HB 4078-1
(LC 122)
2/1/12 (BHC/ps)

PROPOSED AMENDMENTS TO
HOUSE BILL 4078

On page 1 of the printed bill, line 2, after "469.300" insert "469.320, 469.503 and 469.504".

Delete lines 23 through 29 and insert:

"(3) When a county approves an application under this section, the county shall incorporate in the terms of the approval, if necessary, a mitigation plan to:

"(a) Offset adverse impacts from the proposed development of the photovoltaic solar energy facility on species of wildlife that:

"(A) Are listed pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), as in effect on the effective date of this 2012 Act;

"(B) Are candidate species, or have been petitioned for listing, pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531), as in effect on the effective date of this 2012 Act; or

"(C) Are listed as endangered, threatened or sensitive species pursuant to ORS 496.172.

"(b) Facilitate operation of the photovoltaic solar energy facility in compliance with state law and local ordinances and resolutions, if any, protecting fish and wildlife resources, including habitat required to sustain local or migratory fish or wildlife populations.

"(4) The requirements of subsection (3) of this section are in addition to and not in lieu of the requirements in:

"(a) The federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531).

"(b) ORS 496.171 to 496.182.".

In line 30, delete "(4)" and insert "(5)".

On page 2, line 3, delete "(5)" and insert "(6)".

In line 9, delete "(6)" and insert "(7)".

Delete lines 13 through 45 and delete pages 3 through 5.

On page 6, delete lines 1 through 5 and insert:

"SECTION 3. ORS 469.300 is amended to read:

"469.300. As used in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992, unless the context requires otherwise:

"(1) 'Applicant' means any person who makes application for a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

"(2) 'Application' means a request for approval of a particular site or sites for the construction and operation of an energy facility or the construction and operation of an additional energy facility upon a site for which a certificate has already been issued, filed in accordance with the procedures established pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

"(3) 'Associated transmission lines' means new transmission lines constructed to connect an energy facility to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both or to the Northwest Power Grid.

"(4) 'Average electric generating capacity' means the peak generating capacity of the facility divided by one of the following factors:

"(a) For wind [*or solar*] energy facilities, 3.00;

"(b) For geothermal energy facilities, 1.11; or

"(c) For all other energy facilities, 1.00.

"(5) 'Combustion turbine power plant' means a thermal power plant consisting of one or more fuel-fired combustion turbines and any associated waste heat combined cycle generators.

"(6) 'Construction' means work performed on a site, excluding surveying, exploration or other activities to define or characterize the site, the cost of which exceeds $250,000.

"(7) 'Council' means the Energy Facility Siting Council established under ORS 469.450.

"(8) 'Department' means the State Department of Energy created under ORS 469.030.

"(9) 'Director' means the Director of the State Department of Energy appointed under ORS 469.040.

"(10) 'Electric utility' means persons, regulated electrical companies, people's utility districts, joint operating agencies, electric cooperatives, municipalities or any combination thereof, engaged in or authorized to engage in the business of generating, supplying, transmitting or distributing electric energy.

"(11)(a) 'Energy facility' means any of the following:

"(A) An electric power generating plant with a nominal electric generating capacity of 25 megawatts or more, including but not limited to:

"(i) Thermal power; or

"(ii) Combustion turbine power plant.

"(B) A nuclear installation as defined in this section.

"(C) A high voltage transmission line of more than 10 miles in length with a capacity of 230,000 volts or more to be constructed in more than one city or county in this state, but excluding:

"(i) Lines proposed for construction entirely within 500 feet of an existing corridor occupied by high voltage transmission lines with a capacity of 230,000 volts or more; and

"(ii) Lines of 57,000 volts or more that are rebuilt and upgraded to 230,000

volts along the same right of way.

"(D) A solar collecting facility [*using*] **that employs heliostat technology, solar thermal technology or other reflective technology and that uses** more than 100 acres of land.

"(E) A photovoltaic solar energy facility for which the smallest rectangular area of land bounded by imaginary lines forming the perimeter of area containing solar panels, minus any portion of the rectangular area within the perimeter that is used for access roads, parking areas, mitigation, setbacks and buffer areas, is more than 250 acres.

