

OREGON DEPARTMENT OF ENERGY

Regarding Statutes, Administrative Rules, and
Other Requirements Applicable to the Proposed
BOARDMAN SOLAR ENERGY FACILITY

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**EXPEDITED REVIEW
PROJECT ORDER**

**ISSUED BY
OREGON DEPARTMENT OF ENERGY
550 Capital Street NE
Salem, OR 97301-3742**

Issued May 9, 2017

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I. INTRODUCTION

The Oregon Department of Energy (ODOE or the Department) issues this Project Order for the proposed Boardman Solar Energy Facility in accordance with OAR 345-015-0160. The applicant is Boardman Solar Energy LLC (BSE or the applicant). The proposed facility would be an approximately 75 MW solar photovoltaic power generating facility located in Morrow and Gilliam counties, as further described below. On January 13, 2017, the applicant submitted to the Department a preliminary application for site certificate (pASC).

At the request of the applicant and in accordance with ORS 469.370(10), the Energy Facility Siting Council (Council) shall allow expedited processing of an application for a site certificate for a small-capacity energy facility. As defined at ORS 469.370(10), a small capacity energy facility is an energy facility with an average electric generating capacity of less than 100 megawatts. The Council grants expedited review by rule if the Department determines that the facility meets the eligibility requirements described in OAR 345-015-0300.

Under the expedited review process, the applicant is not required to submit a Notice of Intent and the applicant submits a pASC based on the requirements described in OAR 345-021-0010. The Department then issues a Project Order after reviewing the pASC. As described at OAR 345-015-0300(3), the Department's review of an approved expedited small capacity facility is in all other respects the same as for review of other site certificate applications. In this case, BSE has requested and the Department has agreed that the proposed facility qualifies for the Council's expedited review process, as further described below.

(a) Request for Expedited Review

On August 17, 2016, the Department received a Request for Expedited Review from Invenergy LLC for the Boardman Solar Energy facility. Invenergy LLC is the parent company of Invenergy Solar Development LLC, and Invenergy Solar Development LLC is the parent company of Boardman Solar Energy LLC, which is the applicant. As stated in the request for expedited review, the proposed facility would have a peak generating capacity of 75 MW, and an average electric generating capacity of 25 MW. The Council's definition of "average electric generating capacity" is found at ORS 469.300(4). The definition states that the average electric generating capacity for non-wind and non-geothermal facilities is the peak generating capacity of the facility divided by 1.00. As such, the average electric generating capacity of the Boardman Solar Energy Facility, as defined by ORS 469.300(4), would be 75 MW. As this is under 100 MW, the facility is eligible for expedited review for small capacity facilities.

The proposed solar photovoltaic power generating facility would be located on approximately 600 acres of land in Morrow County. The facility would have a 115 kV gen-tie transmission line to connect the facility to the BPA transmission grid. This gen-tie line would be located in Gilliam County. The solar array and the gen-tie line would be located on land zoned exclusive farm use. In addition to the capacity criteria, as described at OAR 345-015-0300(1), a facility qualifying for expedited review must not include a gas pipeline or electric transmission line that, by itself, would be under Council jurisdiction. The proposed transmission line associated with the BSE

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facility would not be defined as an “energy facility” under Council jurisdiction, per the definition at ORS 469.300(11)(a)(C).

On August 26th, 2016, the Department reviewed the request for expedited review and determined that in accordance with OAR 345-015-0300, the Boardman Solar Energy Facility is approved for expedited review.

In preparation for review of the facility, at its January 19, 2017 meeting the Council appointed the governing bodies of two impacted Oregon counties, Morrow and Gilliam, as Special Advisory Groups.¹

(b) Preliminary Application and Project Order

On January 13, 2017, BSE submitted the pASC to ODOE. Thereafter, and in compliance with OAR 345-021-0050(1), ODOE prepared a memorandum to reviewing agencies and compiled a distribution list, including all reviewing agencies identified and defined in OAR 345-001-0010(52). In accordance with ORS 469.350(2) and OAR 345-021-0050, on January 23, 2017 ODOE sent the memorandum and a copy of the pASC (or instructions on how to download an electronic version of the pASC) to each of the reviewing agencies listed in Table 1. The Department requested comments from reviewing agencies on or before February 23, 2017.

¹ Pursuant to ORS 469.480, the governing body of a local government within whose jurisdiction the facility is proposed to be located shall be designated by EFSC as a “special advisory group.”

Table 1. Preliminary Application for Site Certificate Agency Distribution List

State Agencies	
<ul style="list-style-type: none"> • Oregon Department of Environmental Quality • Oregon Department of Agriculture • Oregon Department of Fish and Wildlife • Oregon Department of Geology and Mineral Industries • Oregon Department of Aviation • Oregon Department of State Lands • Oregon Department of Transportation • Oregon Water Resources Department 	<ul style="list-style-type: none"> • Oregon Department of Forestry • Oregon Public Utilities Commission • Oregon Parks and Recreation Department • Department of Land Conservation and Development • Office of State Fire Marshal • State Historic Preservation Office
Native American Tribes	
<ul style="list-style-type: none"> • Confederated Tribes of the Umatilla Indian Reservation • Nez Perce Tribe 	<ul style="list-style-type: none"> • Confederated Tribes of the Warm Springs • Confederated Tribes and Bands of the Yakama Indian Nation
Counties and Cities	
<ul style="list-style-type: none"> • Morrow County • Gilliam County 	<ul style="list-style-type: none"> • City of Arlington
Other Reviewing Agencies	
<ul style="list-style-type: none"> • Northwest Electric Power and Conservation Council 	

