-001-0010), together with a memorandum from the Department, as described in OAR 345-015-0180.

The Department reviews the Preliminary ASC and coordinates review by other state and local agencies. In preparation of the Preliminary ASC, applicants should work directly with state and local agencies to promote better understanding of their projects and to identify information that should be included in the application.

In Exhibit K of the ASC, the applicant must state which path will be used to demonstrate compliance with the Land Use Standard (see discussion above at page 11). Exhibit F of the ASC must include a list of affected property owners, updated to identify any changes in property ownership since the time the applicant submitted the NOI.

B. Corridor Selection Assessment

If the proposed energy facility is a jurisdictional transmission line or gas pipeline as defined in ORS 469.300 (or if the proposed facility has a related or supporting transmission line or pipeline that would be jurisdictional facility by itself), Exhibit B of the Preliminary ASC must

Guidelines for Applicants

identify the proposed corridor that the applicant has selected for the facility. The site certificate can include more than one corridor, but the ASC must document a detailed corridor selection assessment using criteria set forth in OAR 345-021-0010(1)(b)(D), including consideration of the comments from the public and interested agencies and local governments. An inadequate selection assessment can delay a finding that the ASC is complete.

C. Fee for an Application

Under ORS 469.421, applicants must pay “all expenses incurred by the Energy Facility Siting Council, the State Department of Energy and the Oregon Department of Administrative Services related to the review and decision of the council.” An applicant must submit payment for a portion of the anticipated expenses when the applicant submits the Preliminary ASC. The amount of the payment is determined according to an estimate prepared by the Department.

Before submitting the Preliminary ASC, the applicant should request the Department’s estimate of the costs for processing the application. The Department will prepare the Cost Reimbursement Agreement, informing the applicant of the estimated review costs. The applicant must submit payment of 25 percent of the estimated costs when the applicant submits the Preliminary ASC. The Department will apply the initial payment against the actual expenses as they are incurred. When the initial 25-percent payment has been exhausted, the Department will invoice the applicant on a monthly basis as expenses are incurred and will notify the applicant as provided under the statute.

Payment should be made to “Oregon Department of Energy,” and the stub, memo or ledger section of the check should reference the name of the proposed facility and the name of the applicant and should indicate that the payment is for “ASC review.”

D. Environmental Impact Statements

When a federal agency decision will be necessary for some aspect of a proposed facility, the National Environmental Policy Act (NEPA) may require the preparation of an Environmental Impact Statement (EIS) or Environmental Assessment (EA). NEPA documentation typically addresses much of the same subject matter as the ASC and relies on the same baseline information about the proposed site. ORS 469.370(13) requires the Council to conduct the site certificate review to avoid duplication of the federal agency review.

The NEPA process is an independent federal process. Depending on the circumstances, an EIS or an EA may have been issued before the applicant has submitted the Preliminary ASC. Under OAR 345-021-0010(2), applicants can quote the NEPA documentation or include cross-references to the relevant sections of the NEPA documentation in the appropriate exhibits of the ASC. Nevertheless, the site certificate process is significantly different from the NEPA process in that the Council must make specific findings on compliance with standards. NEPA documentation, by itself, is insufficient to demonstrate compliance with the Council’s standards.

E. Completeness Review

The Department reviews the Preliminary ASC to determine whether it contains enough information to support findings by the Council on the applicable standards. That is, the Department must determine whether the application is “complete.” Typically, the Preliminary ASC is not complete, and the Department will request additional information. The completeness

Guidelines for Applicants

phase often takes four to six months (and sometimes longer), depending largely on how careful and diligent the applicant has been in preparing the Preliminary ASC.

Applicants who are concerned about reducing the time it takes to get a site certificate should be prepared to respond fully and quickly to the Department's requests for additional information ("RAI"). During the completeness review phase, it is not unusual for an applicant to request changes to the proposed project. The Department can accommodate such changes so long as the applicant can demonstrate compliance with the standards. Significant changes to the project can increase the time required for review.