"[*(E)*] **(F)** A pipeline that is:

"(i) At least six inches in diameter, and five or more miles in length, used for the transportation of crude petroleum or a derivative thereof, liquefied natural gas, a geothermal energy form in a liquid state or other fossil energy resource, excluding a pipeline conveying natural or synthetic gas;

"(ii) At least 16 inches in diameter, and five or more miles in length, used for the transportation of natural or synthetic gas, but excluding:

"(I) A pipeline proposed for construction of which less than five miles of the pipeline is more than 50 feet from a public road, as defined in ORS 368.001; or

"(II) A parallel or upgraded pipeline up to 24 inches in diameter that is constructed within the same right of way as an existing 16-inch or larger pipeline that has a site certificate, if all studies and necessary mitigation conducted for the existing site certificate meet or are updated to meet current site certificate standards; or

"(iii) At least 16 inches in diameter and five or more miles in length used to carry a geothermal energy form in a gaseous state but excluding a pipeline used to distribute heat within a geothermal heating district established under ORS chapter 523.

"[*(F)*] **(G)** A synthetic fuel plant [*which*] **that** converts a natural resource

including, but not limited to, coal or oil to a gas, liquid or solid product intended to be used as a fuel and capable of being burned to produce the equivalent of two billion Btu of heat a day.

"[*(G)*] **(H)** A plant [*which*] **that** 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.

"[*(H)*] **(I)** A storage facility for liquefied natural gas constructed after September 29, 1991, that is designed to hold at least 70,000 gallons.

"[*(I)*] **(J)** A surface facility related to an underground gas storage reservoir that, at design injection or withdrawal rates, will receive or deliver more than 50 million cubic feet of natural or synthetic gas per day, or require more than 4,000 horsepower of natural gas compression to operate, but excluding:

"(i) The underground storage reservoir;

"(ii) The injection, withdrawal or monitoring wells and individual wellhead equipment; and

"(iii) An underground gas storage reservoir into which gas is injected solely for testing or reservoir maintenance purposes or to facilitate the secondary recovery of oil or other hydrocarbons.

"[*(J)*] **(K)** An electric power generating plant with an average electric generating capacity of 35 megawatts or more if the power is produced from geothermal[*, solar*] or wind energy at a single energy facility or within a single energy generation area.

"(b) 'Energy facility' does not include a hydroelectric facility.

"(12) 'Energy generation area' means an area within which the effects of two or more small generating plants may accumulate so the small generating plants have effects of a magnitude similar to a single generating plant of 35 megawatts average electric generating capacity or more. An 'energy generation area' for facilities using a geothermal resource and covered by a unit

agreement, as provided in ORS 522.405 to 522.545 or by federal law, shall be defined in that unit agreement. If no such unit agreement exists, an energy generation area for facilities using a geothermal resource shall be the area that is within two miles, measured from the electrical generating equipment of the facility, of an existing or proposed geothermal electric power generating plant, not including the site of any other such plant not owned or controlled by the same person.

"(13) 'Extraordinary nuclear occurrence' means any event causing a discharge or dispersal of source material, special nuclear material or by-product material as those terms are defined in ORS 453.605, from its intended place of confinement off-site, or causing radiation levels off-site, that the United States Nuclear Regulatory Commission or its successor determines to be substantial and to have resulted in or to be likely to result in substantial damages to persons or property off-site.

"(14) 'Facility' means an energy facility together with any related or supporting facilities.

"(15) 'Geothermal reservoir' means an aquifer or aquifers containing a common geothermal fluid.

"(16) 'Local government' means a city or county.

"(17) 'Nominal electric generating capacity' means the maximum net electric power output of an energy facility based on the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate.

"(18) 'Nuclear incident' means any occurrence, including an extraordinary nuclear occurrence, that results in bodily injury, sickness, disease, death, loss of or damage to property or loss of use of property due to the radioactive, toxic, explosive or other hazardous properties of source material, special nuclear material or by-product material as those terms are defined in ORS 453.605.

"(19) 'Nuclear installation' means any power reactor, nuclear fuel fabri-

cation plant, nuclear fuel reprocessing plant, waste disposal facility for radioactive waste, and any facility handling that quantity of fissionable materials sufficient to form a critical mass. 'Nuclear installation' does not include any such facilities that are part of a thermal power plant.

"(20) 'Nuclear power plant' means an electrical or any other facility using nuclear energy with a nominal electric generating capacity of 25 megawatts or more, for generation and distribution of electricity, and associated transmission lines.

"(21) 'Person' means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, people's utility district, or any other entity, public or private, however organized.

"(22) 'Project order' means the order, including any amendments, issued by the State Department of Energy under ORS 469.330.

