



Oregon

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To: Energy Facility Siting Council

From: Kellen Tardaewether, Senior Siting Analyst

Date: December 2, 2022

Subject: Agenda Item E (Information Item):
West End Solar Project, EFSC Review of the Draft Proposed Order and
Comments for the December 16, 2022 EFSC Meeting

Attachments: Attachment 1: [November 17-18, 2022 Staff Report \(Agenda Item B & H\)*](#)
Attachment 1a: [Draft Proposed Order on ASC*](#)
Attachment 1b: [DPO Comments*](#)
*Previously provided for Nov 2022 EFSC meeting; provided via hyperlink only
Attachment 2: Combined DPO Comments and Applicant Responses as of
December 1, 2022

INTRODUCTION

At the November 17, 2022 Energy Facility Siting Council (EFSC or Council) meeting, a public hearing on the Draft Proposed Order on the Application for Site Certificate (ASC) for the West End Solar Project was conducted. In preparation for the November 17-18, 2022 meeting, Council was provided a copy of the Draft Proposed Order on the ASC (DPO) and all comments received on the record of the DPO public hearing (see materials for November 17-18 2022 EFSC Meeting Agenda Item B and H: [staff report](#), [DPO](#) and [DPO comments](#)). The materials prepared for the November 2022 EFSC meeting are relevant for Agenda Item E of the December 16, 2022 EFSC meeting and are therefore incorporated via reference and provided via hyperlink attachments.

STAFF RECOMMENDATION

The Oregon Department of Energy's (Department) DPO on the ASC for the West End Solar Project (proposed facility) recommends that the Council find that EE West End Solar, LLC (applicant), a subsidiary of Eurus Solar Holdings, LLC., provided sufficient evidence in the ASC to demonstrate that the proposed facility, with recommended conditions, satisfies the requirements of applicable Council standards and other state statutes and local ordinance provisions.

PROJECT OVERVIEW

The proposed facility includes approximately 50 megawatts (MW) of solar photovoltaic energy generation components that would occupy up to 324 acres on Exclusive Farm Use zoned land in Umatilla County. Related or supporting facilities include a 70 MW lithium-ion energy storage

system, collector substation and switchyard substation within 15-acre fenced area, 15 miles of underground 34.5 kilovolt (kV) collector line system, Supervisory Control and Data Acquisition (SCADA) System, driveway and internal access roads, an Operation and Maintenance (O&M) enclosure, construction staging areas, and approximately 3 miles of perimeter fence.

DRAFT PROPOSED ORDER PROCEDURAL SUMMARY

The Department issued the Draft Proposed Order on October 26, 2022, along with a Public Notice of a 22-day comment period extending from October 26, 2022 through November 17, 2022. A public hearing on the DPO was held on November 17, 2022 at the Oxford Suites in Hermiston, Oregon with opportunities for remote and in-person participation. The public hearing was conducted by an EFSC-appointed Hearing Officer from the Office of Administrative Hearings.

On the record of the DPO public hearing, the Department received comments from two state agencies, 1 tribal government, 2 members of the public, EFSC members and the applicant/landowners on behalf of the applicant. Prior to the conclusion of the November 17, 2022 public hearing, the applicant requested that the Hearing Officer extend the record to December 2, 2022 to allow the applicant to provide additional responses to issues raised by EFSC members.

After the record closes on December 2, 2022, Council will have an opportunity to review the DPO on December 16, 2022. Following Council's review of the DPO and issues raised in comments received, the Department will issue a Proposed Order intended to address issues raised in comments received that are within Council jurisdiction and based on facts and evidence provided in support of the issue.

DEPARTMENT ANALYSIS OF COMMENTS AND APPLICANT RESPONSES RECEIVED

The Department's analysis of issues raised in comments received on the record of the DPO public hearing and the applicant's responses, as of December 1, 2022, is provided below.

Table 1: Summary of DPO Comments and Department Recommendations

Commenter	Comment Subject	Comment Summary	DPO Applicability (Section Reference)	Department's Proposed Order Recommendations and Responses
<i>State and Tribal Government Agencies</i>				
ODFW	Draft Habitat Mitigation Plan (HMP) (DPO Attachment P-5)	Draft HMP is not consistent with mitigation goals for Category 3, 4 and 5; however, habitat quality of site is lower than Category 3 and 4 due to it limited functionality and connectivity	IV.H Fish and Wildlife Habitat (pp. 106-119)	Recommends that F&W Condition 1 include an opportunity for the applicant to update the habitat categorization referenced in the HMP to Category 5; commitments for mitigation area size and enhancement actions should be maintained as sufficient to meet the mitigation goals for Category 5 habitat.
CTUIR	Inadvertent Discovery Plan (IDP) (DPO Attachment S-3) and Noxious Weed Control	Draft IDP should be updated to reflect current contacts for CTUIR, Oregon State Police and CIS; and, requests confirmation of applicant's plan for noxious weed control	IV.K Historic, Cultural and Archeological Resources (pp. 130 – 141); and, IV.H. Land Use (p. 82)	Recommends updated contact information be incorporated into draft IDP. DPO Attachment P-4 includes the applicant's draft Noxious Weed Control Plan; plan identifies pre-construction noxious weed survey and treatment, and monitoring, treatment and control methods to be implemented during construction and operation.
ODAV	Review of facility structures for potential impacts to navigable airspace	Recommends a condition requiring that applicant obtain FAA and ODAV review of structures	IV.M.6 Public Services, Air Traffic (pp. 168-170)	Recommended Public Services Condition 3 is consistent with ODAV comments.
<i>Public Comments</i>				