The Department notifies the applicant that the application is complete when the Department determines that the applicant has submitted enough information for the Council to make findings on all applicable standards. So that the information can be reviewed by other agencies and be made available to the public, the applicant must compile all of the RAI responses in an Application Supplement. The Supplement is described in OAR 345-015-0055.

F. Filing the Application

The application is "filed" when the Department receives the ASC Supplement. The Department then issues a public notice that the complete application is available for public review. Upon filing, the "complete application" consists of the Preliminary ASC plus the ASC Supplement. The Department requests comments on from the public and from the reviewing agencies. The date of filing starts the time periods prescribed under ORS 469.370 and 469.373 for a site certificate decision by the Council (see discussion below at page 38).

G. Draft Proposed Order

The Department issues draft findings and recommendations regarding a proposed facility in a public document called a Draft Proposed Order (DPO). The DPO will reflect the analysis and recommendations of Department staff and will address the comments from other state and local agencies and from the public. Upon issuing the DPO, the Department issues a public notice and schedules a public hearing.

In the usual case, the DPO will recommend findings regarding compliance with all applicable standards and will recommend that the Council issue a site certificate, subject to recommended conditions for construction, operation and retirement of the proposed facility. If the Department believes that a proposed facility cannot meet the Council standards based on information in the record, the Department would have to recommend that the Council deny a site certificate. If that were the case, the Department would inform the applicant before issuing a DPO. Under those circumstances, it is likely that the applicant would withdraw the application and that the Department would not issue the adverse DPO.

H. Public Hearing

The Department will hold at least one public hearing in a location near the proposed site of the facility. The public hearing is an opportunity for the public to express support for, or opposition to, the proposed energy facility or the Department's DPO recommendations, but it is not a "question-and-answer" session. An independent Hearing Officer presides at the public hearing and ensures an orderly presentation of public comments. The public hearing is recorded.

Guidelines for Applicants

The public may also submit written comments. Any written comments received by the deadline receive the same consideration as statements made in person at the hearing.

I. Council Review and the Proposed Order

After the public hearing, the Department presents the DPO to the Siting Council at a meeting that is open to the public. At this meeting, the Department informs the Council of any comments received in writing or at the public hearing. Although the meeting is open to the public and the applicant usually attends, the Council does not receive additional public or applicant comment at the meeting. The purpose of the Council meeting is for the Council to receive detailed information about the proposed facility and the Department's recommendations. It is an opportunity for Council members to ask any questions they may have about the proposed facility and to direct the Department, if necessary, to modify parts of the DPO.

Based on the Council's discussion, the Department issues the Proposed Order on the Application. The Proposed Order is made available to the public. At the same time, the Department issues a Notice of Contested Case Proceeding and sends the notice to all persons who commented during the Public Hearing or who commented in writing by the public hearing deadline.

J. Contested Case Proceeding

The contested case proceeding is required by Oregon statute (ORS 469.370). The Hearing Officer presides and follows the procedures of the Oregon Administrative Procedures Act, ORS Chapter 183, and the procedures required by the Siting Council rules, OAR 345-015-0012 through 345-015-0085.

The Department's Notice of Contested Case Proceeding will include a deadline for eligible persons to request party status and to raise contested case issues. Aside from the applicant, only those persons who have commented in person or in writing on the record of the public hearing (described above) are eligible to request party status. If no one requests party status, the Hearing Officer will terminate the contested case proceedings. The Hearing Officer will notify the Council that the contested case proceedings are concluded. The Council will then decide whether or not to issue a site certificate based on the Department's Proposed Order.

If the Hearing Officer grants party status, the Hearing Officer may hold one or more prehearing conferences (OAR 345-015-0023). A prehearing conference may be used to review procedural matters important to the contested case, to explain the rights of parties to the proceeding and to establish the scope of the contested case proceeding. Matters discussed at the prehearing conference may include, but are not limited to:

- Agreement on the issues that will be the subject of testimony beyond the application.
- Scheduling of filing direct and rebuttal testimony.
- Clarification of issues to be subject to submission of testimony and cross examination.
- Conduct of the proceedings.

Guidelines for Applicants

- The rights of parties.
- Identification of additional information needed for the review.