"(23)(a) 'Radioactive waste' means all material which is discarded, unwanted or has no present lawful economic use, and contains mined or refined naturally occurring isotopes, accelerator produced isotopes and by-product material, source material or special nuclear material as those terms are defined in ORS 453.605. The term does not include those radioactive materials identified in OAR 345-50-020, 345-50-025 and 345-50-035, adopted by the council on December 12, 1978, and revised periodically for the purpose of adding additional isotopes which are not referred to in OAR 345-50 as presenting no significant danger to the public health and safety.

"(b) Notwithstanding paragraph (a) of this subsection, 'radioactive waste' does not include uranium mine overburden or uranium mill tailings, mill wastes or mill by-product materials as those terms are defined in Title 42, United States Code, section 2014, on June 25, 1979.

"(24) 'Related or supporting facilities' means any structure, proposed by the applicant, to be constructed or substantially modified in connection with the construction of an energy facility, including associated transmission

lines, reservoirs, storage facilities, intake structures, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures. 'Related or supporting facilities' does not include geothermal or underground gas storage reservoirs, production, injection or monitoring wells or wellhead equipment or pumps.

"(25) 'Site' means any proposed location of an energy facility and related or supporting facilities.

"(26) 'Site certificate' means the binding agreement between the State of Oregon and the applicant, authorizing the applicant to construct and operate a facility on an approved site, incorporating all conditions imposed by the council on the applicant.

"(27) 'Thermal power plant' means an electrical facility using any source of thermal energy with a nominal electric generating capacity of 25 megawatts or more, for generation and distribution of electricity, and associated transmission lines, including but not limited to a nuclear-fueled, geothermal-fueled or fossil-fueled power plant, but not including a portable power plant the principal use of which is to supply power in emergencies. 'Thermal power plant' includes a nuclear-fueled thermal power plant that has ceased to operate.

"(28) 'Transportation' means the transport within the borders of the State of Oregon of radioactive material destined for or derived from any location.

"(29) 'Underground gas storage reservoir' means any subsurface sand, strata, formation, aquifer, cavern or void, whether natural or artificially created, suitable for the injection, storage and withdrawal of natural gas or other gaseous substances. 'Underground gas storage reservoir' includes a pool as defined in ORS 520.005.

"(30) 'Utility' includes:

"(a) A person, a regulated electrical company, a people's utility district, a joint operating agency, an electric cooperative, municipality or any combination thereof, engaged in or authorized to engage in the business of gen-

erating, transmitting or distributing electric energy;

"(b) A person or public agency generating electric energy from an energy facility for its own consumption; and

"(c) A person engaged in this state in the transmission or distribution of natural or synthetic gas.

"(31) 'Waste disposal facility' means a geographical site in or upon which radioactive waste is held or placed but does not include a site at which radioactive waste used or generated pursuant to a license granted under ORS 453.635 is stored temporarily, a site of a thermal power plant used for the temporary storage of radioactive waste from that plant for which a site certificate has been issued pursuant to this chapter or a site used for temporary storage of radioactive waste from a reactor operated by a college, university or graduate center for research purposes and not connected to the Northwest Power Grid. As used in this subsection, 'temporary storage' includes storage of radioactive waste on the site of a nuclear-fueled thermal power plant for which a site certificate has been issued until a permanent storage site is available by the federal government.

"SECTION 4. ORS 469.320 is amended to read:

"469.320. (1) Except as provided in subsections (2) and (5) of this section, no facility shall be constructed or expanded unless a site certificate has been issued for the site thereof in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. No facility shall be constructed or operated except in conformity with the requirements of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

"(2) A site certificate is not required for:

"(a) An energy facility for which no site certificate has been issued that, on August 2, 1993, had operable electric generating equipment for a modification that uses the same fuel type and increases electric generating capacity, if:

"(A) The site is not enlarged; and

"(B) The ability of the energy facility to use fuel for electricity production under peak steady state operating conditions is not more than 200 million Btu per hour greater than it was on August 2, 1993, or the energy facility expansion is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon.

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

"(c) An energy facility, except coal and nuclear power plants, if the energy facility:

"(A) Sequentially produces electrical energy and useful thermal energy from the same fuel source; and

"(B) Under average annual operating conditions, has a nominal electric generating capacity:

"(i) Of less than 50 megawatts and the fuel chargeable to power heat rate value is not greater than 6,000 Btu per kilowatt hour;

"(ii) Of 50 megawatts or more and the fuel chargeable to power heat rate value is not greater than 5,500 Btu per kilowatt hour; or

"(iii) Specified by the Energy Facility Siting Council by rule based on the council's determination relating to emissions of the energy facility.

"(d) Temporary storage, at the site of a nuclear-fueled thermal power plant for which a site certificate has been issued by the State of Oregon, of radioactive waste from the plant.