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G. Thompson	Opposes proposed facility	Concerns related to project impacts to good quality farmland and wildlife	NA	Comment did not contain sufficient detail to allow the Department to substantively respond.
C. Little	Supports proposed facility	General support of solar project to support local economies and help meet state reviewable energy policies/laws	NA	Comment did not contain sufficient detail to allow the Department to substantively respond.
<i>EFSC Member Comments</i>				
H. Jenkins	Land Use, Goal 3 exception	Expressed concerns about using arable soils for an energy facility rather than preserving for agricultural use and requested additional reasons/evidence to support the proposed Goal 3 exception “reason” that the proposed facility would result in a minimum direct impact to agriculture. Requested a regional assessment to support arguments that the subject tracts are not suitable for agriculture.	IV.E.3 Land Use, Goal 3 Exception (pp. 68-82)	To be based on applicant responses to be received on December 2, 2022. Department is also consulting with Oregon Department of Agriculture and Oregon Water Resources Department to support the evaluation and response to comments.
K. Howe	Land Use, Goal 3 exception	Information in the record is confusing and refers to adjacent agricultural activity on soils of same quality as site – requests that information submitted at the hearing be applied to ASC		

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		Exhibit K analysis to ensure the record is accurate and clear.		
C. Condon	Organizational Expertise and concerns over the “Act”	Applicant should clarify how the applicant, an LLC, can rely on the parent company in light of the limitations established in the definition of the “Act” as referenced in ASC Exhibit A Attachment A-3	IV.B Organizational Expertise (pp. 25-31)	
<i>Applicant Comments (includes comments from underlying landowners on behalf of applicant)</i>				
R. Curulla, EE West End Solar, LLC	Organizational Expertise Condition 5	Requests to revise recommended Organizational Expertise Condition 5 to remove requirement to provide the Department the selected contractor’s compliance history	IV.B Organizational Expertise (pp. 25-31)	Department recommends that the condition be maintained. The Department disagrees that this request is unreasonably burdensome as the information is readily available from construction contractors and is recommended due to the lack of demonstrated experience of the applicant in Oregon. The Department intends to rely on the results of the selected contractor’s compliance history to inform the level of construction compliance oversight/inspections by the Department.
	Land Use Condition 2(d) (parking lot design)	Requests to revise recommended Land Use Condition 2(d) to allow Umatilla County to approve	IV.E Land Use (pp. 55-56)	Department is consulting with Umatilla County to determine if the process

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		alternative parking lot design requirements, if needed.		proposed by applicant will work in practice.
	Land Use Condition 12 (setback for avoidance of impacts to irrigated agriculture)	Requests to revise recommended Land Use Condition 12 to correct tax lot reference applied to setback.	IV.E Land Use (pp. 82-83)	Department agrees that the condition contained an erroneous taxlot reference and recommends the condition be amended to reference taxlot 4N2900000300 rather than 4N29000001700 (see DPO Figure 4)
	T&E Species Condition 1	Requests revisions to recommended T&E Species Condition 1 for sub(a) to allow desktop analysis for areas extending outside the site boundary where applicant land access has not been obtained; and (c) to remove explanation of WGS colonies and burrows.	IV.I Threatened and Endangered Species (pp. 122-123)	Department agrees that the condition should be amended per applicant comment – the revisions are consistent with the methods employed for the ASC evaluation and were discussed/concurred with by ODFW.
	T&E Species Condition 2	Requests revisions to recommended T&E Species Condition 2 to remove the requirement for delineation and avoidance of Category 2 WGS habitat.		Department agrees that the condition should be amended per applicant comment - delineation for avoidance and avoidance requirements do not apply to Category 2 WGS habitat impacts, only Category 1 WGS habitat
S. & W. Scott	Land Use, Goal 3 exception and farm impacts	Testimony describing that they farmed land in 2013 and 2015; best crop occurred in 2013 resulting in 14 bushels an acre which did not pay for	IV.E Land Use (pp. 82-83)	Recommends that the testimony and facts presented be incorporated into findings of fact for Goal 3 exception analysis.

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		<p>the inputs; in 2015, they produced 11 bushels an acre at \$5.50 a bushel. Area is within critical groundwater restricted area and obtaining water for irrigation is virtually impossible. Confirmed that adjacent lands with same soil type are irrigated.</p>		
Prior		<p>Testimony describing that he has owned the property since 1990 and has never attempted to farm the parcel because it is outside of irrigation water district boundaries. He affirmed that his adjacent properties where high value crops are produced are indeed irrigated and that he does not have enough water rights to irrigate the subject properties and that the value of the land is not viable to move water right on to farm.</p>		
Applicant		<p>Provided a copy of the East Improvement District Recorded Landowner Notice, which provides documentation of all of the parcels located in the East Improvement Irrigation District. Pages 92-94 of the</p>		

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		PDF are the pertinent sections to Art Prior's land holdings. Page 94 lists the tax lots he owns that are in the East Improvement District – including the two tax lots (Tract 3 and Tract 6) located east of the West End Solar site boundary that have recently been developed for irrigated agricultural use. The tax lot Mr. Prior owns within the site boundary (4N29C00000500) is not listed in this document.		
		Provided a map from the Oregon Water Resources Department of the Groundwater Restricted Areas in North Umatilla County, Stage Gulch area, where the facility and adjacent properties are located.		Department is also consulting with Oregon Water Resources Department to support the evaluation of the groundwater restricted area designation.

Acronyms:

CTUIR = Confederated Tribes of Umatilla Indian Reservation

CIS = Oregon Legislative Commission on Indian Services FAA = Federal Aviation Administration

ODAV = Oregon Department of Aviation

ODFW = Oregon Department of Fish and Wildlife

The deadline for the applicant to file responses is December 2, 2022. The Department will provide a supplemental staff report to Council analyzing the applicant's additional evidence and responses to EFSC member comments.

ATTACHMENTS:

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