

# State Agency, Local Government, and Tribal Government Role in EFSC Review

Multiple State of Oregon agencies, local governments, and Tribal governments have a role in reviewing proposed energy facilities that come before the Energy Facility Siting Council.

## Agencies that receive notification and a request to review and comment at four specific times in the state siting review:

### State Agencies:

- DEQ – Department of Environmental Quality
- DLCDD – Department of Land Conservation and Development
- DOGAMI – Department of Geology and Mineral Industries
- DSL – Department of State Lands
- NPCC – Northwest Power and Conservation Council
- ODA – Department of Aviation
- ODF – Department of Forestry
- ODAG – Department of Agriculture
- ODFW – Department of Fish and Wildlife
- OPRD – Oregon Parks and Recreation Department
- ODOT – Oregon Department of Transportation
- OSFM – Office of State Fire Marshal
- OWRD – Water Resources Department
- PUC – Public Utility Commission
- SHPO – State Historic Preservation Office
- Any other state agency identified by ODOE

### Local Governments:

- The governing body of any local government within whose jurisdiction the facility is proposed to be located.
- The governing body of any incorporated city or county in Oregon within the study area (usually 10 miles) for impacts to public services.

### Tribal Governments:

- Any Tribe identified by the Legislative Commission on Indian Services as affected by the proposed facility.

### Federal Agencies:

- Federal land management agencies with jurisdiction if any part of the proposed site is on federal land, including, but not limited to: the Bureau of Land Management, U.S. Forest Service, Army Corps of Engineers, Bureau of Reclamation, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and the Department of Defense.



## List of State Agencies and the Exhibits/Standards They Are Asked to Review

Application Exhibit Title	Associated Standard(s)	Identified State Agency, Local Government, Tribal Government, Federal Agency Review
A - Applicant Information	N/A	None
B - Project Description	N/A	All
C - Project Location	N/A	All
D - Applicant's Organizational, Managerial, and Technical Expertise	OAR 345-022-0010 - Organizational Expertise	None
E - Permits Needed for Construction and Operation	N/A	All
F - Adjacent Property Owners Information for Notification	N/A	None
G - Materials Analysis	OAR 345-022-0120 - Waste Minimization OAR 345-022-0022 - Soil Protection ORS 537.505 - Ground Water Act of 1955	DEQ, OSFM, Local Govt., and Tribal Govt.
H - Geological and Soil Stability	OAR 345-022-0020 - Structural Standard OAR 345-022-0022 - Soil Protection	DOGAMI, ODAG, DEQ, and Local Govt.
I - Soil Protection	OAR 345-022-0022 - Soil Protection OAR 345-022-0030 - Land Use – Specifically related farmland soil protection	ODAG, DLCD, DEQ, ODFW, Local Govt., Tribal Govt., and Federal Agency
J - Waters of the State (Wetlands)	ORS 196.795-.990 (Removal of Material, Filling) OAR 141-085-0500 - 0785 - Issuance and Enforcement of Removal-Fill Authorizations Within Waters of Oregon Including Wetlands ORS 537.505 - Ground Water Act of 1955	DSL, DEQ, ODFW, Local Govt., Tribal Govt., and Federal Agency