"(e) An energy facility as defined in ORS 469.300 [*(11)(a)(G)*] **(11)(a)(H)**, if the plant also produces a secondary fuel used on site for the production of heat or electricity, if the output of the primary fuel is less than six billion Btu of heat a day.

"(f) An energy facility as defined in ORS 469.300 [*(11)(a)(G)*] **(11)(a)(H)**,

if the facility:

"(A) Exclusively uses biomass, including but not limited to grain, whey, potatoes, oilseeds, waste vegetable oil or cellulosic biomass, as the source of material for conversion to a liquid fuel;

"(B) Has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with any statewide planning goals or rules of the Land Conservation and Development Commission that are directly applicable to the facility;

"(C) Requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate under subsection (1) of this section;

"(D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling facility located within one mile of the facility or is transported from the facility by rail or barge; and

"(E) Emits less than 118 pounds of carbon dioxide per million Btu from fossil fuel used for conversion energy.

"(g) A standby generation facility, if the facility complies with all of the following:

"(A) The facility has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with all statewide planning goals and applicable rules of the Land Conservation and Development Commission;

"(B) The standby generators have been approved by the Department of Environmental Quality as having complied with all applicable air and water quality requirements. For an applicant that proposes to provide the physical facilities for the installation of standby generators, the requirement of this subparagraph may be met by agreeing to require such a term in the lease contract for the facility; and

"(C) The standby generators are electrically incapable of being intercon-

nected to the transmission grid. For an applicant that proposes to provide the physical facilities for the installation of standby generators, the requirement of this subparagraph may be met by agreeing to require such a term in the lease contract for the facility.

"(3) The Energy Facility Siting Council may review and, if necessary, revise the fuel chargeable to power heat rate value set forth in subsection (2)(c)(B) of this section. In making its determination, the council shall ensure that the fuel chargeable to power heat rate value for facilities set forth in subsection (2)(c)(B) of this section remains significantly lower than the fuel chargeable to power heat rate value for the best available, commercially viable thermal power plant technology at the time of the revision.

"(4) Any person who proposes to construct or enlarge an energy facility and who claims an exemption under subsection (2)(a), (c), (f) or (g) of this section from the requirement to obtain a site certificate shall request the Energy Facility Siting Council to determine whether the proposed facility qualifies for the claimed exemption. The council shall make its determination within 60 days after the request for exemption is filed. An appeal from the council's determination on a request for exemption shall be made under ORS 469.403, except that the scope of review by the Supreme Court shall be the same as a review by a circuit court under ORS 183.484. The record on review by the Supreme Court shall be the record established in the council proceeding on the exemption.

"(5) Notwithstanding subsection (1) of this section, a separate site certificate shall not be required for:

"(a) Transmission lines, storage facilities, pipelines or similar related or supporting facilities, if such related or supporting facilities are addressed in and are subject to a site certificate for another energy facility;

"(b) Expansion within the site or within the energy generation area of a facility for which a site certificate has been issued, if the existing site certificate has been amended to authorize expansion; or

"(c) Expansion, either within the site or outside the site, of an existing council certified surface facility related to an underground gas storage reservoir, if the existing site certificate is amended to authorize expansion.

"(6) If the substantial loss of the steam host causes a facility exempt under subsection (2)(c) of this section to substantially fail to meet the exemption requirements under subsection (2)(c) of this section, the electric generating facility shall cease to operate one year after the substantial loss of the steam host unless an application for a site certificate has been filed in accordance with the provisions of ORS 469.300 to 469.563.

"(7) As used in this section:

"(a) 'Standby generation facility' means an electric power generating facility, including standby generators and the physical structures necessary to install and connect standby generators, that provides temporary electric power in the event of a power outage and that is electrically incapable of being interconnected with the transmission grid.

"(b) 'Total energy output' means the sum of useful thermal energy output and useful electrical energy output.

"(c) 'Useful thermal energy' means the verifiable thermal energy used in any viable industrial or commercial process, heating or cooling application.

"(8) Notwithstanding the definition of 'energy facility' in ORS 469.300 [*(11)(a)(J)*] **(11)(a)(K)**, an electric power generating plant with an average electric generating capacity of less than 35 megawatts produced from wind energy at a single energy facility or within a single energy generation area may elect to obtain a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. An election to obtain a site certificate under this subsection shall be final upon submission of an application for a site certificate.

"SECTION 5. ORS 469.503 is amended to read:

"469.503. In order to issue a site certificate, the Energy Facility Siting Council shall determine that the preponderance of the evidence on the record

supports the following conclusions:

"(1) The facility complies with 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.