Only the applicant and those who have been admitted as parties (intervenor) under the Council's procedural rules may participate in the contested case proceeding. The process typically includes discovery, presentation of evidence, rebuttal and cross-examination. Parties to the contested case may discuss a resolution of the issues by way of settlement before the contested case hearing occurs. If the contested case proceeds to a hearing, the Hearing Officer is in charge of the conduct of the hearing.

Following the hearing, the Hearing Officer issues 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. Parties then have an opportunity to file exceptions to the Proposed Contested Case Order. After the deadline for filing responses to exceptions, the Council will consider the Hearing Officer's proposed order and any exceptions filed by the parties.

K. Council Decision

Following the conclusion of the contested case proceeding, the Council will decide at a public meeting whether to approve a site certificate for the proposed facility. The Council may adopt, modify or reject the Hearing Officer's Proposed Contested Case Order (or, if there were no contested case issues, the Department's Proposed Order). An affirmative vote of at least four Council members is required for approval of a site certificate (ORS 469.370(7)). The Council's findings of fact and conclusions of law are documented in the Final Order on the Application. If a site certificate is issued, it becomes effective upon signature by the Council and the applicant.

L. Statutory Time Periods

Oregon statutes establish time periods for final Council action on site certificate applications (ORS 469.370 and 469.373). Table 1 below lists the statutory time periods. The time periods vary, depending on the type of energy facility being proposed by the applicant and on whether the facility qualifies for expedited review. In all cases, the time periods begin on the date the complete application is filed.

As provided in ORS 469.370, failure by the Council to meet these deadlines does not result in the automatic issuance or denial of a site certificate. The Council and the Department work diligently to complete the site certificate process within the statutory time periods. Since 1994, in almost all cases in which a time period has been exceeded, the additional time has been the result of a challenge to the proposed facility by intervenors in a contested case proceeding.

Guidelines for Applicants

Table 1: Statutory Time Periods

Combustion turbine, geothermal plant, or underground natural gas storage facility	9 months
Other types of thermal power plants with a nominal generating capacity of more than 200 MW	24 months
Nuclear installations	24 months
Expansion of an existing industrial facility to include an energy facility	6 months
Expanding an existing energy facility to achieve a nominal generating capacity between 25 MW and 50 MW	6 months
Adding injection or withdrawal capacity to an existing underground gas storage facility	6 months
Any other energy facility (not including facilities that qualify for expedited review)	12 months
Small-capacity facilities eligible for expedited review (no intervenors)	6 months
Small-capacity facilities eligible for expedited review (if there are intervenors in the contested case)	9 months
Special criteria facilities eligible for expedited review, if there is no contested case	6 months

M. Reconsideration and Appeal

Following the Council’s decision and Final Order, any party to the contested case has 30 days following the date of service of the Final Order to apply for a rehearing (ORS 469.403). A party may file a petition for judicial review within 60 days from the date of service of the Council’s final order or within 30 days after the date a petition for rehearing is denied. Issues on appeal are limited to those raised by the parties to the contested case proceeding. The Oregon Supreme Court has exclusive jurisdiction for judicial review of the Council’s decision.

III. Expedited Review

An applicant may request expedited review if the proposed facility qualifies under applicable statutes. Small-capacity facilities may qualify for expedited review under ORS 469.370. Natural gas facilities meeting certain criteria may qualify for expedited review under ORS 469.373.

A. Small-Capacity Facilities

Energy facilities that have an “average electric generating capacity” of less than 100 megawatts may qualify for expedited review as “small-capacity” facilities. A facility’s “average electric generating capacity” is the facility’s peak capacity divided by a factor defined in statute (ORS 469.300(4)). For different types of electric generating facilities, the factors (and corresponding nominal capacity) are as follows:

- For gas-fired facilities, the factor is 1.0 (nominal capacity of 100 MW)
- For wind or solar energy facilities, the factor is 3.0 (nominal capacity of 300 MW)
- For geothermal facilities, the factor is 1.11 (nominal capacity of 111 MW)

In addition to the capacity criteria above, if the proposed energy facility has, as a related or supporting facility, a transmission line or pipeline that, by itself, would be an energy facility

Guidelines for Applicants

under the definition in ORS 469.300, the proposed energy facility is not eligible for expedited review (OAR 345-015-0300).