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K - Land Use (Compliance with Statewide Planning Goals)	OAR 345-022-0030 - Land Use Applicable Local Land Use Criteria Applicable Statutes in ORS Chapter 215; and Applicable LCD rules in OAR Chapter 660, if those are not adopted into the local land use standards	Local Govt., DLCD, ODF, and ODAG
L - Protected Areas	OAR 345-022-0040 - Protected Areas OAR 345-022-0080 - Scenic Resources OAR 345-022-0100 - Recreation OAR 345-022-0110 - Public Services	OPRD, SHPO, ODFW, ODA, ODOT, Local Govt., Tribal Govt., and Federal Agency
M - Financial Capability	OAR 345-022-0050 - Retirement and Financial Assurance	All
N - Need for a Non-Generating Facility	OAR 345-023-0005 - 0040 - Need Standard for Non-Generating Facilities	PUC
O - Water Use	ORS 537.505 - Ground Water Act of 1955 OAR 690-310-0000 - 0280 - Water Right Application Processing OAR 690-380-0010 - 9000 - Water Right Transfers	ODAG, DLCD, DEQ, ODFW, Local Govt., Tribal Govt., and Federal Agency
P - Fish and Wildlife Habitats and Species	OAR 345-022-0060 - Fish and Wildlife Habitat OAR 635-415-0025 - Fish and Wildlife Habitat Mitigation Policy	ODFW, Local Govt., Tribal Govt., and Federal Agency
Q - Threatened & Endangered Plant & Animal Species	OAR 345-022-0070 - Threatened and Endangered Species	ODFW, Local Govt., Tribal Govt., and Federal Agency

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R - Scenic Resources	OAR 345-022-0080 - Scenic Resources OAR 345-022-0100 - Recreation OAR 345-022-0040 - Protected Areas	OPRD, ODOT, Local Govt., Tribal Govt., and Federal Agency
S - Historic, Cultural, and Archeological Resources	OAR 345-022-0090 - Historic, Cultural and Archaeological Resources Section 106 of the National Historic Preservation Act of 1966	SHPO, Tribal Govt., and Federal Agency
T - Recreational Opportunities	OAR 345-022-0100 - Recreation OAR 345-022-0040 - Protected Areas OAR 345-022-0080 - Scenic Resources OAR 345-022-0110 - Public Services	OPRD, ODOT, ODFW, Local Govt., and Federal Agency
U - Abilities of Communities to Provide Public Services	OAR 345-022-0110 - Public Services	ODOT, Local Govt., and Federal Agency
V - Wildfire Risk	OAR 345-022-0115 - Wildfire Prevention and Risk Mitigation	PUC, ODF, OSFM, Local Govt., Tribal Govt., and Federal Agency
W - Generation of Solid Waste and Wastewater	OAR 345-022-0120 - Waste Minimization OAR 345-022-0110 - Public Services	DEQ, ODAG, ODFW, Local Govt., Tribal Govt., and Federal Agency
X - Facility Retirement and Site Restoration	OAR 345-022-0050 - Retirement and Financial Assurance	All
Y - Noise Generation	DEQ's noise control standards in OAR 340-035- 0035	DEQ
Z - Evaporative Cooling Towers	OAR 345-022-0022 - Soil Protection	DEQ
AA - EMF from Transmission Lines	OAR 345-024-0090 - Specific Standards for Transmission Lines	PUC & Local Govt.

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BB - Other Requested Information included in the Project Order	OAR 345-022-0000(1)(b) - General Standard of Review. Other applicable statutes and rules included in the Project Order.	Specific to information
CC - Statutes, Rules, and Ordinances	OAR 345-022-0000(1)(b) - General Standard of Review. Other applicable statutes and rules whether or not included in the Project Order.	Specific to statutes, rules, or ordinances
DD - Standards for Specific Types of Facilities	OAR 345-024-0010 - Health and Safety Standards for Siting Wind Facilities	Local Govt.
DD - Standards for Specific Types of Facilities	OAR 345-024-0090 - Specific Standards for Transmission Lines  OAR 860-024 Utility Safety  OAR 860-300 Wildfire Mitigation	PUC and Local Govt.
DD - Standards for Specific Types of Facilities 345-021-0020 - Specific Application Requirements for Siting of Surface Facilities Related to Underground Gas Storage Reservoirs	OAR 345-024-0030 - Specific Standards for Surface Facilities Related to Underground Gas Storage Reservoirs	PUC and Local Govt.
DD - Standards for Specific Types of Facilities 345-021-0021 – Specific Application Requirements for Facilities that Emit Carbon Dioxide	OAR 345-024-0500 to 345-024-0720 - Specific Standards for a fossil-fueled power plant or other facility that emits carbon dioxide	DEQ and Local Govt.