"(2) If the energy facility is a fossil-fueled power plant, the energy facility complies with any applicable carbon dioxide emissions standard adopted by the council or enacted by statute. Base load gas plants shall comply with the standard set forth in subsection (2)(a) of this section. Other fossil-fueled power plants shall comply with any applicable standard adopted by the council by rule pursuant to subsection (2)(b) of this section. Subsections (2)(c) and (d) of this section prescribe the means by which an applicant may comply with the applicable standard.

"(a) The net carbon dioxide emissions rate of the proposed base load gas plant shall not exceed 0.70 pounds of carbon dioxide emissions per kilowatt hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean basis. Notwithstanding the foregoing, the council may by rule modify the carbon dioxide emissions standard for base load gas plants if the council finds that the most efficient stand-alone combined cycle, combustion turbine, natural gas-fired energy facility that is commercially demonstrated and operating in the United States has a net heat rate of less than 7,200 Btu per kilowatt hour higher heating value adjusted to ISO conditions. In modifying the carbon dioxide emission standard, the council shall determine the rate of carbon dioxide emissions per kilowatt hour of net electric output of such energy facility, adjusted to ISO conditions, and reset the carbon dioxide emissions standard at 17 percent below this rate.

"(b) The council shall adopt carbon dioxide emissions standards for other types of fossil-fueled power plants. Such carbon dioxide emissions standards shall be promulgated by rule. In adopting or amending such carbon dioxide

emissions standards, the council shall consider and balance at least the following principles, the findings on which shall be contained in the rulemaking record:

"(A) Promote facility fuel efficiency;

"(B) Promote efficiency in the resource mix;

"(C) Reduce net carbon dioxide emissions;

"(D) Promote cogeneration that reduces net carbon dioxide emissions;

"(E) Promote innovative technologies and creative approaches to mitigating, reducing or avoiding carbon dioxide emissions;

"(F) Minimize transaction costs;

"(G) Include an alternative process that separates decisions on the form and implementation of offsets from the final decision on granting a site certificate;

"(H) Allow either the applicant or third parties to implement offsets;

"(I) Be attainable and economically achievable for various types of power plants;

"(J) Promote public participation in the selection and review of offsets;

"(K) Promote prompt implementation of offset projects;

"(L) Provide for monitoring and evaluation of the performance of offsets; and

"(M) Promote reliability of the regional electric system.

"(c) The council shall determine whether the applicable carbon dioxide emissions standard is met by first determining the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. Such determination shall be based on the proposed design of the energy facility. The council shall adopt site certificate conditions to ensure that the predicted carbon dioxide emissions are not exceeded on a new and clean basis. For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of subparagraphs (A) to (D) of this paragraph, or any combination thereof. The

council shall determine the amount of carbon dioxide or other greenhouse gas emissions reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard. For purposes of determining the net carbon dioxide emissions, the council shall by rule establish the global warming potential of each greenhouse gas based on a generally accepted scientific method, and convert any greenhouse gas emissions to a carbon dioxide equivalent. Unless otherwise provided by the council by rule, the global warming potential of methane is 23 times that of carbon dioxide, and the global warming potential of nitrous oxide is 296 times that of carbon dioxide. If the council or a court on judicial review concludes that the applicant has not demonstrated compliance with the applicable carbon dioxide emissions standard under subparagraphs (A), (B) or (D) of this paragraph, or any combination thereof, and the applicant has agreed to meet the requirements of subparagraph (C) of this paragraph for any deficiency, the council or a court shall find compliance based on such agreement.

"(A) The facility will sequentially produce electrical and thermal energy from the same fuel source, and the thermal energy will be used to displace another source of carbon dioxide emissions that would have otherwise continued to occur, in which case the council shall adopt site certificate conditions ensuring that the carbon dioxide emissions reduction will be achieved.

"(B) The applicant or a third party will implement particular offsets, in which case the council may adopt site certificate conditions ensuring that the proposed offsets are implemented but shall not require that predicted levels of avoidance, displacement or sequestration of greenhouse gas emissions be achieved. The council shall determine the quantity of greenhouse gas emissions reduction that is reasonably likely to result from each of the proposed offsets based on the criteria in sub-subparagraphs (i) to (iii) of this subparagraph. In making this determination, the council shall not allow

credit for offsets that have already been allocated or awarded credit for greenhouse gas emissions reduction in another regulatory setting. In addition, the fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of greenhouse gas emissions is not, by itself, a basis for withholding credit for an offset.