Figure 2 illustrates the process for expedited review of a qualified small-capacity facility. Under the expedited process, an NOI is not required. An applicant submits a Request for Expedited Review to the Department. The Department reviews the request to determine whether the proposed facility qualifies for expedited review. Although there is no prescribed format for the request, it must include all of the information listed in OAR 345-015-0300(2). Applicants who want to reduce the time needed to complete the review process should provide additional information about the proposed facility and any potential issues that could delay the siting process.

The Council grants the request (by rule) if the Department determines that the request satisfies the requirements (OAR 345-015-0300(4)). The Department will notify the applicant whether the expedited review process is granted. The applicant can submit Preliminary Application at any time after expedited review is granted.

In the Request for Expedited Review, an applicant may propose modification of the analysis areas, and the Department will decide whether to allow the modification. Otherwise, for the purposes of preparing the Preliminary ASC, the applicant should use the “study areas” defined in OAR 345-001-0010 as the “analysis areas” in addressing the requirements of OAR 345-021-0010 and demonstrating compliance with Council standards.

In the absence of an NOI, the Department will have no information upon which to prepare a Project Order before the applicant submits the Preliminary ASC. Therefore, the applicant must rely on OAR 345-021-0010 and consultations with the Department and reviewing agencies to determine what information should be included in the Preliminary ASC. The Department will issue a Project Order *after* the Preliminary ASC is received to conform the record to the requirements of ORS 469.503(3).

After the applicant has submitted a Preliminary ASC, the procedural steps for expedited review of a small-capacity facility are the same as described above for the standard review process. The Department reviews the Preliminary ASC for “completeness” and sends requests for additional information (RAI) to the applicant if more information is needed to support recommended findings on the applicable standards. When the Department determines that the application is complete, based on the applicant’s responses to the RAI, the applicant will be asked to submit an Application Supplement. The application is “filed” by the Department upon receipt of the Application Supplement. The Department will then prepare a Draft Proposed Order, taking into consideration any public comments and reviewing agency comments on the complete application. The public hearing process, Council review and contested case procedures are the same as in the standard process. Table 1 above lists the statutory time periods for small capacity facilities eligible for expedited review.

B. Special Criteria Facilities

Gas-fired generating plants may qualify for expedited review if they meet certain special criteria (ORS 469.373(1)). These criteria include:

- Location in an industrial zone, near existing industrial facilities.

Guidelines for Applicants

- No more than 3 miles of new transmission line or gas pipeline outside existing right of way.
- No new water right or water right transfer.
- No new NPDES permit unless it will be obtained by a municipal facility.
- Compliance with the Council's Carbon Dioxide Standard via the monetary path.

Figure 3 illustrates the process for expedited review of special criteria facilities. The Council's process for expedited review of a special criteria facility is described in OAR 345-015-0310 and 345-015-0320. The process differs from the standard review process in the following ways:

- An NOI is not required. The Department will issue a Project Order after receiving the Preliminary Application.
- The Department must notify the applicant whether the application is complete within 30 days of receiving it. If the application is not complete, the Department will not file it until the applicant has submitted all the information necessary to support findings on all Council standards.
- The Council must determine compliance with land use laws. The applicant does not have the option of obtaining a land use decision from the local government.
- The Department must issue a Draft Proposed Order within 90 days after the application filing date.
- Council will hold a public hearing after the Department issues the Proposed Order (unlike the standard process in which a public hearing is held after issuance of the Draft Proposed Order).
- The applicant can request an additional 14 days to supplement the evidentiary record if new issues are raised at the public hearing.
- The applicant can request a contested case hearing, but there is no contested case proceeding unless the applicant requests one.
- If, on further review, the Council decides that the project does not qualify for expedited review, then the standard review process is followed. The pending application will be treated as a Preliminary Application (an NOI is not required), and the Department must notify the applicant within 30 days whether the application is complete (OAR 345-015-0310(29)).

