

EXHIBIT K LAND USE

OAR 345-021-0010(1)(k)

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K.1 LAND USE REVIEW APPROACH

OAR 345-021-0010(1)(k) *Information about the proposed facility's compliance with the statewide planning goals adopted by the Land Conservation and Development Commission, providing evidence to support a finding by the Council as required by OAR 345-022-0030. The applicant shall state whether the applicant elects to address the Council's land use standard by obtaining local land use approvals under ORS 469.504(1)(a) or by obtaining a Council determination under ORS 469.504(1)(b). An applicant may elect different processes for an energy facility and a related or supporting facility but may not otherwise combine the two processes. Once the applicant has made an election, the applicant may not amend the application to make a different election. In this subsection, "affected local government" means a local government that has land use jurisdiction over any part of the proposed site of the facility. In the application, the applicant shall:*

Response: To issue a site certificate, the Energy Facility Siting Council (Council) must find that the Madras Solar Energy Facility (Facility) complies with Oregon's Statewide Planning Goals adopted by the Land Conservation and Development Commission (LCDC). See Oregon Administrative Rule (OAR) 345-022-0030(1). Madras PV1, LLC (Applicant) has elected to seek a Council determination of compliance under Oregon Revised Statute (ORS) 469.504(1)(b). Under this election, the Application for Site Certificate (ASC) complies with the Council's land use standard if the Council determines:

ORS 469.504(1)(b)(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;*

ORS 469.504(1)(b)(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*

ORS 469.504(1)(b)(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.*

Response: Exhibit K demonstrates the Facility's compliance with the local government's (Jefferson County) applicable substantive criteria from the *Jefferson County Comprehensive Plan* (JCCP) (Jefferson County, 2013) and *Jefferson County Zoning Ordinance* (JCZO) (Jefferson County, 2018). In addition, Exhibit K demonstrates the Facility's compliance with the LCDC administrative rules and goals and any land use statutes directly applicable to the Facility. Exhibit K also demonstrates that a reasons exception to statewide planning Goal 3, agriculture, is justified under ORS 469.504(2). Finally, Exhibit K provides evidence upon which the Council may find that the proposed Facility meets OAR 345-022-0030.

K.2 OVERVIEW OF FACILITY, PERMITTING APPROACH, AND APPLICABLE LOCAL CRITERIA

K.2.1 Facility Overview and Permitting Approach

As explained in Exhibit B, the Applicant proposes to construct and operate a solar energy facility with approximately 63 megawatts of nominal and average electric generating capacity. The Facility will generate electricity using multiple arrays of photovoltaic modules connected to electrical infrastructure. The major components, structures, and systems include the solar modules (i.e., solar panels mounted on steel tracking systems designed to absorb the sun's energy and convert it into electrical current; inverters that are designed to take the direct current produced by the solar modules and convert it to the alternating current used by the grid; and

transformers designed to step up the voltage of the electricity as required to interconnect to the existing electrical grid. The related or supporting facilities consist of 34.5-kilovolt (kV) underground collector lines, potentially an integrated battery storage system designed to store a portion of the Facility's output and dispatch it during the utility's peak load hours, onsite Facility substation, point of interconnection (POI) switching station, operations and maintenance (O&M) enclosure, service roads, security fencing and gates, construction areas, and if needed, a temporary batch plant.

The Facility is proposed with two distinct conceptual site plans showing the proposed general arrangement of buildings, equipment, and structures (see Figures C-2A and C-2B in Exhibit C). The difference between the two site plans is the inclusion of a battery storage system. The Facility may be constructed and operate without any battery storage, which is shown in the site plan on Figure C-2A. Alternatively, the Facility may be developed with a battery storage system housed within a maximum of 120 battery storage containers. The maximum battery storage scenario with up to 120 battery storage containers is shown in the site plan on Figure C-2B. The constructed Facility may have an amount of battery storage in between the two scenarios presented on Figures C-2A and C-2B, but not more than the 120 battery storage containers shown on Figure C-2B.

The Facility is located on land within the land use jurisdiction of Jefferson County (Figure K-1). The entire area encompassed by the Facility site boundary is within Jefferson County's Exclusive Farm Use (EFU A-1) zone designation (see Figure K-2). Additional County overlay zone designations are shown on Figure K-3. To comply with the Council's land use standard, the Applicant must demonstrate compliance with both state law and the applicable criteria from the local government's comprehensive plans and land use codes.¹ The applicable local criteria and state law are summarized directly below in Sections K.2.2 (Applicable Local Criteria) and K.2.3 (Applicable State Law).

K.2.1.1 Soil Classifications

Table K-1 provides a summary of the acreage impacts from the Facility for different soils classifications specified in Exhibit I. The near-surface soils at the Facility site and vicinity were identified according to the Natural Resources Conservation Service (NRCS) web-based soil survey (NRCS, 2019) and Myhrum and Ferry (2002). The NRCS database includes the physical and chemical properties of the soils in the vicinity and the soil map unit distribution. In addition, Cascade Earth Sciences (CES) prepared a site-specific soil survey for the area within the Facility site boundary with the goal of refining and revising the NRCS soil classifications at the site (CES, 2018). The CES report is included as Attachment I-3 to Exhibit I. Figures K-4, K-5, K-6, and K-7 show soils maps adapted from Figure 4 of the CES report. These figures show the Facility site boundary and the major soil units within the site boundary and 0.5-mile land use analysis area. Specifically, Figures K-4, K-5, K-6, and K-7 show the adapted soils classifications, prime and unique soils, irrigated soil capability classes, and nonirrigated soil capability classes, respectively, within the Facility site boundary and corresponding land use analysis area.

¹ The Applicant may satisfy the Council's land use standard by complying with applicable local criteria, by seeking a Council determination of compliance with directly applicable statewide land use planning goals, or through the goal exception process.