Section II of this Project Order outlines the EFSC regulatory framework and references the main statutes and rules that govern the EFSC review process [per OAR 345-015-0160(1)]. Section III discusses the application content requirements under OAR 345-021-0010. Section IV specifies the impact assessment analysis areas for the proposed facility. Section V incorporates by reference comments received from several reviewing agencies that address matters within the jurisdiction of the Council that the applicant must consider and discuss in the application for a site certificate. Section VI discusses Project Order amendments, and Section VII describes the applicant’s duty to comply with applicable requirements.

ORS 469.401(4) provides that a site certificate issued by the Council does not govern certain matters. The Project Order clearly identifies those as matters that will not be included in or governed by the site certificate, and they are not applicable to issuance of the site certificate for the proposed facility pursuant to ORS 469.503(3). Throughout this Project Order, the definitions in ORS 469.300 and OAR 345-001-0010 apply, except where otherwise stated or where the context indicates otherwise.

II. EFSC REGULATORY FRAMEWORK

Issuance of an EFSC expedited review of an application for a site certificate is governed by the statutory requirements in ORS 469.300 et seq. (eliminating ORS 469.330 – the Notice of Intent to file application for site certificate phase) and administrative rules in OAR chapter 345. The following divisions of OAR Chapter 345 include rules related to application requirements, EFSC review of an expedited application, and construction and operation of an approved facility:

OAR Chapter 345, Division 21 (Site Certificate Application Requirements) includes the primary site certificate application requirements. See Section III of this Project Order for specific information related to the site certificate application requirements for the proposed BSE facility.

OAR Chapter 345, Division 22 (Council Standards for Siting Facilities) includes the regulatory standards by which the EFSC must evaluate the proposed facility. In addressing each of the Division 21 application requirements, the applicant should refer to the Division 22 standard to which the requirement relates to ensure the application is responsive to the standards by which the Council must evaluate it.

OAR Chapter 345, Division 24 (Specific Standards for Siting Facilities) includes additional standards for specific types of EFSC applications. In addressing the Division 21 application requirements, the application should refer to the Division 24 standards that apply to the proposed BSE facility to ensure the application is responsive to these standards. The only Division 24 standard that applies to BSE is OAR 345-024-0090, Siting Standards for Transmission Lines.

OAR Chapter 345, Division 26 (Construction and Operation Rules for Facilities) includes the compliance plan requirements that will apply if the Council issues a site certificate for the proposed facility. In addressing the Division 21 application requirements, the applicant should refer to the compliance plan requirements, described in OAR 345-026-0048, and reporting requirements, described in OAR 345-026-0080, to ensure that the facility, as proposed, can comply with these standards. Note that, if a site certificate is issued, the certificate holder must also comply with additional construction- and operation-related regulations that may apply to the proposed facility but that may not be covered by the site certificate, per ORS 469.401(4).

OAR Chapter 345, Division 27 (Site Certificate Conditions) includes the mandatory conditions that EFSC must apply to all site certificates, as well as applicable site-specific and monitoring conditions. Note that per the mandatory condition included at OAR 345-027-0020(10), the Council will include as conditions in the site certificate, if issued, all representations made in the application and supporting record the Council deems to be binding commitments made by the applicant.

III. APPLICATION REQUIREMENTS

BSE must adhere to the general requirements under OAR 345-021-0000, including, for all state and local government agency permit approvals that the applicant proposes to be included in and governed by the site certificate, the submittal of information that would otherwise be required by the state or local government agency in an application for such permit, license or

certificate [OAR 345-021-0000(6)]. The applicant shall also submit copies of the applications for federally delegated permits that are needed for construction or operation of the proposed facility [OAR 345-021-0000(7)]. OAR 345-021-0010(1) identifies the required contents of an application for a site certificate. Each of the paragraphs below indicates which provision(s) of OAR 345-021-0010(1)(a) – (dd) will apply to the Boardman Solar Energy Facility. The application shall also include the information described in OAR 345-021-0010(3).

(a) Exhibit A – General Information about the Applicant

Applicable Paragraphs: All paragraphs apply except (C), (E), (F), and (G)

Related Council and Other Standards: General Standard of Review [OAR 345-022-0000]

Discussion: Note that paragraph (B) calls for a list of “participating persons, other than individuals.” Please note the definition of “Person” in ORS 469.300(21).

(b) Exhibit B – General Information about the Proposed Facility

Applicable Paragraphs: All paragraphs apply except (A)(vi), (D), and (E)(iv).

Related Council and Other Standards: General Standard of Review [OAR 345-022-0000]

Discussion: The description of the proposed facility in the application will form the basis for the description of the facility in the site certificate. The site certificate, if issued, would require that BSE build the facility “substantially as described” (OAR 345-027-0020). The application should also describe all related and supporting facilities.

(c) Exhibit C – Location

Applicable Paragraphs: All paragraphs apply.

