



Oregon

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To: Energy Facility Siting Council

From: Chase McVeigh-Walker, Senior Siting Analyst

Date: September 6, 2024

Subject: Agenda Item D (Action Item): Wagon Trail Solar Project – Council Decision on Application for Site Certificate (ASC) for the September 19-20, 2024 EFSC Meeting

Attachments:

1. [Proposed Order](#) (provided via hyperlink)
2. Summary of DPO Comments, Applicant Response and Department Evaluation
3. Hearing Officer's Order Concluding the Contested Case

STAFF RECOMMENDATION

The Oregon Department of Energy's (Department) Proposed Order on the Application for Site Certificate (ASC) recommends that the Energy Facility Siting Council (Council) approve the Application for Site Certificate (ASC) for the Wagon Trail Solar Project (proposed facility). Based upon the recommended findings of fact, conclusions of law, and site certificate conditions presented in the Proposed Order on the ASC (included as Attachment 1 of this staff report), the Department recommends Council approve the Final Order and grant issuance of a site certificate for the Wagon Trail Solar Project.

PROJECT OVERVIEW

The proposed facility is a 500 megawatt (MW) solar photovoltaic energy generation facility. The proposed facility would be located within an approximately 7,450-acre (11.64 sq. miles) site boundary in Morrow County. Other proposed components include a battery energy storage system (lithium-ion batteries); power collection system; up to two substations; operation and maintenance building; Generator Step Up transformer; 0.6 mile overhead 230 kV transmission line; perimeter fencing, access roads and staging areas.

PROCEDURAL HISTORY OVERVIEW – ASC TO CURRENT

- August 31, 2022 - The applicant submitted the preliminary application for site certificate (pASC)
- December 22, 2023 - The Department determined the pASC to be complete.
- January 3, 2024 - The applicant filed a complete ASC

- January 17, 2024 - The Department held a remote complete application public informational meeting. The meeting was scheduled to be in person at the Lexington Town Hall but was changed to a remote only meeting due to weather conditions.
- May 7, 2024 - The Department issued the Draft Proposed Order (DPO) on the ASC, initiating a 31-day public comment period. Concurrent with the issuance of the DPO, the Department issued Public Notice of the DPO and Public Hearing on the DPO.
- May 30, 2024 - The Council held a public hearing on the DPO in Boardman
- June 14, 2024 & July 19, 2024 – Council reviewed the DPO, comments received on the record of the DPO, and the applicant’s responses to the DPO. The issues raised in DPO comments, and the Department’s evaluation of the comments received, and the applicant’s response to the comments are summarized and presented in Attachment 2 of this staff report.
- July 30, 2024 - The Department issued the Proposed Order (in a redline/strikeout format), taking into consideration Council comments, any comments received “on the record of the public hearing, and agency consultation. On the same date, the Department issued notice of the Proposed Order and Contested Case.
- August 30, 2024 - The deadline for requesting party status in the contested case. No requests were received.
- September 4, 2024 - The Hearing Officer issued the Order Concluding the Contested Case for the facility (see Attachment 3 of this staff report).

SUMMARY OF REVISIONS – DPO TO PROPOSED ORDER

A summary of all significant issues raised in the written and oral comments, and staff’s preliminary recommendations for how to address the issues in the DPO were originally provided as Table 1 of the June 14, 2024 Agenda Item B Staff Report (Attachment 2 of this Staff Report).

In addition to the recommendations provided in Table 1 of the June 14, 2024 Staff Report, the following actions were provided and recommended for Councils consideration in the July 5, 2024 Agenda Item B Staff Report and presented to Council during the July 19, 2024 EFSC meeting:

Soil Protection Standard (Section IV.D, p. 43-50)

Developed in consultation with the Oregon Department of Agriculture, the Department recommended Council include additional measures for long term site stabilization and vegetation management.

Land Use Standard (Section IV.E, p. 50-118)

In the DPO, the Department recommended Council grant an exception based on three reasons: locational dependency; minimal impacts to agriculture within the subject tracts and surrounding area; agricultural related economic benefits; and minimal impacts to other environmental resources projected by Council standards. On the record of the DPO, the SAG and Council members expressed concern about the reasons recommended by the Department

as justifying an exception to Goal 3, particularly related to the evidence and analysis for the minimal impacts to agriculture within the subject tracts.

Based upon further review of the applicant's analysis presented in ASC Exhibit K Attachment K-4 (Agricultural Economic Analysis Report by EcoNorthwest), the Department considers there to be impacts that should not be considered "minimal." Therefore, the Department recommended Council find that "minimal impacts to agriculture" is not a reason to support a goal exception.