Table K-1. Summary of Impacts to Soil Classifications within the Facility Site Boundary and Tracts

NRCS Soil Unit ^a	Map Code	Acreage	Percentage	NRCS Irrigated Soil Capability Class	NRCS Nonirrigated Soil Capability Class
Facility Site Boundary: Includes portions of Jefferson County tax lot 1013310000200 (Jefferson County Tract), and tax lots 1013300000600 and 1013310000100 (Binder Tract).					
Cullius loam, 0 to 3 percent slopes	30A	130.6	46%	Class IV	Class VI
Cullius loam, 3 to 8 percent slopes	30B	23.4	8%	Class IV	Class VI
Madras loam, 0 to 3 percent slopes	87A	104.8	37%	Class III	Class IV
Madras loam, 3 to 8 percent slopes	87B	21.7	8%	Class III	Class IV
Simas-Ruckles-Rock outcrop complex, 40 to 80 percent north slopes	120F	2.2	1%	N/A ^b	Class VI
Simas-Ruckles-Rock outcrop complex, 40 to 80 percent south slopes	121F	1.4	> 1%	N/A ^b	Class VI
Total		284.1			
Jefferson County Tract					
Cullius loam, 3 to 8 percent slopes	30B	0.3	6%	Class IV	Class VI
Madras loam, 0 to 3 percent slopes	87A	0.8	16%	Class III	Class IV
Madras loam, 3 to 8 percent slopes	87B	1.7	36%	Class III	Class IV
Simas-Ruckles-Rock outcrop complex, 40 to 80 percent north slopes	120F	1.9	39%	N/A ^b	Class VI
Simas-Ruckles-Rock outcrop complex, 40 to 80 percent south slopes	121F	0.1	2%	N/A ^b	Class VI
Total		4.8			
Binder Tract					
Cullius loam, 0 to 3 percent slopes	30A	133.5	26%	Class IV	Class VI
Cullius loam, 3 to 8 percent slopes	30B	30.7	6%	Class IV	Class VI
Madras loam, 0 to 3 percent slopes	87A	117.4	23%	Class III	Class IV
Madras loam, 3 to 8 percent slopes	87B	38.8	8%	Class III	Class IV
Simas-Ruckles-Rock outcrop complex, 40 to 80 percent north slopes	120F	69.6	14%	N/A ^b	Class VI
Simas-Ruckles-Rock outcrop complex, 40 to 80 percent south slopes	121F	118.6	23%	N/A ^b	Class VI

Table K-1. Summary of Impacts to Soil Classifications within the Facility Site Boundary and Tracts

NRCS Soil Unit ^a	Map Code	Acreage	Percentage	NRCS Irrigated Soil Capability Class	NRCS Nonirrigated Soil Capability Class
Total		508.6			
Soil Classification Summary for Area within the Facility Site Boundary (Acres):					
Arable Lands					126.5
Nonarable Lands					157.6
Total Area in Goal 3 Exception Request					284.1

Source: NRCS, 2019

^a Soils within the CES 2018 Study Area Boundary shown on Figures K-4 through K-7 and reported above are based on revised soil map units from CES (2018). Soils outside of CES 2018 Study Area Boundary are from the Natural Resources Conservation Service (NRCS).

^b N/A indicates that the soil is not rated or the capability class is not available.

The Facility site boundary consists of two tracts defined by OAR 660-033-0020(14) as “one or more contiguous lots or parcels under the same ownership.” The primary tract within the Facility site boundary consists of three parcels (tax lots 1013300000600, 1013310000100, and 1013320000300) owned by Binder, LLC, and Binder, Bryce K. Trust (referred to collectively herein as “Binder”). Attachment K-1 is a letter from the landowner of the Binder tract, Mrs. Darlene Binder. In the letter, Mrs. Binder verifies that the Binder tract within the Facility site boundary is not currently irrigated, has no history of irrigation, and is not subject to plans for irrigation of the area. Mrs. Binder also confirms that no water right permits, certificates, points of diversion, or places of use are attached to the parcels in the Binder tract. The Binder tract has not been cultivated since 1985 and has been used for pasture only once in the last 25 years (Attachment K-1). The second smaller tract within the Facility site boundary is owned by Jefferson County (tax lot 1013310000200) and used as road right-of-way for NW Pelton Dam Road. Similar to the Binder tract, Oregon Water Resources Department (OWRD) water rights mapping confirms no water right permits, certificates, points of diversion, or places of use are associated with the County tract.

OWRD water rights mapping results are shown on Figures K-4 through K-7. The only OWRD authorized water use within the land use analysis area is associated with Water Right Certificate 73197 (see Attachment K-2). Certificate 73197 was issued to OWRD on August 30, 1990, for surface water use associated with anadromous and resident fish habitat. The nearest point of diversion under Certificate 73197 is located at the mouth of Willow Creek where it meets Lake Simtustus north of the Facility site boundary. The certificate does not include an authorized place of use within the Facility site boundary and the certificate is not designated for and cannot be used for irrigation. Additional water rights certificates associated with Lake Simtustus are listed on Figures K-4 through K-7 for completeness. These certificates are being listed due to the fact that a portion of Lake Simtustus is within the land use analysis area; however, the certificates are not associated with the tracts analyzed herein and are not discussed further in this analysis. Accordingly, the Facility site has no history of irrigation and no OWRD authorized water right permits, certificates, points of diversion, or places of use exist within the Facility site boundary or underlying subject tracts.

Since the area within the Facility site boundary is not and has never been irrigated, Table K-1 shows that the majority (approximately 55 percent) of the area within the Facility site boundary consists of nonirrigated Class VI soils, while the remaining area (approximately 45 percent) consists of nonirrigated Class IV soils (Figure K-7). Figure K-5 shows that, based on NRCS data and the CES prepared site-specific soil survey (CES, 2018), the Binder tract does not predominantly consist of prime or unique farmland, given that approximately 31 percent of lands within the Binder tract are identified as prime farmland if irrigated and no irrigation is present. ORS 215.710 defines “high-value farmland” as land “in a tract composed predominantly of soils

that are either [irrigated or not irrigated] classified prime, unique, Class I or Class II by the NRCS.” OAR 215.710(5)(b) allows for the revision of soil classifications and ratings for specific parcels if i) a soils scientist credentialed with the Oregon State Department of Agriculture submits a report demonstrating that the soil classification and rating should be changed, and ii) the Oregon State Department of Agriculture finds the “analysis in the report to be soundly and scientifically based.” Consistent with OAR 215.710(5)(b), the CES report included as Attachment I-3 to Exhibit I refines and revises NRCS soil classifications within the Facility site boundary to evaluate whether the site soils are predominantly arable versus nonarable. The CES report has been submitted to the Oregon Department of Land Conservation and Development (DLCD) for review and concurrence (see Attachment K-3). Thus, based on NRCS data, the CES report, and lack of irrigation, the area within the Facility site boundary is not technically high-value farmland.