Related Council and Other Standards: General Standard of Review [OAR 345-022-0000]

Discussion: Maps shall indicate the “site boundary” as defined in OAR 345-001-0010(55). Maps shall provide enough information for property owners potentially affected by the facility to determine whether their property is within or adjacent to the site boundary. Major roads should be named. The Department notes that BSE shared GIS data for the proposed facility in a format that is compatible with current Department software programs; accurate GIS data will help streamline the application review process for the Department and reviewing agencies.

(d) Exhibit D – Organizational Expertise

Applicable Paragraphs: All paragraphs apply.

Related Council and Other Standards: Organizational Expertise [OAR 345-022-0010]

Discussion: Please note that the Council’s review for the Organizational Expertise standard includes BSE’s ability to construct, operate, and retire the proposed facility in compliance with Council standards and conditions of the site certificate.

(e) Exhibit E – Permits

Applicable Paragraphs: All paragraphs apply.

Related Council and Other Standards: General Standard of Review [OAR 345-022-0000]

Discussion: Exhibit E shall describe and discuss all permits that the applicant proposes to be included in and governed by the site certificate, as well as state and local permits that are related to the siting, construction, or operation of the proposed facility but are proposed by the applicant to not be included in and governed by the site certificate.² Exhibit E shall also describe required federal and federally-delegated permits. For federally-delegated permits needed for construction or operation, the applicant must submit a copy of the permit application to the Department, as required under OAR 345-021-000(7).

Although the Council does not have jurisdiction over federally-delegated permits, the Council may rely on the determinations of compliance and the conditions in federally-delegated permits in evaluating the application for compliance with Council standards.

The following permits and approvals are expected to be required for the proposed BSE facility. This list may not be exhaustive.

Federally-Delegated Permits

Oregon Department of Environmental Quality — Air Quality Division

Statute and Rule References

- OAR Chapter 340, Division 216 (Air Contaminant Discharge Permits)

Permits

- Basic Air Contaminant Discharge Permit (ACDP)

Discussion

The Environmental Protection Agency (EPA) has delegated authority to the Oregon Department of Environmental Quality (DEQ) to administer air quality under the Clean Air Act. As described in the January 13, 2017 pASC, a portable concrete manufacturing plant may be required for facility construction. The concrete batch plant would require a basic Air Contaminant Discharge

² This expedited review project order includes permits that are known at the time this order is issued to be related to the siting of the proposed facility. This list does not include permits that are statutorily excluded from the site certificate under ORS 469.401(4) and may exclude other permits that may not be related to the siting of the proposed facility or will otherwise not be included in or governed by the site certificate.

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Permit (ACDP). A Basic ACDP authorizes operation of a concrete manufacturing plant that produces more than 5,000 but less than 25,000 cubic yards per year output. The Council does not have authority over this federally-delegated permit. However, the Council may rely on the determinations of compliance and the conditions in federally-delegated permits in determining compliance with other standards and requirements under Council jurisdiction. In accordance with OAR 345-021-0000(7), if a ACDP permit is required by DEQ the applicant must submit to the Department one copy of the required permit application, or provide a schedule of the date by which the applicant intends to submit the application. DEQ issued the Basic ACDP to BSE on January 18, 2017.

Oregon Department of Environmental Quality — Water Quality Division

Statute and Rule References

- ORS Chapter 468B (Water Quality)
- OAR Chapter 340, Division 45 (Regulations Pertaining To NPDES and WPCF Permits)

Permits

- National Pollution Discharge Elimination System (NPDES) Construction Storm Water 1200-C permit

Discussion

The EPA has delegated authority to DEQ to issue NPDES Storm Water Discharge permits for construction and operation activities.

Based upon the information in the pASC, an NPDES 1200-C permit will be required for the construction of the facility. In accordance with OAR 345-021-0000(7), the applicant must submit to the Department one copy of all applications for federally-delegated permits (including the NPDES permit), or provide a schedule of the date by which the applicant intends to submit the application. Note that the Department will not be able to find the application for site certificate complete before receiving a copy of the NPDES permit application and a response letter from the DEQ. The DEQ response letter must state that the agency has received a permit application from the applicant, and provide an estimated date when the agency will complete its review and issue a permit decision. The applicant may incorporate this information into Exhibit I (Soils) or Exhibit BB (Other Information) of the site certificate application. The Department notes that the applicant appropriately incorporated this information into Exhibit I of the January 13, 2017 pASC.

State Permits

Oregon Department of Environmental Quality

Statute and Rule References

- ORS Chapter 454 (Sewage Treatment and Disposal Systems)
- ORS Chapter 468B (Water Quality)
- OAR Chapter 340, Division 45 (Regulations Pertaining To NPDES and WPCF Permits)
- OAR Chapter 340, Division 71 (Onsite Wastewater Treatment Systems)

Permits

- Onsite Sewage Disposal Construction-Installation Permit
- Water Pollution Control Facilities (WPCF) General Permit 1700-B
- WPCF General Permit 1000

Discussion

As indicated in the January 13, 2017 pASC and confirmed by DEQ's February 7, 2017 comment letter, construction of the proposed operations and maintenance building's on-site sewage disposal system would require a Construction-Installation Permit, disposal of solar panel wash water would require a WPCF General Permit 1700-B, and disposal of concrete batch plant wash water (if a temporary batch plant is necessary) would require a WPCF General Permit 1000. The applicant indicates in the January 13, 2017 pASC that its third-party contractor would obtain the WPCF General Permit 1000 (if needed), the WPCF General Permit 1700-B, and the Construction-Installation Permit directly from DEQ; these permits are therefore related to the siting and operation of the proposed facility but would not be included in and governed by the site certificate (see the Third-Party Permits discussion below).