"(i) The degree of certainty that the predicted quantity of greenhouse gas emissions reduction will be achieved by the offset;

"(ii) The ability of the council to determine the actual quantity of greenhouse gas emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance; and

"(iii) The extent to which the reduction of greenhouse gas emissions would occur in the absence of the offsets.

"(C) The applicant or a third party agrees to provide funds in an amount deemed sufficient to produce the reduction in greenhouse gas emissions necessary to meet the applicable carbon dioxide emissions standard, in which case the funds shall be used as specified in paragraph (d) of this subsection. Unless modified by the council as provided below, the payment of 57 cents shall be deemed to result in a reduction of one ton of carbon dioxide emissions. The council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If a site certificate is approved based on this subparagraph, the council may not adjust the amount of such offset funds based on the actual performance of offsets. After three years from June 26, 1997, the council may by rule increase or decrease the monetary offset rate of 57 cents per ton of carbon dioxide emissions. Any change to the monetary offset rate shall be based on empirical evidence of the cost of offsets and the council's finding that the standard will be economically achievable with the modified rate for natural gas-fired power plants. Following the initial three-year period, the council may increase or decrease the monetary offset rate no more than 50

percent in any two-year period.

"(D) Any other means that the council adopts by rule for demonstrating compliance with any applicable carbon dioxide emissions standard.

"(d) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under paragraph (c)(C) of this subsection, the applicant shall identify the qualified organization. The applicant may identify an organization that has applied for, but has not received, an exemption from federal income taxation, but the council may not find that the organization is a qualified organization unless the organization is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996. The site certificate holder shall provide a bond or comparable security in a form reasonably acceptable to the council to ensure the payment of the offset funds and the amount required under subparagraph (A)(ii) of this paragraph. Such security shall be provided by the date specified in the site certificate, which shall be no later than the commencement of construction of the facility. The site certificate shall require that the offset funds be disbursed as specified in subparagraph (A) of this paragraph, unless the council finds that no qualified organization exists, in which case the site certificate shall require that the offset funds be disbursed as specified in subparagraph (B) of this paragraph.

"(A) The site certificate holder shall disburse the offset funds and any other funds required by sub-subparagraph (ii) of this subparagraph to the qualified organization as follows:

"(i) When the site certificate holder receives written notice from the qualified organization certifying that the qualified organization is contractually obligated to pay any funds to implement offsets using the offset funds, the site certificate holder shall make the requested amount available to the qualified organization unless the total of the amount requested and any amounts previously requested exceeds the offset funds, in which case only the remaining amount of the offset funds shall be made available. The

qualified organization shall use at least 80 percent of the offset funds for contracts to implement offsets. The qualified organization shall assess offsets for their potential to qualify in, generate credits in or reduce obligations in other regulatory settings. The qualified organization may use up to 20 percent of the offset funds for monitoring, evaluation, administration and enforcement of contracts to implement offsets.

"(ii) At the request of the qualified organization and in addition to the offset funds, the site certificate holder shall pay the qualified organization an amount equal to 10 percent of the first $500,000 of the offset funds and 4.286 percent of any offset funds in excess of $500,000. This amount shall not be less than $50,000 unless a lesser amount is specified in the site certificate. This amount compensates the qualified organization for its costs of selecting offsets and contracting for the implementation of offsets.

"(iii) Notwithstanding any provision to the contrary, a site certificate holder subject to this subparagraph shall have no obligation with regard to offsets, the offset funds or the funds required by sub-subparagraph (ii) of this subparagraph other than to make available to the qualified organization the total amount required under paragraph (c) of this subsection and sub-subparagraph (ii) of this subparagraph, nor shall any nonperformance, negligence or misconduct on the part of the qualified organization be a basis for revocation of the site certificate or any other enforcement action by the council with respect to the site certificate holder.

"(B) If the council finds there is no qualified organization, the site certificate holder shall select one or more offsets to be implemented pursuant to criteria established by the council. The site certificate holder shall give written notice of its selections to the council and to any person requesting notice. On petition by the State Department of Energy, or by any person adversely affected or aggrieved by the site certificate holder's selection of offsets, or on the council's own motion, the council may review such selection. The petition must be received by the council within 30 days of the