However, the Facility site boundary is located within the North Unit Irrigation District (NUID), which is an irrigation district as defined by ORS 540.505(1). The NUID is shown on the map of Deschutes Basin Irrigation Districts (Central Oregon Irrigation District, 2019) provided in Attachment K-4 and generally extends from the Deschutes River east of the City of Madras and approximately 20 miles north and south of the proposed Facility site. It is also located within an exclusive farm use zone, according to the *Jefferson County Zoning Map* (Jefferson County, 2016). Therefore, by law, the land within the Facility site boundary is considered high-value farmland under ORS 195.300(10)(c)(B). Pursuant to ORS 469.300(11)(a)(D), a solar photovoltaic power generation facility is an “energy facility” subject to the jurisdiction of the Council if it is located on i) more than 100 acres of high-value farmland as defined in ORS 195.300, or ii) more than 100 acres of land that is either predominantly cultivated or, if not cultivated, predominantly composed of soils that are in capability classes I to IV. While analysis in this Exhibit demonstrates that the area within the Facility site boundary is not cultivated and is not predominantly composed of Class I through IV soils, the approximately 284 acres within the Facility site boundary is located both within an exclusive farm use zone and the NUID; therefore, it is considered high-value farmland by default. Thus, the Facility is an “energy facility” under the Council’s jurisdiction per ORS 469.300(11)(a)(D).

Although the Facility has been designed to avoid the need for a new generation-tie transmission line, the overhead cables connecting the substation to the POI technically meet the definition of “associated transmission lines” in ORS 469.300, given that the cables will connect to the Northwest power grid via the PGE transmission line. Thus, the Applicant addresses ORS 215.274 (*Associated transmission lines necessary for public service*) in Section K.5.2.2 of this Exhibit.

K.2.1.2 Jefferson County Land Use and Zoning Designations

The entire Facility within the site boundary shown on Figure K-2 is proposed within Jefferson County’s EFU comprehensive plan land use designation and corresponding EFU A-1 zoning district identified on the *Jefferson County Zoning Map* (Jefferson County, 2016). The major components and related or supporting facilities associated with the Facility are described in Exhibit B and will occur within the Facility site boundary.

In Jefferson County’s EFU A-1 zone designation, the Facility and associated related or supporting facilities are assessed as “*Commercial utility facilities for the purpose of generating power for public use by sale*” under Section 301.4(H) of the JCZO (Jefferson County, 2018). OAR 660-033-0130(38) is the more specific state law that regulates photovoltaic solar power generation facilities within EFU zones, as discussed in Section K.5.2.3, and ORS 215.274 is the more specific state law that regulates a transmission line associated with an energy facility within EFU zones, as discussed in Section K.5.3.

Because Facility operations will preclude over 20 acres of land zoned EFU A-1 from farm use during the estimated 40-year useful life of the Facility, the Facility may not comply with one of the applicable substantive criteria for Jefferson County under JCZO 301.4(H). Therefore, the Applicant demonstrates in Section K.5.4 that an exception to Statewide Planning Goal 3 is justified pursuant to ORS 197.732 and as governed by the applicable substantive criteria in OAR 660 004 0000.

K.2.2 Applicable Local Criteria

The County's Board of Commissioners serves as the Special Advisory Group (SAG) for the Facility. On August 23, 2019, the SAG submitted a letter to the Department in response to the Notice of Intent (NOI) for the Facility (see Attachment K-5). The applicable local substantive criteria from the JCZO and JCCP (Jefferson County, 1986) are summarized below and are consistent with those identified by the SAG:

Jefferson County Zoning Ordinance

Chapter 3 (Land Use Zones)

- Section 301 – Exclusive Farm Use Zones (EFU A-1, EFU A-2 and RL)
- Section 316 – Flood Plain Overlay Zone (FP)
- Section 322 – Sensitive Bird Habitat Overlay Zone (BH)

Chapter 4 (Supplementary Provisions)

- Section 401 – Access
- Section 402 – Transportation Improvements
- Section 403 – Clear-Vision Areas
- Section 404 – Fences
- Section 405 – Outdoor Lighting
- Section 406 – Sign Regulations
- Section 412 – Scenic and Natural Hazard Rim Set Back
- Section 413 – Improvement Guarantees and Bonding Requirements
- Section 414 – Site Plan Review
- Section 415 – Soil or Rapid Moving Landslide Hazard Procedures
- Section 416 – Grading, Fill and Removal
- Section 417 – Historic Resource Protection
- Section 418 – Airport Protection
- Section 419 – Riparian Protection
- Section 420 – Endangered Species
- Section 421 – Traffic Impact Studies
- Section 423 – Off-Street Parking Requirements
- Section 426 – Fire Safety Standards
- Section 429 – Archaeological Preservation
- Section 433 – Photovoltaic Facilities

Chapter 5 (Exceptions)

- Section 505 – Goal Exceptions

Chapter 6 (Conditional Uses)

- Section 601 – Authorization to Grant or Deny Conditional Uses
- Section 602 – Approval Criteria
- Section 603 – Conditions of Approval

Jefferson County Comprehensive Plan

- Goal 3: Agricultural Lands
- Goal 5: Natural Resources, Scenic and Historic Area, and Open Spaces
- Goal 6: Air, Water, and Land Resources Quality
- Goal 7: Areas Subject to Natural Hazards
- Goal 8: Recreational Needs
- Goal 9: Economic Development
- Goal 11: Public Facilities and Services
- Goal 12: Transportation
- Goal 13: Energy Conservation

K.2.3 Applicable State Law

The applicable substantive criteria for the State of Oregon are as follows:

Oregon Statewide Planning Goals

- Goal 3 – Agricultural Lands

Oregon Revised Statutes

- 215.283 – Uses Permitted in Exclusive Farm Use Zones in Nonmarginal Lands Counties
- 215.274 – Associated Transmission Lines Necessary for Public Service

Oregon Administrative Rules

- 660-033-0130(5) – Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses
- 660-033-0130(38) – Photovoltaic Solar Power Generation Facility
- 660-012-0065 – Transportation Improvements on Rural Lands

K.3 LAND USE ANALYSIS AREA AND MAP

OAR 345-021-0010(1)(k)(A) *Include a map showing the comprehensive plan designations and land use zones in the analysis area.*

Response: The analysis area consists of the site boundary and the area within one-half mile of the site boundary. The following maps are provided:

