



# Oregon

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**To:** Energy Facility Siting Council

**From:** Christopher M. Clark, Senior Siting Analyst

**Date:** November 1, 2024

**Subject:** Agenda Item B (Action Item): Sunstone Solar Project – Proposed Order Review, Possible Material Change Hearing and Public Notice of Possible Hearing to Adopt Final Order (ORS 469.370(7) for the November 14, 2024, EFSC Meeting

**Attachments:** 1. Proposed Order  
2. Hearing Officer's Order Concluding the Contested Case (Forthcoming)

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## STAFF RECOMMENDATION

The Oregon Department of Energy (Department) issued the Proposed Order on the Application for Site Certificate (ASC) for the Sunstone Solar Project (proposed facility) on October 8, 2024. The proposed order recommends the Council approve the ASC subject to conditions of approval. The Public Notice of the Proposed Order, issued on the same date as the Proposed Order, set November 7, 2024, at 5:00 pm Pacific as the deadline for requests to participate in the contested case proceeding on the ASC. If no petitions are received by the deadline, the Department recommends the Council adopt the Proposed Order as the Final Order and grant issuance of a site certificate for the proposed facility. If any timely petitions are received, the Council's review will occur after the conclusion of the Contested Case.

## PROJECT OVERVIEW

The Sunstone Solar Project (formerly Echo Solar Project) is a proposed 1,200-megawatt solar photovoltaic power generation facility. In addition to the proposed solar photovoltaic arrays, the facility would include:

- Up to 7,200 MW hours of battery storage capacity
- An interconnection substation
- Up to six collector substations
- Up to four operations and maintenance buildings
- Up to 9.5 miles of 230-kilovolt (kV) overhead transmission lines
- Other structures including roads, perimeter fencing, and gates.

If approved, the facility would occupy approximately 9,442 acres (14.75 sq. miles) of private land zoned for Exclusive Farm Use within an approximately 10,960-acres (17 sq. miles) site in Morrow County, Oregon.

### **PROCEDURAL HISTORY OVERVIEW – ASC TO CURRENT**

- August 8, 2023 - The Department received the preliminary application for site certificate (pASC)
- August 28, 2023 - The Department distributed the pASC to state and local government reviewing agencies and tribal governments.
- October 6, 2023 - The Department issued a determination that the pASC was incomplete and provided Requests for Additional Information (RAIs).
- December 6 and 15, 2023 - The applicant provided initial responses to the RAIs.
- December 15, 2023 - The Department issued a second set of RAIs.
- March 6, March 29, April 16, April 19, and April 24, 2024 - The applicant provided responses to the second set of RAIs, and responses to outstanding requests from the first set.
- May 10, 2024 - The Department determined that the pASC, with the revisions to exhibits included in the RAI responses, was complete.
- May 15, 2024 - The applicant filed the complete ASC
- May 21, 2024 - The Department issued Public Notice of the Complete ASC.
- May 22, 2024 - The Department distributed electronic copies of the complete ASC to reviewing agencies, along with a request for agency reports on the complete ASC by June 21, 2024.
- June 5, 2024 - The Department held an in-person and remote public informational meeting on the Complete ASC in Boardman, Oregon.
- July 12, 2024 - The Department issued the DPO initiating a 41-day comment period. Public Notice of the DPO was issued on the same day.
- August 23, 2024 - A Public Hearing on the DPO and ASC was held at the Council’s meeting in Hermiston, Oregon. The public comment period ended at the close of the hearing, the applicant requested that the Council hold the record open for one week so it could respond.
- August 29, 2024 - The applicant provided responses to public comments.
- September 20, 2024 - The Council reviewed the DPO, the public comments provided on the record of the public hearing, and the applicant’s responses to public comments.
- October 8, 2024 - The Department issued its Proposed Order on the ASC and the Public Notice of the Proposed Order.
- November 7, 2024 - Deadline for petitions to request to participate in the contested case to be received by the Hearing Officer.