date the notice of selection is placed in the United States mail, with first-class postage prepaid. The council shall approve the site certificate holder's selection unless it finds that the selection is not consistent with criteria established by the council. The site certificate holder shall contract to implement the selected offsets within 18 months after commencing construction of the facility unless good cause is shown requiring additional time. The contracts shall obligate the expenditure of at least 85 percent of the offset funds for the implementation of offsets. No more than 15 percent of the offset funds may be spent on monitoring, evaluation and enforcement of the contract to implement the selected offsets. The council's criteria for selection of offsets shall be based on the criteria set forth in paragraphs (b)(C) and (c)(B) of this subsection and may also consider the costs of particular types of offsets in relation to the expected benefits of such offsets. The council's criteria shall not require the site certificate holder to select particular offsets, and shall allow the site certificate holder a reasonable range of choices in selecting offsets. In addition, notwithstanding any other provision of this section, the site certificate holder's financial liability for implementation, monitoring, evaluation and enforcement of offsets pursuant to this subsection shall be limited to the amount of any offset funds not already contractually obligated. Nonperformance, negligence or misconduct by the entity or entities implementing, monitoring or evaluating the selected offset shall not be a basis for revocation of the site certificate or any other enforcement action by the council with respect to the site certificate holder.

"(C) Every qualified organization that has received funds under this paragraph shall, at five-year intervals beginning on the date of receipt of such funds, provide the council with the information the council requests about the qualified organization's performance. The council shall evaluate the information requested and, based on such information, shall make any recommendations to the Legislative Assembly that the council deems appropriate.

"(e) As used in this subsection:

"(A) 'Adjusted to ISO conditions' means carbon dioxide emissions and net electric power output as determined at 59 degrees Fahrenheit, 14.7 pounds per square inch atmospheric pressure and 60 percent humidity.

"(B) 'Base load gas plant' means a generating facility that is fueled by natural gas, except for periods during which an alternative fuel may be used and when such alternative fuel use shall not exceed 10 percent of expected fuel use in Btu, higher heating value, on an average annual basis, and where the applicant requests and the council adopts no condition in the site certificate for the generating facility that would limit hours of operation other than restrictions on the use of alternative fuel. The council shall assume a 100 percent capacity factor for such plants and a 30-year life for the plants for purposes of determining gross carbon dioxide emissions.

"(C) 'Carbon dioxide equivalent' means the global warming potential of a greenhouse gas reflected in units of carbon dioxide.

"(D) 'Fossil-fueled power plant' means a generating facility that produces electric power from natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material.

"(E) 'Generating facility' means those energy facilities that are defined in ORS 469.300 (11)(a)(A), (B) [*and (D)*]**, (D) and (E)**.

"(F) 'Global warming potential' means the determination of the atmospheric warming resulting from the release of a unit mass of a particular greenhouse gas in relation to the warming resulting from the release of the equivalent mass of carbon dioxide.

"(G) 'Greenhouse gas' means carbon dioxide, methane and nitrous oxide.

"(H) 'Gross carbon dioxide emissions' means the predicted carbon dioxide emissions of the proposed energy facility measured on a new and clean basis.

"(I) 'Net carbon dioxide emissions' means gross carbon dioxide emissions of the proposed energy facility, less carbon dioxide or other greenhouse gas emissions avoided, displaced or sequestered by any combination of cogeneration or offsets.

"(J) 'New and clean basis' means the average carbon dioxide emissions rate per hour and net electric power output of the energy facility, without degradation, as determined by a 100-hour test at full power completed during the first 12 months of commercial operation of the energy facility, with the results adjusted for the average annual site condition for temperature, barometric pressure and relative humidity and use of alternative fuels, and using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel and a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel, if such fuel use is proposed by the applicant. The council may by rule adjust the rate of pounds of carbon dioxide per million Btu for natural gas or distillate fuel. The council may by rule set carbon dioxide emissions rates for other fuels.

"(K) 'Nongenerating facility' means those energy facilities that are defined in ORS 469.300 (11)(a)(C) and [*(E) to (I)*] **(F) to (J)**.

"(L) 'Offset' means an action that will be implemented by the applicant, a third party or through the qualified organization to avoid, sequester or displace emissions.

"(M) 'Offset funds' means the amount of funds determined by the council to satisfy the applicable carbon dioxide emissions standard pursuant to paragraph (c)(C) of this subsection.