Oregon Department of Transportation

Statute and Rule References

- ORS 818.030 (Exemptions from Weight Limitations)
- OAR Chapter 734, Division 82 (Variance Permits Issued for Non-Divisible Loads and Road Use Assessment Fees)

Permit

- Oversize Load Movement Permit/Load Registration

Discussion

The Oversize Load Movement Permit/Load Registration applies to the operation of vehicles transporting loads that exceed legal limits and is issued for vehicles or loads having weight or dimension greater than that allowed by statute. This permit/registration may be required for the movement of large equipment and materials to and from the facility.

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The applicant indicates in the January 13, 2017 pASC that its third-party contractor would obtain the Oversize Load Movement Permit from ODOT (see the Third-Party Permits discussion below); this permit would not be included in or governed by the site certificate as it is not related to siting of the proposed facility.

Local Permits

Morrow County and Gilliam County

Local Land Use Ordinance References

- Morrow County Zoning Ordinance
- Gilliam County Zoning Ordinance

Permits

- Morrow County Conditional Use Permit
- Morrow County Zoning Permit
- Morrow County Building and Utility Permits (administered by the City of Boardman)
- Morrow County Permit to Work in Roadway (if applicable)
- Gilliam County Type I Approval
- Gilliam County Right of Way Permit (if applicable)

Discussion

Each of the affected local government Special Advisory Groups has permitting requirements that may or may not relate to the construction or operation of the facility. The applicant shall identify those permits or approvals and include an analysis of whether each should be included in and governed by the site certificate.

The applicant has elected to request that EFSC determine compliance with the substantive criteria of all affected local governments' comprehensive plans and land use ordinances under ORS 469.504(1)(b). The above-listed local zoning and conditional use permits will be included in and governed by the site certificate. The listed building, utility, and road right of way permits would not be included in or governed by the site certificate. Gilliam County noted in its February 22, 2017 comment letter that if the proposed transmission line "falls within a public road right of way a separate right of way permit will need to be acquired." In its February 22, 2017 comment letter, Morrow County stated that a "Permit to Work in Roadway'...would be required for any improvements along county or public roads in Morrow County."

Third-Party Permits

As noted previously in reference to the ODOT Oversize Load Movement Permit and the DEQ Construction-Installation Permit, WPCF General Permit 1700-B, and WPCF General Permit 1000, the applicant may rely upon third-party permits in its application for site certificate. If the applicant does rely upon a state or local government permit issued to a third party, the

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applicant must identify each third-party permit, and, for each, include evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit; evidence that the third party has or, has a reasonable likelihood of obtaining, the necessary permit; and, an assessment of the impact of the proposed facility on any permits that a third party has obtained and on which the applicant relies to comply with any applicable Council standard.

(f) Exhibit F – Property Owners

Applicable Paragraphs: Paragraph (C) of the Rule applies.

Related Council and Other Standards: General Standard of Review [OAR 345-022-0000]

Discussion: As the proposed facility would be located entirely within an area zoned Exclusive Farm Use (EFU), OAR 345-020-0011(1)(f)(C) applies and requires notice to property owners within 500 feet of the site boundary. The Council requires notice to all owners of record, as shown on the most recent property tax assessment roll within the specified distance from the proposed site boundary. In order to ensure notifications are provided using the most up-to-date property owner list, Exhibit F in the pASC should indicate that, pursuant to direction by the Department, the property owner list will be generated just prior to the Department's determination of application completeness and in coordination with Department staff.

The property owner notification list must be accompanied by one or more maps that include the site boundary, the area surrounding the site boundary consistent with the OAR 345-021-0010(1)(f)(C) site distance requirement, and the properties/tax lots that are within the applicable site distance.

(g) Exhibit G – Materials Analysis

Applicable Paragraphs: All paragraphs apply.

Related Council and Other Standards: General Standard of Review [OAR 345-022-0000]; Soil Protection [OAR 345-022-0022]

Discussion: The Department uses the materials analysis to identify any hazardous materials whose management and storage could affect the cost of site restoration because of the possibility of spills. The applicant shall include in the application any proposed fuel storage areas, vehicle maintenance areas, or other areas that will be utilized for activities that could result in a spill of a hazardous substance. Please identify the expected storage locations and quantities of hazardous materials expected to be used during construction and operation of the facility.

The DEQ Hazardous Waste program implements requirements of the EPA and is a federally-delegated program. The applicant shall comply with DEQ regulations concerning the storage and management of hazardous materials and the clean-up and disposal of hazardous waste.

(h) Exhibit H – Geologic and Soil Stability

Applicable Paragraphs: All paragraphs apply except (E).