The Council has never used the special criteria facility rules. Only one facility has ever received a site certificate as a special criteria facility (the applicant had already submitted an NOI when the Legislature adopted the special criteria law; the Council applied the statute directly before adopting the rules). Despite the expedited process, the facility was never built.

(1) Request for Expedited Review

A Request for Expedited Review for a special criteria facility must describe the proposed facility, give the applicant's name and address, state when the applicant expects to submit a

Guidelines for Applicants

Preliminary Application and list applicable statutes and rules. Most important, the request must show that the facility meets the special criteria of ORS 469.373(1).

Because there is no Notice of Intent, the applicant should provide as much information as possible in the Request for Expedited Review. The earlier the state agencies have information about the facility, the more “expedited” the review can be.

Before submitting a Request for Expedited Review, the applicant should contact other state and local agencies, especially if the proposed facility potentially needs:

- A Removal/Fill Permit.
- Mitigation for fish and wildlife habitat.
- Mitigation for potential impacts to endangered species.
- Conditional land use permits.
- Any other state permits.

The Department reviews the request to determine whether the proposed facility qualifies for expedited review. If the Department finds that the proposed facility meets the criteria, the Department will notify the applicant that the facility qualifies for expedited review on a *preliminary and non-binding basis* (ORS 469.373(2)). The determination is “preliminary” until it is confirmed by the Council in the Final Order on the Application.

(2) Preliminary Application and Project Order

After the Department’s determination that the facility qualifies for expedited review, the applicant can submit a Preliminary Application at any time. The contents of a Preliminary Application are the same as in the standard process. Applicants should refer to the “study area” definition in OAR 345-001-0010 for guidance on the “analysis areas” to use in preparing the Preliminary Application. The Council cannot use the Structural Standard, the Scenic Resources Standard, the Historic, Cultural and Archaeological Standard, the Recreation Standard, the Public Services Standard or the Waste Minimization Standard to deny a site certificate, but the Council may still impose conditions based on those standards. Accordingly, applicants should include information describing the potential impacts and proposed mitigation applicable to those standards.

Within 30 days after receiving the Preliminary ASC, the Department issues a Project Order and determines whether the application is complete. The Department may request additional information needed to support findings on the applicable standards.

(3) Completeness and the Draft Proposed Order

After determining that the application is complete, the Department notifies the applicant and requests an Application Supplement, if needed. The filing date of the application is the date the Department receives the Supplement. The Department issues a public notice that the application is complete and invites public comments. The Department holds a public meeting. The meeting is informational only.

The Department must issue a Draft Proposed Order within 90 days after the filing date. After Council review of the Draft Proposed Order, the Department will issue a Proposed Order.

(4) Public Hearing on the Proposed Order

After a 20-day notice, the Department holds a public hearing near the proposed site of the facility. The hearing is not a contested case, but it is the evidentiary hearing for the project. A Hearing Officer presides, and the Department records the public testimony. The evidentiary record for the proposed facility will close at the end of the hearing. The Hearing Officer can “continue” the hearing for a period not exceeding 7 days to allow for further public comment. If someone raises a new issue at the hearing, the applicant has up to 14 days to present additional written evidence, arguments or testimony regarding the application. The 14-day period runs from the adjournment of the hearing; that is, it is in addition to any period of continuance.

(5) Contested Case and Final Decision

Unlike the standard process, in the special criteria expedited process there is no contested case proceeding unless the applicant requests one. If the applicant does not request a contested case hearing, the Department prepares a draft Final Order after the close of record of the public hearing. The Council then decides at a public meeting whether to approve a site certificate for the proposed facility.

Part 4 – Exemptions

Electric generating plants, transmission lines, pipelines and fuel production plants that do not meet the threshold criteria for Council jurisdiction do not need a site certificate. These projects are not “energy facilities” as defined in ORS 469.300, and therefore they are not subject to the site certificate requirement under ORS 469.320(1). The jurisdictional threshold criteria are listed above at page 1.