- Figure K-1, Aerial Photograph, shows the proposed Facility location and layout in Jefferson county.
- Figure K-2, Land Use, shows the Jefferson County base zone and comprehensive plan map designations within the half-mile land use analysis area.
- Figure K-3, Overlay Zones, shows the Jefferson County overlay zones within the half-mile land use analysis area.
- Figure K-4, Soil Map Units, presents the NRCS data and adapted CES data for soil types within the Facility site boundary and the half-mile land use analysis area.
- Figure K-5, Prime Farmlands, displays NRCS data and adapted CES data regarding the location of prime and unique farmlands and the half-mile land use analysis area.
- Figure K-6, Irrigated Soil Capability Class, shows NRCS and adapted CES irrigated soil capability classes within the Facility site boundary and the half-mile land use analysis area.
- Figure K-7, Nonirrigated Soil Capability Class, shows NRCS and adapted CES nonirrigated soil capability classes within the Facility site boundary and the half-mile land use analysis area.
- Figure K-8, Farm Practices in the Land Use Analysis Area, shows existing farm practices on tax lots occurring within the Facility site boundary and the half-mile land use analysis area.
- Figure K-9, Property Ownership, displays property ownership within the Facility site boundary and the half-mile land use analysis area.

K.4 LOCAL LAND USE APPROVAL

OAR 345-021-0010(1)(k)(B) *If the applicant elects to obtain local land use approvals:*

- (i) *Identify the affected local government(s) from which land use approvals will be sought.*

- (ii) *Describe the land use approvals required in order to satisfy the Council's land use standard.*
- (iii) *Describe the status of the applicant's application for each land use approval.*
- (iv) *Provide an estimate of time for issuance of local land use approvals.*

Response: OAR 345-021-0010(1)(k)(B) is not applicable. The Applicant has elected to obtain a Council determination on land use.

K.5 COUNCIL DETERMINATION ON LAND USE

OAR 345-021-0010(1)(k)(C) *If the applicant elects to obtain a Council determination on land use:*

- (i) *Identify the affected local government(s).*

Response: The Facility will be sited in Jefferson County (County), which is the affected local governments.

- (ii) *Identify the 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 that are in effect on the date the application is submitted and describe how the proposed facility complies with those criteria.*

Response: The applicable substantive criteria from the County are identified and addressed below in Section K.5.1.

- (iii) *Identify all Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3) and describe how the proposed facility complies with those rules, goals and statutes.*

Response: The applicable Land Conservation and Development Commission administrative rules, statewide planning goals, and land use statutes are identified and addressed below in section K.5.2.

- (iv) *If the proposed facility might not comply with all applicable substantive criteria, identify the applicable statewide planning goals and describe how the proposed facility complies with those goals.*

Response: The Facility does not meet JCZO 301.4(H), as it will preclude more than 12 acres of high-value farmland or 20 acres of other land from commercial farm use during the estimated 40-year useful life of the Facility. The Applicant demonstrates below in Section K.5.4 that an exception to Statewide Planning Goal 3 is justified.

- (v) *If the proposed facility might not comply with all applicable substantive criteria or applicable statewide planning goals, describe why an exception to any applicable statewide planning goal is justified, providing evidence to support all findings by the Council required under ORS 469.504(2).*

Response: Pursuant to OAR 660-033-0130(38)(g) and (i), a photovoltaic solar power generation facility cannot use, occupy, or cover more than 12 acres of high-value farm land or 20 acres of arable land from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. As discussed above, the Facility site is located within both an exclusive farm use zone and the NUID and therefore, by law, the land within the Facility site boundary is considered high-value farmland under ORS 195.300(10)(c)(B). The CES report provided as Attachment I-3 to Exhibit I demonstrates that, while the majority of the site consists of Class VI nonarable soils, over 20 acres of land within the Facility site boundary is Class IV soils and is considered arable. Regardless of what percentage of the soils

within the Facility site boundary are considered arable, the exception threshold is met based on the Facility's location within an exclusive farm use zone and the NUID (see Attachment K-4). Thus, the Facility will permanently occupy more than 12 acres of high-value farmland or 20 acres of arable land. Pursuant to OAR 660-033-130(38)(g) and (i), constructing the Facility requires an exception to Statewide Planning Goal 3. The Applicant demonstrates below in Section K.5.4 that an exception to Statewide Planning Goal 3 is justified.

K.5.1 Jefferson County

This section includes a demonstration of compliance with the applicable substantive criteria from the JCZO and JCCP.

K.5.1.1 Applicable Substantive Criteria from the Jefferson County Zoning Ordinance

Section 301 - Exclusive Farm Use Zones (EFU A-1, EFU A-2 and RL)

301.1 Purpose

This Section sets forth regulations for land use and development within the County's three exclusive farm use zones: Exclusive Farm Use A-1 (EFU A-1), Exclusive Farm Use A-2 (EFU A-2) and Range Land (RL).

- A. The EFU A-1 zone has been established to preserve areas containing predominantly irrigated agricultural soils for existing and future farm uses related to the production of agricultural crops or products.*
- B. The EFU A-2 Zone has been established to recognize and preserve areas of agricultural land which are less productive than lands in the EFU A-1 zone due to soil class and lack of irrigation water.*
- C. The RL zone has been established to recognize and preserve areas containing predominantly non-irrigated agricultural soils which are being used, or have the capability of being used, for livestock grazing.*
- D. All three agricultural zones recognize the right to farm for all land owners within the zone, and provide regulations that are reasonable and prudent in order to protect the performance of typical farm use practices, growing various farm crops, conducting animal husbandry, and producing horticultural or other farm related products for the purpose of obtaining a profitable income for the property owner.*

Response: The Facility site boundary and proposed Facility components are located entirely within the County's EFU A-1 zoning district shown on Figure K-2. Compliance with the applicable provisions of JCZO 301 for the EFU A-1 zoning district is demonstrated below. The County's Exclusive Farm Use A-2 (EFU A2) and Range Land (RL) zoning districts are not applicable to the Facility. The Applicant recognizes the right to farm for landowners within the EFU A-1 zoning district and demonstrates under JCZO 301.5(A) and (B) that the Facility will not result in a significant change in, or significantly increase the costs of, accepted farming practices on surrounding lands devoted to farm use. Therefore, the Facility complies with these criteria.