Related Council and Other Standards: Structural Standard [OAR 345-022-0020]

Discussion:

The Oregon Department of Geology and Mineral Industries (DOGAMI) provides technical review and recommendations on compliance with the Council’s Structural Standard. The applicant must provide evidence of consultation with DOGAMI regarding the appropriate site specific geotechnical work that must be performed for the application.

Any geotechnical reports included in Exhibit H as supporting evidence that the proposed facility will meet the Council’s Structural Standard should follow the guidelines of DOGAMI’s Open File Report 00-04 “Guidelines for Engineering Geologic Reports and Site Specific Seismic Hazard Reports”.

Note that OAR 345-021-0010(1)(h), paragraphs (F)(i), and (F)(iv) may contain references to outdated guidelines and codes. Nevertheless, the applicant must provide evidence that it satisfies the Council rules and standards that are in place at the time a site certificate is authorized.

As described in the Structural Standard at OAR 345-022-0020(2), the Council may issue a site certificate for a facility that would produce power from solar energy without making the findings of the Structural Standard at OAR 345-022-0020(1), though the Council may apply the requirements of OAR 345-022-0020(1) to impose conditions on a site certificate issued for such a facility.

(i) Exhibit I – Soils

Applicable Paragraphs: All paragraphs apply.

Related Council and Other Standards: Soil Protection [OAR 345-022-0022]

Discussion: The applicant shall include information describing the impact of construction and operation of the proposed facility on soil conditions in the analysis area. The application should include information related to the federally-delegated NPDES 1200-C permit application. OAR 345-021-0000(7) requires the applicant to submit one copy of all applications for federally-delegated permits, or provide a schedule of the date by which the applicant intends to submit the application. In addition to a copy of the federally delegated permit application, the applicant must also provide a letter or other indication from the DEQ stating that the agency has received a permit application from the applicant, identifying any additional information the agency is likely to need from the applicant based on the agency’s review of the application, and estimating the date when the agency will complete its review and issue a permit decision. The January 13, 2017 pASC Exhibit I Attachments I-1 and I-2 provide the information required by OAR 345-021-0000(7) related to the applicant’s NDPEs 1200-C permit application.

A draft erosion and sediment control plan must be provided for review if the applicant will rely upon the erosion and sediment control plan to meet the Soil Protection standard. The January 13, 2017 pASC Exhibit I contains this plan as part of Attachment I-1.

(j) Exhibit J – Waters of the State and Removal-Fill

Applicable Paragraphs: All paragraphs apply.

Related Council and Other Standards: General Standard of Review [OAR 345-022-0000]; Removal of Material, Filling [ORS 196.795-.990]; Administrative Rules Governing the Issuance and Enforcement of Removal-Fill Authorizations Within Waters of Oregon Including Wetlands [OAR Chapter 141, Division 85]

Discussion: Per the Exhibit J requirement, the application shall include a description of all areas within the site boundary that might be waters of this state and a map showing the location of these features. The Department understands that the applicant is not requesting a removal-fill permit and has provided evidence in Exhibit J of the pASC that such a permit is not required. Should a removal-fill permit become necessary for the facility, based on future design changes or other factors, an amendment to the site certificate would be required to process the permit application.

(k) Exhibit K – Land Use

Applicable Paragraphs: Paragraphs (A) and (C) of the rule apply.

Related Council and Other Standards: Land Use [OAR 345-022-0030]

Discussion: ORS 469.504 requires an evaluation of all site certificate applications for compliance with the statewide planning goals. The proposed facility must comply with the Council's Land Use standard (OAR 345-022-0030) to ensure the facility complies with statewide planning goals adopted by the Land Conservation and Development Commission (LCDC). LCDC issues no permit for compliance but the Department of Land Conservation and Development may provide additional review for compliance with statewide planning goals and directly applicable LCDC rules.

Under 469.504(1), the applicant may establish compliance with the applicable statewide planning goals either by obtaining local land use approval under ORS 469.504(1)(a) or by obtaining Council approval under ORS 469.504(1)(b). The applicant has indicated that they have elected to seek a Council determination of compliance under ORS 469.504(1)(b). Within Exhibit K, since the applicant has elected to obtain a Council determination on land use under ORS 469.504(1)(b), paragraphs A and C of OAR 345-021-0010(1)(k) apply; paragraph B does not apply. The proposed facility is not located on federal land, so paragraph (D) does not apply.

The facility would be located on land zoned EFU in Morrow and Gilliam counties. Pursuant to ORS 469.480 and in preparation for review of the facility, at its January 19, 2017 meeting the Council appointed the governing bodies of Morrow and Gilliam counties as Special Advisory Groups. As provided in ORS 469.401(3), if the Council issues a site certificate, Morrow and Gilliam counties will be bound to issue all required permits and other land use approvals, subject to the conditions set forth in the site certificate. Under Path B, the applicant should discuss each applicable comprehensive plan and land use ordinance provision that contains substantive criteria and should demonstrate how the proposed facility complies with those criteria. If the proposed facility does not comply with one or more of the applicable substantive criteria, the applicant must demonstrate that the facility nevertheless complies with the applicable statewide planning goals or that an exception to goal compliance is justified under ORS 469.504(2).