## Examples of Substantive Comments from Reviewing Agencies on Select Projects:

### Boardman to Hemingway Transmission Line – Morrow, Umatilla, Union, Baker and Malheur Counties

- ODFW – Fish passage, Sage Grouse, disruption of big game migration patterns due to perimeter fencing, bald and golden eagles, pygmy rabbits, bird and bat mortality, trenching and potential impacts to mammals, amphibians and reptiles, survey protocols, reclamation and revegetation of disturbed areas, control of invasive weeds, compensatory mitigation for habitat loss.
- SHPO (Historical Resource Associates, Inc.) – Determinations of eligibility for historic, cultural and archeological resources, mitigation measures for impacts, historic properties management plan, proposed condition language.
- Baker County – The County opposed the project and believed it would not be appropriate in Baker County, but had specific comments related to land use, fish and wildlife, scenic resources and public services.
- Malheur County – Wildfire risks and the fact that the project would largely be located outside of rural fire protection districts, compliance with County ordinances.
- Morrow County – Potential impacts and mitigation related to the Blue Mountain Century Scenic Bikeway, properly licensed aggregate vendors, possible spread of noxious weeds, proposed condition language as well as traffic impacts and road improvements.
- Union County – concerns about impacts to roads, weed management, aggregate sources and batch plants.
- Umatilla County – Land use and compliance with the County ordinances.
- City of La Grande – Access roads that could impact the city and potential impacts to the Union County Airport.
- DSL – Wetland delineations related to the project and protection of “waters of the state.”
- ODOT – Potential construction impacts to state road rights of way, coordination with utilities, potential impacts to designated scenic byways, potential impacts to aggregate quarries used by ODOT.
- ODA – Height of structures and locations of helipads and potential impacts to aircraft.
- DEQ – DEQ permitting authority under the clean air act and clean water act, horizontal directional drilling fluids and dust emissions during construction.
- ODF – Fire prevention and suppression planning, Oregon Forest Practices Act compliance, operation notification, potential conflicts with planned logging operations and potential impacts to specific resources.
- Confederated Tribes of the Umatilla Indian Reservation – Concerned about impacts to cultural, historic and archaeological resources, adequate documentation, proposed condition language and appreciation for ODOE’s help in ensuring consultation between Idaho Power and the tribe related to the National Historic Preservation Act.
- Confederated Tribes of the Warm Springs – Concerns about potential effects to historic properties or cultural resources.
- Bureau of Land Management – Coordination throughout the review.
- United States Navy – Potential impacts to the Naval Weapons Systems Training Facility Boardman and alternative routes.

## **Nolin Hills Wind Power Project (Wind, Solar and Battery) - Morrow County**

- ODFW – Potential impacts to Washington Ground Squirrel and raptors, survey needs, temporal loss of habitat and habitat compensatory mitigation. Review and recommendations on draft condition language.
- ODAG – Potential impacts to Laurence’s Milkvetch, a state T&E species. Review and recommendations on draft condition language.
- DSL – Wetland delineations related to the project and protection of “waters of the state.”
- DEQ – Air quality, water quality, waste minimization and hazardous waste and spill response.
- SHPO – Potential impacts to known and unknown historic, cultural and archeological resources.
- ODA – Potential impacts to airports and aircraft.
- ODOT – Traffic control needs and state highways.
- DOGAMI – Need for site specific geotechnical investigations and landside hazard mapping.
- Umatilla County – protection of county identified resources and compliance with county ordinances.
- City of Pendleton – Availability of providing water for the project.
- City of Echo – Availability of providing water for the project.
- Morrow County – Potential road impacts and the need for a road use agreement.
- Confederated Tribes of the Warm Springs Reservation – Concerns about potential effects to historic properties or cultural resources.
- Confederated Tribes of the Umatilla Indian Reservation – Project is located within their ceded lands and traditional use area where they retain treaty rights. Concerned about cultural resource protection.