301.4 Conditional Uses

The following uses may be approved in the EFU A-1, EFU A-2 and RL zones unless specifically stated otherwise. Applications will be reviewed at a public hearing before the Planning Commission in accordance with the procedures in Section 903.5. In order to be approved, the use must comply with the criteria in Section 301.5, Section 602, any standards and criteria listed under the specific use and any other applicable requirements of this ordinance.

- H. Commercial utility facilities for the purpose of generating power for public use by sale. A power generation facility shall not preclude more than 20 acres from farm use as a*

commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR 660, Division 4, or more than 12 acres if the land is high-value farmland.

Response: The Facility and associated related or supporting facilities are consistent with the County's definition of "Commercial utility facilities for the purpose of generating power for public use by sale." The Facility components are described in detail in Exhibit B and include photovoltaic panels connected to electrical and supporting infrastructure consisting of the collection system, integrated energy storage system, power conversion stations, onsite Facility substation, POI switching station, O&M enclosure, service roads, security fencing and gates, and construction areas.

The Facility is a "power generation facility" on approximately 284 acres of EFU A-1 zoned land within the County. As discussed in Exhibit I and detailed in the Site-specific Soil Study included as Attachment I-3, the majority of the area within the Facility site boundary consists of nonarable soils. OAR 660-033-0130(38)(j) specifies that 320 acres is the threshold for triggering the need for a Goal 3 exception. However, the entire site is location within both the NUID (see Attachment K-4) and an EFU zone. Therefore, per ORS 195.300(10)(c)(B), the entire site is considered high-value farmland, which overrides the underlying nonarable soils categorization. For high-value farmland, OAR 660-033-0130(38)(g) specifies that 12 acres is the threshold for triggering the need for a Goal 3 exception. Since the Facility is approximately 284 acres and considered high-value farmland per ORS 195.300(10)(c)(B), a Goal 3 exception is required. The Applicant demonstrates below in Section K.5.4 that an exception to Statewide Planning Goal 3 is justified.

Compliance with JCZO 301.5 is demonstrated below, and compliance with JCZO 602 is demonstrated at the end of Section K.5.1.1. Therefore, with the Council's approval of the Goal 3 exception, the Facility complies with this criterion.

- H. (CONTINUED) For purposes of this rule a wind power generation facility includes, but is not limited to, the following system components: all wind turbine towers and concrete pads, permanent meteorological towers and wind measurement devices, electrical cable collection systems connecting wind turbine towers with the relevant power substation, new or expanded private roads (whether temporary or permanent) constructed to serve the wind power generation facility, office and operation and maintenance buildings, temporary lay-down areas and all other necessary appurtenances. A proposal for a wind power generation facility shall be subject to the following provisions: [see JCZO 301.4(H)(1) through (4)]*

Response: The Facility is not a "wind power generation facility." Therefore, JCZO 301.4(H)(1) through (4) do not apply.

301.5 Approval Criteria

Uses listed in Section 301.4 and specified uses in Section 301.3 may be approved only where the use:

- A. Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and*
- B. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.*

The applicant may demonstrate that these criteria will be satisfied through the imposition of conditions. Any conditions so imposed must be clear and objective.

Response: Section K.5.2 provides a detailed response demonstrating the Facility's compliance with OAR 660-033-0130(5)(a) and (b), which are identical to the provisions of JCZO 301.5(A) and (B) listed directly above.

In summary, the Facility is not proposed adjacent to or within 0.5 mile of any lands in forest use. The nearest lands in Jefferson County zoned for Forest Management (FM) occur approximately 20 miles to the southwest of the Facility site boundary in the Deschutes National Forest. The Facility will not force a significant change in, or significantly increase the cost of, accepted forest practices within the County's FM zone designation.

No lands cultivated for farm use occur within the Facility site boundary or surrounding 0.5-mile land use analysis area (Figure K-8). The closest cultivated agricultural land occurs approximately 0.6 mile north of the Facility site boundary on the opposite side of Willow Creek Canyon. A description of farm practices on surrounding lands within the 0.5-mile land use analysis area is provided in Section K.5.2 in response to OAR 660-033-0130(5) and shown on Figure K-8.

Attachment K-1 is a letter from the landowner of the Binder tract, Mrs. Darlene Binder. In the letter, Mrs. Binder verifies that the land within the Facility site boundary and Binder tract was cultivated for dryland wheat prior to 1985. Property within the Binder tract was under the USDA's Conservation Reserve Program (CRP) between approximately 1985 to 1995 and was seeded with crested wheat grass. Since 1995, properties within the Binder tract have been used for pasture grazing only once and no cultivation or other farm practices have occurred on the tract within approximately 25 years. The Facility site does not have any water rights and there is no realistic potential for water rights in the future. The site, therefore, has no history of irrigation.

Construction, operation, and maintenance of solar panels and associated equipment at the Facility will not change existing land use practices on lands surrounding the Facility site boundary. The Facility will not necessitate relocating any access routes or farm infrastructure on neighboring properties within the land use analysis area, and will not result in changes to practices for planting, irrigating, fertilizing, or harvesting. Because the Facility will not change farm practices on surrounding lands, the Facility will not increase the cost of farm practices on surrounding lands. In the letter provided as Attachment K-1, Mrs. Binder verifies the Facility site has limited productivity because it is not irrigated and has not been used for commercial farm or ranching operations in over 30 years. Mrs. Binder states:

...We have worked with Madras PV1, LLC to identify a Facility site that will not preclude or impair access to farm operations associated with adjacent landowners. Specifically, we do not anticipate any changes to farm operations occurring on surrounding lands as a result of construction or operation of the proposed Facility. Based on the lack of irrigation and water rights, we support the Facility site as a higher and better use of the land and as a means to concentrate renewable energy development off of more productive farmland...

Thus, the proposed Facility complies with JCZO 301.5(A) and (B) and the identical provisions of OAR 660-033-0130(5) and ORS 215.296(1).

301.10 Setback Requirements (minimum): *Front – 30 feet, Side – 30 feet, Rear – 30 feet.*

Response: The security fence is the nearest Facility component to adjacent property lines along the Facility site boundary. While the security fence does not meet the County's definition of a "structure" under JCZO 105 and is not "customarily regulated through zoning ordinances," the fence will be located at least 30 feet from property lines that form the Facility site boundary. The nearest Facility components to an adjacent property line that are consistent with the County's definition of a "structure" under JCZO 105 are the solar modules located west of SW Elk Drive. These solar modules are approximately 55 feet from the property line to tax lot 1013310000200, as shown on Figure K-2 and C-2 in Exhibit C. Therefore, no Facility components or structures will be within 30 feet of property lines along the Facility site boundary and the Facility complies with JCZO 301.10.