During the June 14, 2024 review of the DPO, Council raised questions about the difference between the mitigation approach proposed by the applicant and the applicant of the Sunstone Solar Project since both projects related upon an Agricultural Economic Analysis Report by EcoNorthwest. The Department reviewed the reports for both projects in efforts to identify any unsupported discrepancies.

Based upon review, the Department affirms that EcoNorthwest applied similar methodologies in their analyses of both projects. The Sunstone Solar Project is a larger facility (more than twice the size of Wagon Trail Solar, e.g., 1200 MW vs. 500 MW and impacting 9,400 acres of arable land vs. 3,684 acres). The Sunstone Solar Project proposes an \$11.1 million agricultural fund as mitigation – i.e., to support a Council finding under OAR 345-022-0030(4)(B) – that significant [agricultural] economic impacts will be mitigated. In contrast, the applicant for Wagon Trail Solar has proposed a \$500,000 fund, not as mitigation for a significant impact to agriculture but rather as an economic benefit to support the local agricultural economy – i.e., as a reason to support a Council finding under OAR 345-022-0030(4)(A). For these reasons, the Department considers that there are no unsupported discrepancies.

An outcome of the above review includes recommended amended condition language for Land Use Condition 14 and 15, to ensure that the mitigation funds (\$500,500) represented in the ASC are remitted prior to construction.

Noise Control Regulations (Section IV.R.1, p. 239-257)

The Department recommended Council amend Recommended Noise Control Condition 1(C) to remove specific reference to "(IV) and (VI)" of OAR 340-035- 0035(1)(b)(B)(iii). This recommendation would maintain the applicant's requirement to provide the Department with results of the noise analysis consistent with the requirements of OAR 340-035- 0035(1)(b)(B)(iii) but would eliminate potential confusion as to which sub sections apply.

SUMMARY OF REVISIONS – PROPOSED TO FINAL ORDER

The Final Order, if approved or modified and approved by Council at the September 19-20, 2024 EFSC Meeting, will include updates to the procedural history and administrative revisions such as converting "Department recommends" to "Council finds and "Proposed Order" to "Final Order." The Final Order will include any changes to findings of fact or material changes to conditions made by EFSC during its review of the Proposed Order, and any changes made in response to applicant's comments on material changes from material change hearing, if held.

COUNCIL SCOPE OF REVIEW

Under ORS 469.370(7), at the conclusion of the Contested Case, the Council shall issue a Final Order, either approving or rejecting the application based upon the standards adopted under ORS 469.501 and any additional statutes, rules or local ordinances determined to be applicable to the facility by the Project Order. Four affirmative votes are required to approve the proposed facility. On September 6, 2024, the Department issued public notice of the September 19-20, 2024 EFSC Meeting Agenda which included Public Notice of the potential for a Hearing to Adopt Final Order under ORS 469.370(7). If the Council approves the ASC in the Final Order, the Council shall issue a site certificate. The site certificate becomes effective upon execution by the Council and by the applicant.

The Council's three options are provided below:

- 1. Approve as presented by staff.** The Council can approve the Proposed Order as the Final Order and grant issuance of a site certificate.
- 2. Amend, and approve.** The Council may amend the staff's Proposed Order, including either the findings of fact or conditions of approval. If the amendments are not considered material, the Council can approve and issue the Final Order without a material change hearing. If the amendments are considered material, including material changes to conditions, the Council must provide the applicant an opportunity to comment on the changes, during a material change hearing, which if necessary, is planned for the September 19-20, 2024 EFSC Meeting.
- 3. Reject and deny.** The Council can decide that the proposed facility does not meet one or more Council standards or other applicable rules and statutes and reject the Proposed Order and deny issuing a site certificate. However, because the Proposed Order recommends that the facility meets all Council standards and applicable rules and statutes (with conditions of approval), if Council disagrees with staff's findings of fact or conclusions of law in the Proposed Order, Council will have to specify which standard or rule is not met and why based upon fact or law, and direct staff to prepare findings accordingly. As per ORS 469.370(7), Council would be required to provide a material change hearing on the revised conclusions, which if necessary, is planned for the September 19-20, 2024 EFSC Meeting, or applicant and EFSC can hold a hearing at a later Council, and ultimately issue its Final Order.

The Council's order is considered a Final Order for purposes of appeal under ORS 469.403.