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Exhibit K shall also provide evidence that the proposed facility would comply with any directly-applicable LCDC administrative rules and statutory requirements related to the proposed facility, including ORS 215.283 and 215.274, and specifically including all requirements regarding the location of the proposed facility within the EFU zone. In addition, Exhibit K shall provide evidence that the proposed facility would comply with the applicable administrative rules, including rules related to development and use of photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale (and accessory transportation improvements) on agricultural lands [including OAR 660-033-0130(5), 660-033-0130(38), and 660-012-0065].

(l) Exhibit L – Protected Areas

Applicable Paragraphs: All paragraphs apply.

Related Council and Other Standards: Protected Areas [OAR 345-022-0040]

Discussion: The application must address the potential impacts to protected areas identified in OAR 345-022-0040 within the analysis area.

Where OAR 345-022-0040(3) is applicable, ensure that the application provides evidence that the proposed transmission line would be routed within 500 feet of an existing utility right-of-way containing at least one transmission line with a voltage rating of 115 kV or higher or containing at least one natural gas pipeline of 8 inches or greater diameter that is operated at a pressure of 125 psig.

(m) Exhibit M – Financial Capability

Applicable Paragraphs: All paragraphs apply.

Related Council and Other Standards: Retirement and Financial Assurance [OAR 345-022-0050]

Discussion: The application shall include information about the applicant's financial capability, including the applicant's legal authority to construct and operate the facility without violating its bond indenture provisions, articles of incorporation, common stock covenants, or similar agreements. To find that the proposed facility satisfies the Financial Assurance Standard (OAR 345-022-0050(2)), the Council must find that the applicant has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition. The application shall include the type and amount of the applicant's proposed bond or letter of credit to satisfy the requirements of OAR 345-022-0050.

(n) Exhibit N – Non-Generating Facility Need

Applicable Paragraphs: Exhibit N does not apply because the proposed facility is not a nongenerating facility for which the applicant must demonstrate need for the facility.

(o) Exhibit O – Water Use

Applicable Paragraphs: All paragraphs apply except (D).

Related Council and Other Standards: General Standard of Review [OAR 345-022-0000]; OAR 690, Divisions 310 and 380 (Water Resources Department permitting requirements)

Discussion: Exhibit O of the application must describe water use during construction and operation of the proposed facility. The application must identify the sources of water to be used, and include an estimate of the amount of water the facility will need during construction and during operation from each source under annual average and worst-case conditions. Exhibit O shall specify the final disposition of all wastewater and describe and quantify water loss from the facility site.

The Department understands that the proposed facility does not need a groundwater permit, a surface water permit, or a water right transfer. Exhibit O shall include an explanation as to why such a permit or transfer is not required for construction and operation of the proposed facility.

(p) Exhibit P – Fish and Wildlife Habitat

Applicable Paragraphs: All paragraphs apply.

Related Council and Other Standards: Fish and Wildlife Habitat [OAR 345-022-0060] and Oregon Department of Fish & Wildlife (ODFW) Fish and Wildlife Habitat Mitigation Policy [OAR 635-415-0025]

Discussion: Exhibit P shall include analysis of how the evidence provided supports a finding by the Council that the proposed facility meets the Council’s Fish and Wildlife Habitat standard. Exhibit P must include a description of biological and botanical surveys performed that support the information in this exhibit, including a discussion of the timing and scope of each survey. Exhibit P must also identify all state sensitive species that may be present in the analysis area.

If fish and wildlife habitat or state sensitive species are identified within the analysis area that could be adversely affected as a result of the proposed facility, the applicant shall include a description of the nature, extent and duration of potential adverse impacts and a description of any proposed mitigation measures. Fish and Wildlife Habitat Mitigation Policy (OAR Chapter 635, Division 415) classifies six habitat categories and establishes a mitigation goal for each category. The applicant must identify the appropriate habitat category for all areas affected by the proposed facility and provide the basis for each category designation, subject to ODFW review. A map showing the different habitat categories is required under sub-paragraph (C) of OAR 345-021-0010(1)(p), and inclusion of vegetation classes within the map is recommended. The map must be of sufficient scale to show details. Exhibit P must include tables depicting the estimated temporary and permanent impacts, broken down by habitat categories. The applicant must show how it would comply with the habitat mitigation goals and standards by appropriate monitoring and mitigation. This information may be incorporated into a proposed Wildlife Monitoring and Adaptive Management Plan, a proposed Revegetation and Noxious Weed Control Plan, and a proposed Habitat Mitigation Plan as attachments to Exhibit P.

(q) Exhibit Q – Threatened and Endangered Species

Applicable Paragraphs: All paragraphs apply.

Related Council and Other Standards: Threatened and Endangered Species [OAR 345-022-0070]

Discussion: The Oregon Department of Agriculture (ODA) provides technical review and recommendations regarding compliance with the Council’s Threatened and Endangered Species standard (OAR 345-022-0070) as it relates to plant species, and ODFW provides technical review and recommendations related to fish and wildlife species.

The application should include a list of state-listed endangered, threatened, and candidate species that have potential to occur in the analysis area. The applicant should identify these species based on a review of literature, consultation with knowledgeable individuals, and reference to the list of species maintained by the Oregon Biodiversity Information Center.

The applicant should consult with ODFW and ODA Native Plant Conservation Program regarding field survey methods, appropriate survey seasons, qualifications of field survey personnel, and the information to be included in the field survey report.