Section 316 - Flood Plain Overlay Zone (FP)

316.2 Applicability:

This section shall apply to all flood hazard areas within the jurisdiction of Jefferson County as shown on the Flood Boundary and Floodway Maps or Federal Insurance Rate Maps (FIRM). Flood hazard areas coincide with the 100-year flood plain. These standards are in addition to the requirements of the underlying zone and the riparian protection standards of Section 419. Where there is a conflict between regulations, the more restrictive shall apply.

Response: Portions of the Flood Plain Overlay Zone are located within the Exhibit K analysis area, as shown on Figure K-2. However, no structure, building, or permanent fixture associated with the Facility, including solar modules will be sited within the Flood Plain Overlay Zone. Therefore, JCZO 316 does not apply.

316.3 Determining Flood Hazard Location and Base Flood Elevation:

- A. The flood hazard areas identified by the Federal Insurance Administration, in a scientific and engineering report entitled the "Flood Insurance Study for Jefferson County, Oregon", dated July 17, 1989, with accompanying FIRMs, is hereby adopted by reference and declared to be a part of this Ordinance. These documents will be the means for establishing the location of flood hazard areas. The Flood Insurance Study is on file with the County.*
- B. In areas where the base flood elevation is shown on the FIRM or the Flood Insurance Study profiles, the base flood elevation at the proposed building site shall be extrapolated from the elevations that are immediately upstream and downstream from the location of the proposed use.*
- C. When base flood elevation data is not provided on the FIRM or the Flood Insurance Study, the applicant shall employ an Oregon registered professional engineer to prepare a report certifying the base flood elevation in accordance with Federal Emergency Management Agency (FEMA) standards. The report shall set forth the elevation of the 100-year flood, and cite the evidence relied upon in making such determination. The calculated base flood elevation may be from mean sea level or may be based on an assumed elevation when tied to a benchmark. The location of the benchmark shall be described in the report and shown on a map that must be included with the report. The report may be accepted or rejected by the County.*

Response: As shown on Figure K-3, no portion of the Facility or its components are located within the Flood Plain Overlay Zone. Therefore, JCZO 316.3 does not apply.

316.4 Flood plain Development Permit Required

- A. A flood plain development permit is required before construction or development begins within any flood hazard area, unless specifically exempted under Section 316.5. Development includes, but is not limited to, substantial improvement, the placement of manufactured dwellings, stream crossings, mining, dredging, filling, grading, paving, excavation, drilling operations and other land-altering activities. For purposes of this section, "substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either before the improvement or repair is started, or, if the structure has been damaged and is being restored, before the damage occurred.*
- B. Flood plain development permits will be administratively reviewed by the Planning Director, in accordance with the provisions in Section 903.4.*

Response: As shown on Figure K-3, no portion of the Facility or its components are sited in the Flood Plain Overlay Zone. And no construction activities, or staging, associated with the Facility will occur within the Flood Plain Overlay Zone. Therefore, a Floodplain Development Permit is not required.

Section 322 - Sensitive Bird Habitat Overlay Zone (BH)

322.1 Purpose

The purpose of the Sensitive Bird Habitat Overlay (BH) Zone is to insure that sensitive habitat areas identified in the County's Goal 5 sensitive bird inventory as critical for the survival of the northern bald eagle, golden eagle and prairie falcon are protected from the effects of conflicting uses and activities. This objective shall be achieved by implementation of the decision which was made as part of the economic, social environmental and energy (ESEE) analysis that was completed for each site as part of the Goal 5 inventory process.

Response: The Applicant demonstrates below in responses to the applicable substantive criteria under JCZO 322 that the Facility is consistent with the purpose of the County's Sensitive Bird Habitat (BH) Overlay Zone.

322.2 Location of Sensitive Bird Habitat Overlay Zone

The BH Zone consists of all land within a 1320 foot (1/4 mile) radius of a golden eagle, bald eagle or prairie falcon nest listed in the Comprehensive Plan Goal 5 inventory adopted by Ordinance 49-97, as shown on the Jefferson County Zoning Map.

Response: In 1997, the County completed a statewide planning Goal 5 inventory process for sensitive bird habitat, resulting in the development of the BH Overlay Zone. As defined in JCZO 322.2, the BH Overlay Zone is composed of land within a 1,320-foot (1/4-mile) radius of mapped golden eagle, bald eagle, or prairie falcon nest locations associated with 24 inventoried sensitive bird habitat sites throughout the County. Only one of these 24 inventoried sensitive bird habitat sites is located within the Facility's land use analysis area; the site is referred to as "County Site No. 26." Note that while this site is referred to as "County Site No. 26," it occurs as the 23rd site in a total list of 24 inventoried sensitive bird habitat sites (Jefferson County, 1997). County Site No. 26, the only portion of the County's BH Overlay Zone that occurs within the land use analysis area, is shown on Figure K-3.

Figure K-3 also shows a 0.25-mile radius from golden eagle nests associated with County Site No. 26, which is listed in the table of Sensitive Bird Habitat in the JCCP (Jefferson County, 2013), and identified in the amended map and policies of the Goal 5 Inventory to the JCCP, adopted by Ordinance 49-97 on April 9, 1997. The four golden eagle nest sites and corresponding buffers are identified by their Oregon Department of Fish and Wildlife (ODFW) identification numbers (JE 0732-01 to JE 0732-04) provided in the County's economic, social environmental, and energy (ESEE) analysis for County Site No. 26 (Jefferson County, 1997).

Figure K-3 shows that no nest locations are within the Facility site boundary and no nests are located on properties within the Binder tract that underlies the Facility site boundary. The area of the BH Overlay Zone specific to County Site No. 26 is approximately 208.5 acres. This total accounts for the area that occurs within the 0.25-mile radius from golden eagle nests associated with County Site No. 26 as shown on Figure K-3. Approximately 194.1 acres, or 93 percent, of the BH Overlay Zone specific to County Site No. 26 occurs within the Facility's land use analysis area. However, only a small portion of approximately 5.7 acres, or less than 3 percent, of the BH Overlay Zone specific to the County Site No. 26 overlaps with the permanently disturbed area shown within the northeast portion of the Facility site boundary depicted on Figure C-1 (Facility Layout) in Exhibit C.