"(N) 'Qualified organization' means an entity that:

"(i) Is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996;

"(ii) Either is incorporated in the State of Oregon or is a foreign corporation authorized to do business in the State of Oregon;

"(iii) Has in effect articles of incorporation that require that offset funds received pursuant to this section are used for offsets that require that decisions on the use of the offset funds are made by a decision-making body composed of seven voting members of which three are appointed by the council, three are Oregon residents appointed by the Bullitt Foundation or

an alternative environmental nonprofit organization named by the body, and one is appointed by the applicants for site certificates that are subject to paragraph (d) of this subsection and the holders of such site certificates, and that require nonvoting membership on the body for holders of site certificates that have provided funds not yet disbursed under paragraph (d)(A) of this subsection;

"(iv) Has made available on an annual basis, beginning after the first year of operation, a signed opinion of an independent certified public accountant stating that the qualified organization's use of funds pursuant to this statute conforms with generally accepted accounting procedures except that the qualified organization shall have one year to conform with generally accepted accounting principles in the event of a nonconforming audit;

"(v) Has to the extent applicable, except for good cause, entered into contracts obligating at least 60 percent of the offset funds to implement offsets within two years after the commencement of construction of the facility; and

"(vi) Has to the extent applicable, except for good cause, complied with paragraph (d)(A)(i) of this subsection.

"(3) Except as provided in ORS 469.504 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 compliance with applicable Oregon statutes and administrative rules, other than those involving federally delegated programs, would result in conflicting conditions in the site certificate, the council may resolve the conflict consistent with the public interest. A resolution may not result in the waiver of any applicable state statute.

"(4) The facility complies with the statewide planning goals adopted by

the Land Conservation and Development Commission.

"SECTION 6. ORS 469.504 is amended to read:

"469.504. (1) A proposed facility shall be found in compliance with the statewide planning goals under ORS 469.503 (4) if:

"(a) 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 Energy Facility Siting Council determines that:

"(A) The facility complies with applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and in effect on the date the application is submitted, and with any Land Conservation and Development Commission administrative rules and goals and any land use statutes that apply directly to the facility under ORS 197.646;

"(B) For an energy facility or a related or supporting facility that must be evaluated against the applicable substantive criteria pursuant to subsection (5) of this section, that the proposed facility does not comply with one or more of the applicable substantive criteria but does otherwise comply with the applicable statewide planning goals, or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section; or

"(C) For a facility that the council elects to evaluate against the statewide planning goals pursuant to subsection (5) of this section, that the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section.

"(2) The council may find goal compliance for a 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 an exception process goal, 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.

"(3) If compliance with applicable substantive local criteria and applicable statutes and state administrative rules would result in conflicting conditions in the site certificate or amended site certificate, the council shall resolve the conflict consistent with the public interest. A resolution may not result in a waiver of any applicable state statute.

"(4) An applicant for a site certificate shall elect whether to demonstrate compliance with the statewide planning goals under subsection (1)(a) or (b) of this section. The applicant shall make the election on or before the date specified by the council by rule.

"(5) Upon request by the State Department of Energy, the special advisory

group established under ORS 469.480 shall recommend to the council, within the time stated in the request, the applicable substantive criteria under subsection (1)(b)(A) of this section. If the special advisory group does not recommend applicable substantive criteria within the time established in the department's request, the council may either determine and apply the applicable substantive criteria under subsection (1)(b) of this section or determine compliance with the statewide planning goals under subsection (1)(b)(B) or (C) of this section. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300 or a related or supporting facility that does not pass through more than one local government jurisdiction or more than three zones in any one jurisdiction, the council shall apply the criteria recommended by the special advisory group. If the special advisory group recommends applicable substantive criteria for an energy facility as defined in ORS 469.300 (11)(a)(C) [*to (E)*]**, (D) and (F)** 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 determine 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 its determination, 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 consistency of the applicable substantive criteria from the various zones and jurisdictions.

"(6) The council is not subject to ORS 197.180 and a state agency may not require an applicant for a site certificate to comply with any rules or programs adopted under ORS 197.180.

"(7) On or before its next periodic review, each affected local government shall amend its comprehensive plan and land use regulations as necessary to reflect the decision of the council pertaining to a site certificate or amended site certificate.

"(8) Notwithstanding ORS 34.020 or 197.825 or any other provision of law, the affected local government's land use approval of a proposed facility under subsection (1)(a) of this section and the special advisory group's recommendation of applicable substantive criteria under subsection (5) of this section shall be subject to judicial review only as provided in ORS 469.403. If the applicant elects to comply with subsection (1)(a) of this section, the provisions of this subsection shall apply only to proposed projects for which the land use approval of the local government occurs after the date a notice of intent or an application for expedited processing is submitted to the State Department of Energy.

"(9) The State Department of Energy, in cooperation with other state agencies, shall provide, to the extent possible, technical assistance and information about the siting process to local governments that request such assistance or that anticipate having a facility proposed in their jurisdiction.".