In addition, Oregon law exempts energy facilities that meet certain criteria from the site certificate requirement. ORS 469.320(2) describes exempt facilities and lists the criteria. The Council rules describe the exemptions from Council jurisdiction in OAR 345-015-0350. For certain types of exemption, the developer must request a determination by the Council that the proposed facility qualifies. The requirement of a request for exemption applies to most of the facilities described in ORS 469.320(2). The Council rules describe the contents of a request for exemption (OAR 345-015-0360).

The two types of exemption that have been the most commonly requested are described below. Developers seeking to claim other types of exemption should contact the Department for further information.

I. High Efficiency Cogeneration

Under ORS 469.320(2)(c), a site certificate is not required for a cogeneration facility with a useful thermal energy output of no less than 33 percent. “Cogeneration” is the sequential production of electricity and useful thermal energy (steam) from a common fuel source. The statute provides an alternate criterion for this exemption based on the “fuel chargeable to power heat rate.” Although the statute sets the rate at 6,000 Btu per kilowatt-hour, the Council is authorized to revise the rate that qualifies for the exemption (ORS 469.320(3)).

The current criteria (including fuel chargeable to power heat rates as revised by the Council) appear in the definition of “high efficiency cogeneration facility” in OAR 345-001-

Guidelines for Applicants

0010. Under the definition, to qualify for the exemption, the facility, under normal operating conditions, must have a useful thermal energy output of no less than 33 percent of the total energy output or:

- (a) For an energy facility with a nominal electric generating capacity of 50 megawatts or more, a fuel chargeable to power heat rate of no greater than 5550 Btu per kilowatt-hour;
- (b) For an energy facility with a nominal electric generating capacity of less than 50 megawatts, a fuel chargeable to power heat rate of no greater than 6000 Btu per kilowatt-hour.

The typical exempt facility is one that uses a large amount of steam or process heat, such as a paper mill. Some cogeneration facilities use the excess heat from their industrial process to make electric power. Others use waste heat from power production to make process steam. Both types of cogeneration can qualify for exemption from the site certificate requirement if they meet the criteria.

Incremental environmental and land use impacts from exempt cogeneration facilities are generally small because they are located at an existing industrial facility. They do not require large new power lines or gas pipelines. Because they produce useful thermal energy that would otherwise be produced by burning another fuel, their net air emissions are usually very small compared to a conventional power plant.

More information about the high efficiency cogeneration exemption can be found on the Department's website: www.oregon.gov/ENERGY/SITING/higheff.shtml.

II. Biofuel Production Facilities

Energy facilities for the production of ethanol or biodiesel may qualify for exemption under ORS 469.320(2)(f). The exemption applies to production plants that have a production capacity that is high enough to meet the "energy facility" definition in ORS 469.300 (11)(a)(G):

A plant which converts biomass to a gas, liquid or solid product, or combination of such products, intended to be used as a fuel and if any one of such products is capable of being burned to produce the equivalent of six billion Btu of heat a day.

To determine whether a proposed production facility meets this definition, the proposed ethanol output must be converted into a daily equivalent heat rate. Although a developer should provide a specific calculation for the proposed facility, a "ball-park" conversion for ethanol production is approximately 26 million gallons per year. For biodiesel, the conversion is approximately 18 million gallons per year. If the proposed facility will produce quantities of ethanol or biodiesel above or close to these "ball-park" estimates, then the facility may need a site certificate, unless the proposed facility qualifies for the exemption.

In the request for exemption, the developer should provide information demonstrating that the proposed production facility meets all of the statutory criteria listed in ORS 469.320(2)(f). The facility must use only grain, whey, potatoes, oil seeds, waste vegetable oil or cellulosic biomass as the feedstock. No other feedstock is allowed.

The facility must apply to the local government for land use approval. An approved land use permit issued by the local government must be obtained before requesting the exemption.

Guidelines for Applicants

If the proposed facility would need a new transmission line or pipeline, the facility does not qualify for the exemption if the transmission line or pipeline is above the Council's jurisdictional threshold. That is, if the transmission line or pipeline, by itself, would be an "energy facility," then the biofuel production plant must have a site certificate.