These golden eagle nests are part of the Willow Creek golden eagle territory. The nests in this territory have been monitored since 2011. A breeding, female golden eagle within the Willow Creek territory was fitted with a telemetry unit in 2011 and her movements and space use were monitored through 2013. The Applicant has been in communication with the U.S. Fish and Wildlife Service (USFWS) and ODFW regarding the golden eagle nests since November 2018 including multiple site visits with relevant agency staff. In addition, the Applicant's avian biologists have studied the telemetry data and conducted two rounds of aerial eagle nest surveys and two rounds of ground-based nest surveys. The analysis of historical nest data and results of the nest surveys are included in the report provided as Attachment P-5 (*submitted separately under confidential cover*) to Exhibit P.

Golden eagles are protected by the federal Bald and Golden Eagle Protection Act as regulated by the USFWS. As part of coordination with the USFWS, the Applicant has submitted an application for an Incidental Eagle Take Permit to address potential noise disturbance to golden eagles during construction. Attachment P-8 (*submitted separately under confidential cover*) contains the Applicant's application to the USFWS. The Applicant has applied for this voluntary permit to document and formalize avoidance, minimization, mitigation, and monitoring measures to be implemented for potential construction disturbance to the golden eagle nests and will continue to consult with USFWS and ODFW on these issues.

322.3 Exemptions

- A. *Portions of a BH Zone located on federal land are not subject to the provisions of this section.*
- B. *Forest practices and farming practices as defined in ORS 30.930 are exempt from the provisions of this Section. However, buildings proposed to be constructed or converted for use in conjunction with farming or forestry operations are subject to the requirements of this section.*

Response: While no golden eagle nests are located within the Facility site boundary or on the underlying property, a small portion of the BH Overlay Zone specific to the County's sensitive bird Site No. 26 overlaps with the northeast portion of the Facility site boundary on private property owned by Binder, LLC. The Facility is not a farming practice as defined in ORS 30.930 and is not a building constructed in conjunction with farm operations. Therefore, the exemptions under JCZO 322.3 do not apply to the proposed Facility.

322.4 Regulation of Uses

- A. *Development within a BH Zone shall follow the Program to Meet Goal 5 specified in the ESEE Findings and Decision adopted for each nesting site identified in the Comprehensive Plan inventory.*
- B. *For certain bird sites, the Program to Meet Goal 5 does not refer to tax lots within the BH Zone that were already developed at the time the ESEE analysis was done. Any proposal for new construction on these lots shall be subject to the same requirements as the nearest tax lot to the proposed development that is regulated through the Program to Meet Goal 5.*

Response: The County's BH Overlay Zone specific to County Site No. 26 is shown on Figure K-3 and overlaps with a portion of previously undeveloped tax lot 1013300000600. Therefore, the applicable substantive provisions of JCZO 322 and the Program to Meet Goal 5 apply to the Facility. The BH Overlay Zone is defined in response to JCZO 322.2 above and is consistent with the 0.25-mile radius from the golden eagle nest locations associated with ODFW Identification Nos. JE 0732-02, JE 0732-03, and JE 0732-04. These nest locations are identified in the County's ESEE analysis for County Site No. 26.

The Applicant demonstrates below that development of the Facility within a small portion (less than 3 percent) of the BH Overlay Zone buffer that applies to the County's sensitive bird Site No. 26 is consistent with the Program to Meet Goal 5 for the ESEE findings and decision adopted for County Site No. 26 (Jefferson County, 1997). An excerpt from the Program to Meet Goal 5 that applies to County Site No. 26 and tax lot 1013300000600 is below:

In order to protect both the nest site and sensitive habitat area and allow limited conflicting uses, the following requirements shall apply to specific properties within the sensitive habitat area, for the following properties (as mapped on Exhibit "B"), the conditions below shall apply:

10-13-30-600

1. Development, including conditional uses, within the restricted area is prohibited.
2. New structural development outside the restricted area shall be setback at least 30 feet from the rim.
3. Construction activities for expansion, maintenance, replacement of existing structures or construction of new structures requiring a building permit from the Jefferson County Community Development Department or septic installation requiring a permit from the Jefferson County Environmental Services or the Department of Environmental Quality (DEQ) shall be prohibited during the nesting season from January 15 through August 31. Maintenance and repair of existing structures not requiring a construction permit, permitted work conducted within a closed structure, or repair of a failing septic system are exempt from this requirement. Construction activity subject to a construction permit from the Community Development Department or a septic installation permit from the Jefferson County Environmental Services or the Department of Environmental Quality (DEQ) may occur after May 1, if ODFW determines in writing that the nest site is not active or that the young birds have fledged.

Although “restricted area” is not defined in the JCZO or the Program to Meet Goal 5, the Bird Nesting Sites section of the JCCP provides additional context for the County’s restrictions in the Program to Meet Goal 5 and states that “In most cases, when a nest site was on a canyon wall, all development below the canyon rim within ¼ mile of the nest was prohibited. Development above the rim was restricted to time periods when birds are not actively nesting” (Page 27, Jefferson County, 2013).

The Facility is consistent with the purpose and intent of the restrictions outlined above for Bird Nesting Sites in the JCCP. Specifically, no portion of the Facility will be developed in the restricted area below the canyon rim within the BH Overlay Zone, which includes areas within 0.25 mile of the golden eagle nest locations associated with ODFW identification numbers JE 0732-02, JE 0732-03, and JE 0732-04.

The portion of the Facility that will occur in the BH Overlay Zone on tax lot 1013300000600 is limited to less than 3 percent of the area within the BH Overlay Zone buffer that applies to the County’s sensitive bird Site No. 26. This small area of the Facility shown on Figure K-3 will be constructed on a plateau above the rim as defined by JCZO 412.1(B), and outside of the restricted area within the BH Overlay Zone. As shown on Figure K-3 and Figures C-2A and C-2B in Exhibit C, no structures associated with the Facility will be constructed within the Scenic and Natural Hazard Rim Set Back, and the Facility will be set back 30 feet from the rim of the plateau along Willow Creek Canyon.