(r) Exhibit R – Scenic Resources

Applicable Paragraphs: All paragraphs apply.

Related Council and Other Standards: Scenic Resources [OAR 345-022-0080]

The application should include an analysis of significant potential impacts of the proposed facility, if any, on scenic resources identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area. For the purposes of Exhibit R, “local” land use plans include state, county, and city planning documents or inventories. The applicant shall also describe the measures it proposes to avoid, reduce, or otherwise mitigate any significant adverse impacts to these scenic resources.

(s) Exhibit S – Historic, Cultural and Archaeological Resources

Applicable Paragraphs: All paragraphs apply.³

Related Council and Other Standards: Historic, Cultural, and Archaeological Resources [OAR 345-022-0090]

Discussion: The application should include evidence of consultation with the potentially affected tribes identified by the Legislative Commission on Indian Services, including the Confederated Tribes of Warm Springs, Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes and Bands of the Yakama Indian Nation, and the Nez Perce Tribe regarding archaeological and cultural sites and materials within the site boundary. [See OAR 345-001-0010(52)(n).] The affected tribes can provide technical review and recommendations in reference to the Council’s Historic, Cultural and Archaeological Resources Standard (OAR 345-022-0090).

The application shall include the survey methodology, survey areas, and the results of all surveys conducted for historic, cultural, and archaeological resources, as well as an analysis of any significant adverse impacts anticipated and proposed mitigation measures.

As described in the Historic, Cultural, and Archaeological Resources standard at OAR 345-022-0090(2), the Council may issue a site certificate for a facility that would produce power from solar energy without making the findings of the Historic, Cultural, and Archaeological Resources standard at OAR 345-022-0090(1), though the Council may apply the requirements of OAR 345-022-0090(1) to impose conditions on a site certificate issued for such a facility.

(t) Exhibit T – Recreation

Applicable Paragraphs: All paragraphs apply.

Related Council and Other Standards: Recreation [OAR 345-022-0100]

Discussion: The application shall analyze the importance of recreational opportunities in the analysis area using the factors listed in OAR 345-022-0100(1), discuss any significant potential adverse impacts to important recreational opportunities, and describe measures proposed to avoid, minimize or mitigate those impacts. In addition to the important recreational opportunities the applicant identified in the January 13, 2017 pASC, the application should identify Willow Creek Wildlife Area and Quesnel Park as important recreational opportunities. Based upon information provided by ODFW, Morrow County, and Gilliam County, the Department considers Willow Creek Wildlife Area and Quesnel Park important recreational opportunities. Therefore, the application shall include an analysis of the impacts on recreational opportunities at Willow Creek Wildlife Area and Quesnel Park.

³ Information concerning the location of archaeological sites or objects may be exempt from public disclosure under ORS 192.501(11). Specific location information about cultural resources should not be included in the text of application for a site certificate. Such information, including archaeological survey reports, should be provided confidentially under separate cover in hard copy format only after consultation with the Department.

(u) Exhibit U – Public Services

Applicable Paragraphs: All paragraphs apply.

Related Council and Other Standards: Public Services [OAR 345-022-0110]

Discussion: The application shall provide information related to the facility’s potential impacts to the ability of public and private providers within the analysis area to provide: sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools (OAR 345-022-0110).

As described in the Public Services standard at OAR 345-022-0110(2), the Council may issue a site certificate for a facility that would produce power from solar energy without making the findings of the Public Services standard at OAR 345-022-0110(1), though the Council may apply the requirements of OAR 345-022-0110(1) to impose conditions on a site certificate issued for such a facility.

(v) Exhibit V – Solid Waste and Wastewater

Applicable Paragraphs: All paragraphs apply

Related Council and Other Standards: Waste Minimization [OAR 345-022-0120]; Public Services [OAR 345-022-0110]

Discussion: To support a finding by the Council as required by OAR 345-022-0120, the application shall provide information about the applicant’s plans to minimize the generation of solid waste and wastewater in the construction and operation of the facility, and to recycle or reuse solid waste and wastewater. Information in Exhibit V may be incorporated by reference in Exhibit U’s discussion of impacts to solid waste and wastewater service providers.

As described in the Waste Minimization standard at OAR 345-022-0120(2), the Council may issue a site certificate for a facility that would produce power from solar energy without making the findings of the Waste Minimization standard at OAR 345-022-0120(1), though the Council may apply the requirements of OAR 345-022-0120(1) to impose conditions on a site certificate issued for such a facility.

(w) Exhibit W – Facility Retirement

Applicable Paragraphs: All paragraphs apply.

Related Council and Other Standards: Retirement and Financial Assurance [OAR 345-022-0050]

Discussion: The application shall provide an estimate of retirement costs, including a detailed explanation and justification of the methodology it uses to estimate retirement costs. The Council’s Retirement Standard requires evidence that the site can be restored, following facility retirement, to a useful and non-hazardous condition.

(x) Exhibit X – Noise

Applicable Paragraphs: All paragraphs apply.

Related Council and Other Standards: General Standard of Review [OAR 345-022-0000]; DEQ Noise Control Regulations [ORS 467.020 and ORS 467.030; OAR 340, Division 35]

Discussion: The application shall contain a noise analysis and information to support a Council finding that the proposed facility would comply with applicable DEQ noise control standards in OAR 340-035-0035.