The fourth criterion limits the exemption to production facilities that do not rely on truck transport of the fuel output. To qualify for the exemption, at least 90 percent of the fuel produced must either be used in an industrial or refueling facility located within one mile of the facility or be transported to more distant fuel markets by rail or barge. In other words, trucks may be used to transport not more than 10 percent of the fuel product.

Figure 1: Standard Site Certificate Process

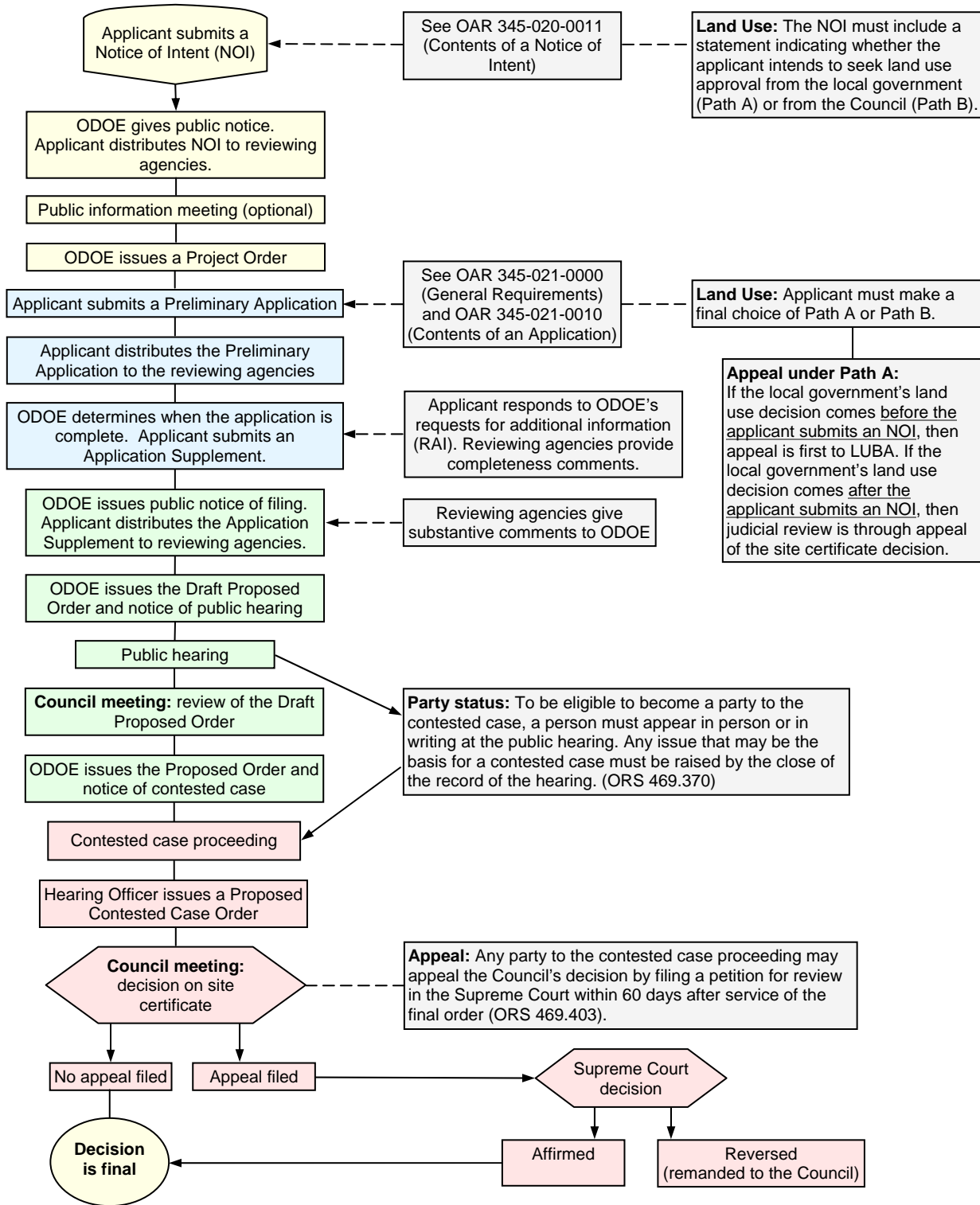


Figure 2: Expedited Review of Small-Capacity Facilities

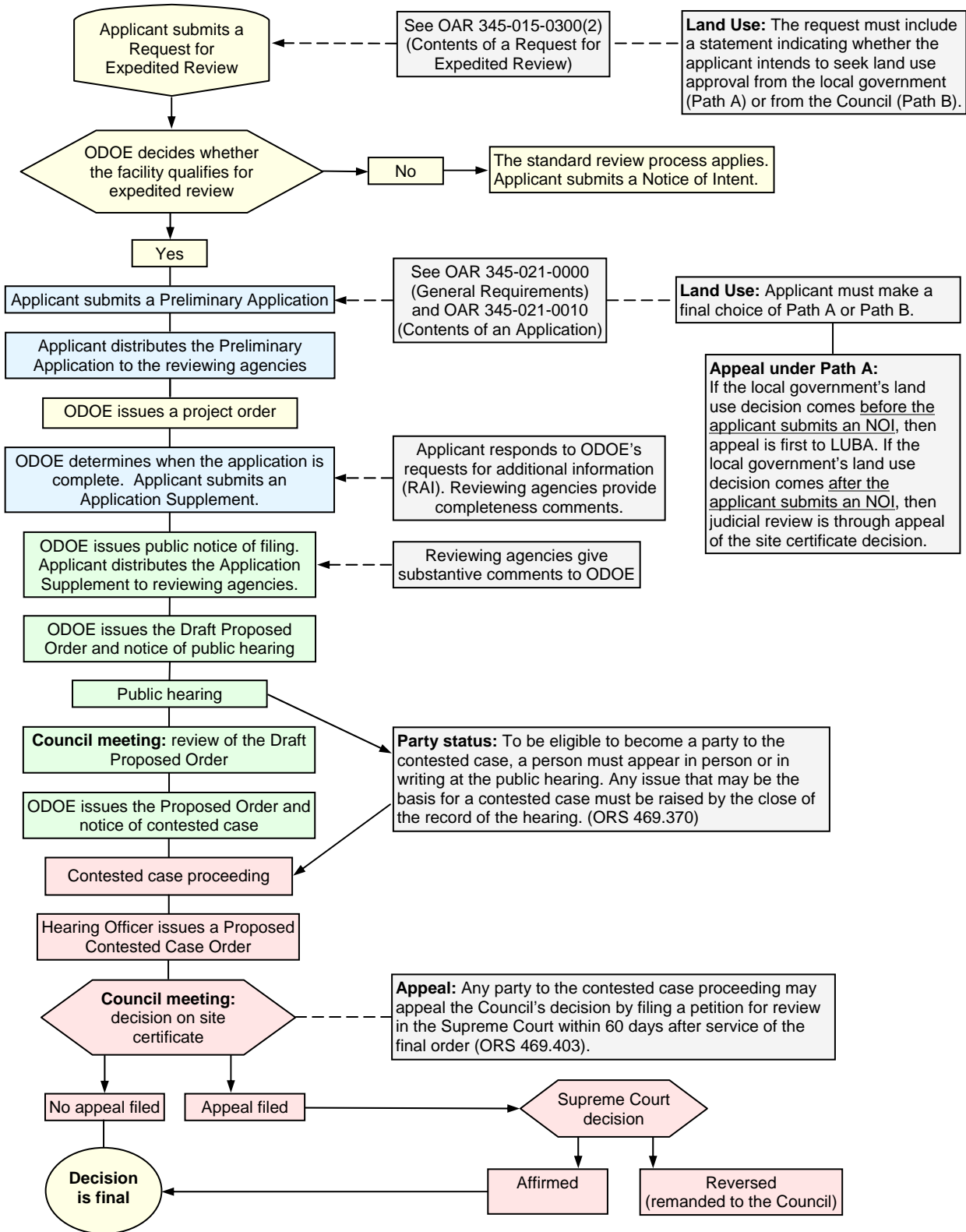


Figure 3: Expedited Review of Special Criteria Facilities