## **Obsidian (Solar and Battery) - Lake County**

- ODFW – Big Game Winter Range, habitat mitigation, compensatory mitigation for habitat loss, survey protocols, control of invasive weeds, mitigation risks, ratios and monitoring, Juniper treatment.
- DSL – Wetland delineations and protection of “waters of the state.”
- SHPO (Historical Resource Associates, Inc.) – Inadequate evaluation of architectural and built environment resources, inconsistent evaluation of some identified resources, lack of justification for some conclusions.
- DOGAMI – Need for site specific seismic analyses and subsurface explorations investigations.
- DEQ – Air quality, solid waste, water quality, stormwater, and cleanup.
- DLCDD – Need to meet ORS 215.296 (standards for non-farm uses) and address the non-soil prongs of the high-value farmland definition for associate transmission lines.
- DSL – Wetland delineations and protection of “waters of the state.”
- ODA – Potential impacts to airports and aircraft.
- ODF – Wildfire risk and fire protection, operation notification, compliance with Forest Practices Act, conversion of forestlands, landside hazards.
- OPUC – applicant’s ability to develop a project this size in terms of finances and experience.
- OWRD – Water rights requirements.
- Lake County – Compliance with County ordinances.
- The Klamath Tribes – Worked closely with the applicant and reached an agreement regarding avoidance, mitigation, and minimization of impacts to cultural and archaeological resources.

- Confederated Tribes of the Warm Springs – Concerned about potential effects to historic properties or cultural resources.

### Example of where EFSC’s standards and agency participation resulted in protection of resources that would not have occurred absent state jurisdictional review:

- Oregon Department of Agriculture – Counties typically do not evaluate or protect state threatened and endangered plant species. EFSC’s Threatened and Endangered Species standard references those listed under ORS 564.105(2). Examples of species that have been protected in the state siting process include:
  - Lawrence’s Milkvetch<sup>1</sup>
  - Snake River goldenweed<sup>2</sup>
  - Mulford’s milkvetch<sup>3</sup>
  - Cronquist’s stickseed<sup>4</sup>
- Oregon Department of Fish and Wildlife – County Land Use Goal 5 natural resource inventories were largely established by the early 1980’s and most have not been updated since. EFSC’s Fish and Wildlife Habitat standard references and implements Oregon Department of Fish and Wildlife’s Fish and Wildlife Habitat Mitigation Policy at OAR 635-415 which requires current surveys to determine the presence of species to establish the quality of habitat. Species protected based on current surveys include but are not limited to:
  - Washington Ground Squirrel<sup>5</sup>
  - Species that utilize Big Game Winter Range
  - Pygmy Rabbits<sup>6</sup>

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<sup>1</sup> [www.oregon.gov/oda/programs/PlantConservation/SiteAssets/Pages/AboutThePlants/AstragalusCollinusLaurentiiProfile.pdf](http://www.oregon.gov/oda/programs/PlantConservation/SiteAssets/Pages/AboutThePlants/AstragalusCollinusLaurentiiProfile.pdf)

<sup>2</sup> <https://www.oregon.gov/oda/programs/PlantConservation/SiteAssets/Pages/AboutThePlants/PyrocomaRadiataProfile.pdf>

<sup>3</sup> <https://www.oregon.gov/oda/programs/PlantConservation/SiteAssets/Pages/AboutThePlants/AstragalusMulfordiaeProfile.pdf>

<sup>4</sup> <https://www.oregon.gov/oda/programs/PlantConservation/SiteAssets/Pages/AboutThePlants/HackeliaCronquistiiProfile.pdf>

<sup>5</sup> <https://myodfw.com/wildlife-viewing/species/washington-ground-squirrel>

<sup>6</sup> <https://myodfw.com/wildlife-viewing/species/pygmy-rabbit>