(y) Exhibit Y – Carbon Dioxide Emissions

Applicable Paragraphs: Exhibit Y does not apply because the proposed facility is not a base load gas plant, a non-base load power plant, or a non-generating energy facility that emits carbon dioxide.

(z) Exhibit Z – Cooling Tower Impacts

Applicable Paragraphs: Exhibit Z does not apply because the proposed facility would not include an evaporative cooling tower.

(aa) Exhibit AA – Electric and Magnetic Fields

Applicable Paragraphs: All paragraphs apply.

Related Council and Other Standards: General Standard of Review [OAR 345-022-0000]

Discussion: As the proposed facility would have a transmission line as a related and supporting facility, the provisions of Exhibit AA apply.

(bb) Exhibit BB – Other Information

Related Council Standard: General Standard of Review [OAR 345-022-0000]

No additional information is required.

(cc) Exhibit CC – Other Law

Related Council Standard: General Standard of Review [OAR 345-022-0000]

All requirements apply.

(dd) Exhibit DD – Specific Standards

Applicable Paragraphs: Paragraph (C) applies.

Related Council and Other Standards: Specific Standards for Transmission Lines [OAR 345-024-0090]

Discussion: The Council applies specific standards for transmission lines under its jurisdiction in OAR 345-024-0090. The applicant should provide analysis regarding compliance with OAR 345-024-0090 in Exhibit DD or refer to Exhibit AA as appropriate.

IV. ANALYSIS AREAS FOR THE PROPOSED FACILITY

The analysis areas are the minimum areas that BSE must study for potential impacts from the construction and operation of the proposed facility. The analysis areas described in this Project Order do not limit the applicant's responsibility to assess the potential impacts of the facility. They are the areas in which significant adverse impacts from the proposed facility are likely to occur. If significant impacts could occur beyond the analysis areas described here, then BSE must assess those impacts in the application for a site certificate and show how the facility

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would comply with the applicable standard with regard to the larger area where impacts could occur.

For all potential impacts, the analysis area includes all the area within the site boundary, as defined in OAR 345-001-0010(55) and in this order. The application for site certificate must specifically describe the site boundary and provide a map showing the proposed site boundary, including all related and supporting facilities. The minimum required analysis areas are presented in Table 2.

As the proposed BSE facility qualifies for expedited review, the analysis area used in the pASC is the same as the study area defined at OAR 345-001-0010(59). As discussed in OAR 345-015-0300(3), the Department may, in the Project Order, modify the analysis areas. In this case, the Department has determined that the analysis areas used in the pASC are accurate and do not need to be modified.

Table 2. Analysis Areas

Affected Standard or Resource	Exhibit	Analysis Area ⁴
Structural Standard	Exh. H	The area within the site boundary, notwithstanding the distances related to an assessment of seismic hazards required by OAR 345-021-0010(1)(h).
Soils	Exh. I	The area within the site boundary.
Wetlands	Exh. J	The area within the site boundary and a 300-foot-wide buffer around the proposed transmission line.
Land Use	Exh. K	The area within the site boundary and 0.5 miles from the site boundary.
Protected Areas	Exh. L	The area within the site boundary and 20 miles from the site boundary.
Fish and Wildlife Habitat	Exh. P	The area within the site boundary and 0.5 miles from the site boundary.
Threatened and Endangered Species	Exh. Q	The area within the site boundary and 5 miles from the site boundary (for the transmission line, the analysis area is only the area within the site boundary).
Scenic Resources	Exh. R	The area within the site boundary and 10 miles from the site boundary.
Historic, Cultural and Archaeological Resources	Exh. S	The area within the site boundary (pedestrian archaeological field survey & desktop review). The area within 1 mile of the analysis area (desktop review).
Recreational Opportunities	Exh. T	The area within the site boundary and 5 miles from the site boundary (for the transmission line, the analysis area is only the area within the site boundary).
Public Services	Exh. U	The area within the site boundary and 10 miles from the site boundary.

V. COMMENTS FROM REVIEWING AGENCIES

The Department received comments from numerous reviewing agencies. All of the reviewing agency comments have been provided under separate cover to the applicant and are incorporated by reference in this order. The applicant shall address the concerns of the

⁴ The applicant should note that analysis areas defined in this Project Order are to be used for the assessment of impacts to the associated resource. The applicant is not required to perform comprehensive field surveys of the entire analysis area if another method of impact assessment is suitable.

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reviewing agencies (that are under the jurisdiction of the Council) within the applicable exhibit of the application.

VI. PROJECT ORDER AMENDMENT

The Council or the Department may amend this Project Order at any time [OAR 345-015-0160(3)]. Amendment may include changes to the analysis areas. To issue a site certificate, the Council must determine that the proposed facility complies with 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. ORS 469.503(3).

VII. APPLICABILITY AND DUTY TO COMPLY

Failure to include an applicable statute, rule, ordinance, permit or other requirement in this Project Order does not render that statute, rule, ordinance, permit or other requirement inapplicable, nor in any way relieves applicant from the duty to comply with the same.

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Todd R. Cornett, Assistant Director, Siting Division
Energy Facility Siting Division
Oregon Department of Energy
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