### **SUMMARY OF REVISIONS – DPO TO PROPOSED ORDER**

The Department issued the Proposed Order after considering the comments of the Council, any public comments made at a public hearing, written comments received before the close of the record of the public hearing, and agency consultation. Changes made from the Draft Proposed Order to the Proposed Order include the following:

#### DPO Section IV.E.1.3, Land Use; Goal 3 Exception

In its comments on the DPO, the applicant disagreed with the Department's recommended denial of the economic benefits reason provided to support the applicant's request for an exception to Statewide Planning Goal 3, arguing, in part, that the facility will result in a net economic benefit to the local agricultural economy through its proposed Agricultural Mitigation Program. Morrow County made similar arguments in its written and oral comments, and other commenters offered support for the proposed Agricultural Mitigation Fund.

The Proposed Order partially reverses the DPO's recommended denial of the economic benefit reason. The Proposed Order recommends the Council accept the applicant's economic benefits reason as one of the reasons that would justify an exception to Statewide Planning Goal 3 because the applicant has provided evidence demonstrating that the projects that would be supported by the Agricultural Mitigation Fund are reasonably likely to generate a net economic benefit to the local agricultural economy.

#### DPO Section IV.M.1.3, Public Services; Housing

In the DPO, the Department recommended the Council find the anticipated influx of workers during construction could potentially affect housing supply in the vicinity of the site, and recommended Council impose Public Services Conditions 3 and 4, requiring the development and implementation of a temporary housing plan that identifies strategies to coordinate with contractors and local officials on housing options that minimize impacts to local housing supply.

In its written comments, Morrow County requested the Council consider amending Recommended Public Services Condition 4 to require the applicant collect data on workforce housing outcomes (i.e. location and housing type) and report the data back to the County. In its responses, the applicant stated that supported Morrow County's recommendation as long as any required data could be reported in aggregate to protect worker privacy.

The Proposed Order revises Recommended Public Services Conditions 3 and 4 to require the applicant to collect and report aggregate data on construction workforce housing outcomes, including the location where workers stay and the type of housing they stay in.

#### DPO Section IV.N.2, Wildfire Prevention and Risk Mitigation; Wildfire Mitigation Plans

In the DPO, the Department recommended the Council impose Wildfire Prevention and Risk Mitigation Conditions 1 to 4, requiring the applicant to finalize and implement Construction and Operational Wildfire Mitigation Plans.

In its written comments, Morrow County restated a previous recommendation to include a condition that requires the Wildfire Mitigation Plan to be approved by the County Emergency Manager and reiterated the importance of including the Emergency Manager in plan review. Both Wildfire Mitigation Plans had required the applicant to contact local fire districts, as well as local emergency management agencies to request and incorporate any input about the location and types of temporary fire breaks needed in the event of a fire on or off site into the final plans and to develop procedures for providing emergency notifications to adjacent

landowners, but the Department provided the plans to the Morrow County Emergency Manager for review. Based on his comments, and comments from similar agencies during implementation of other wildfire plans, the Proposed Order modifies the draft Construction and Operation Wildfire Mitigation Plans provided as Proposed Order Attachment L and M to require the applicant to identify and provide maps of primary access points, facility components, and important safety features or hazards such as shut-offs and hazardous material storage areas to local fire and emergency management agencies prior to construction and operation of the facility, respectively. The revised Attachment M also requires the applicant to provide annual training to local first responders on how to safely respond to electrical fires or fires involving BESS components.

#### DPO Section V.C.1, Water Rights

During its review of the DPO, the Council raised concerns about the adequacy of conditions to protect water resources within the Butter Creek Critical Ground Water Area. The Proposed Order revises Recommended Water Rights Conditions 1 and 2 to require the applicant to provide evidence such as a contract or purchase agreement demonstrating that adequate water supply to meet construction demand has been secured from sources with valid water rights prior to construction, and to report the source and amount of water used during construction in semiannual construction progress reports.

#### **SUMMARY OF REVISIONS – PROPOSED TO FINAL ORDER**

The Final Order, if approved or modified and approved by Council, 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 November 1, 2024, the Department issued public notice of the November 14, 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 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 November 1, 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 as described above, or at a later date, and ultimately issue its Final Order.

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