The Applicant has been in communication with USFWS and ODFW regarding the golden eagle nests since November 2018, including multiple site visits with participatory agency staff. In addition, the Applicant’s avian biologists have studied the telemetry data and conducted two rounds of aerial eagle nest surveys and two rounds of ground-based nest surveys. The analysis of historical nest data and results of the nest surveys are included in the report provided as Attachment P-5 (*submitted separately under confidential cover*) to Exhibit P.

Golden eagles are protected by the federal Bald and Golden Eagle Protection Act as regulated by the USFWS. As part of coordination with the USFWS, the Applicant has submitted an application for an Incidental Eagle Take Permit to address potential noise disturbance to golden eagles during construction. Attachment P-8 (*submitted separately under confidential cover*) contains the Applicant’s application to the USFWS. The Applicant has applied for this voluntary permit to document and formalize avoidance, minimization, mitigation, and monitoring measures to be implemented for potential construction disturbance to the golden eagle nests and will continue to consult with USFWS and ODFW on these issues.

As described in Section P.8.2 and Attachment P-8 (*submitted separately under confidential cover*) in Exhibit P, the Applicant has implemented or will implement minimization measures developed in consultation with the USFWS to minimize any potential impacts to nesting eagles.

For example, heavy construction (pile driving and trenching) and vegetation clearing will occur outside the nesting season to the greatest extent feasible. The minimization measures also incorporate construction monitoring by a qualified biologist to identify and monitor any active eagle nests within 0.25 mile of construction activities to document possible disturbance during the ODFW recommended time period for golden eagles, which is February 1 through August 15.

No direct impacts to golden eagles are anticipated from the Facility and potential loss of golden eagle foraging habitat is not considered significant. Discussions with USFWS and ODFW about potential adverse impacts to golden eagle nests are ongoing. Collectively, the design of the Facility and the minimization and mitigation measures developed in coordination with USFWS and ODFW are outlined in Exhibit P and demonstrate that development of the Facility is consistent with the Program to Meet Goal 5 and will protect the identified nest locations, as required by the JCZO. Therefore, the Facility is consistent with the regulated uses under JCZO 322.4 in the BH Overlay Zone.

322.5 Variance to Regulations

Regulations specified in the Program to Meet Goal 5 may be modified if approved by the Planning Director under the Administrative Review procedures of Section 903.4 if an applicant demonstrates the following:

- A. The regulations specified in the Program to Meet Goal 5 render the parcel unable to be developed for a dwelling that would otherwise be allowed; and*
- B. The Oregon Department of Fish and Wildlife (ODFW) has specified in writing that either the proposed location of the dwelling will adequately protect the nest site, or the nest site is no longer in use. Any measures designed to mitigate adverse impacts recommended by ODFW shall be included as conditions of approval.*

Response: As discussed above, the Facility is consistent with the Program to Meet Goal 5 and therefore no variance is needed.

322.6 Additional Regulations

The following standards apply to all lands within a BH Zone:

- A. New roads, driveways or public trails shall be located at the greatest distance possible from the nest site unless topography, vegetation or structural features will provide greater visual protection and noise buffer from the nest site.*
- B. Existing vegetation or other landscape features which obscure the view of the nest from development shall be preserved and maintained.*
- C. Partitions, subdivisions and property line adjustments that would result in a lot or parcel configuration that would force the location of a dwelling or other structure within the designated sensitive habitat area shall not be approved.*
- D. All exterior lighting, including security lighting, shall be sited and shielded so that the light is directed so that it does not shine on or towards the nest site.*

Response: No new roads or public trails are proposed as part of the Facility. As described in response to JCZO 401.3 below, the Facility will be accessed from three new gravel access road segments located off the existing County road, SW Elk Drive. These gravel access road segments are shown on the conceptual site plan (see Figures C-2A and C-2B in Exhibit C). The nearest gravel access road segment is located over 0.2 mile southwest from the outer edge of the 0.25-mile radius associated with ODFW identification numbers JE 0732-02, JE 0732-03, and JE 0732-04 where they overlap with the northeast portion of the Facility site boundary. The gravel

access road segments are the greatest distance possible from the nest locations shown on Figure K-3 while providing feasible access from SW Elk Drive.

The nest locations are within Willow Creek Canyon below the elevation of the Facility site. The nest sites are not currently visible from areas within the Facility site boundary and the Facility will not remove or alter existing vegetation or other landscape features that would otherwise obscure views of the nests. As described in Section P.8.2 in Exhibit P, the Applicant will observe clearing limits during Facility design and construction. The Applicant or the Applicant's contractor will not remove existing vegetation beyond approved construction corridors.

The Facility does not require partitions, subdivisions, or property line adjustments. In addition, Facility lighting, to whatever extent lighting is installed, will comply with the applicable outdoor lighting criteria addressed below under JCZO 405. Specifically, lighting associated with the Facility will be shielded to illuminate downward and to limit visibility from occurring at or beyond the property line, although the Applicant has no plans to install lighting at the Facility. Therefore, the Facility complies with the applicable substantive criteria under JCZO 322.6.

Section 401 – Access

401.3 Access from an Undeveloped Right-of-Way, Public Access Easement or Private Access Easement.

Prior to issuance of building permits for a lot or parcel that will obtain access from an undeveloped dedicated or platted public right-of-way, public access easement or private access easement, the road(s) that will be used to access the lot or parcel shall be improved to applicable city, county or state standards, unless the County Public Works Director approves a deferral of improvements or a local improvement district is formed. The Public Works Director may authorize incremental improvements so that the first property owner who will use the road(s) only needs to improve it to the emergency vehicle access standards of Section 426.2(E) or other appropriate standard, and subsequent owners proposing to use the road(s) will each be responsible for additional improvements.

Response: The Facility will have three main points of access from the existing County road, SW Elk Drive, for construction and operation as shown on the conceptual site plan (see Figures C-2A and C-2B in Exhibit C). Two points of access will be 20-foot-wide gravel access road segments into the southern end of the Facility. One of these access points extends into the portion of the Facility west of SW Elk Drive and the other extends into the southern end of the Facility east of SW Elk Drive. The graveled entrance/exit point west of SW Elk Drive ends within the Facility after approximately 120 feet and the graveled entrance/exit point east of SW Elk Drive ends within the Facility after approximately 140 feet. At the end of the access road segments, internal circulation will be via the 16-20 foot wide clear spaces between the rows of solar modules (see Figures C-2A and C-2B in Exhibit C).

The main access road providing access to the construction staging and laydown area, O&M enclosure, Facility substation, point of interconnection, and northern end of the Facility will be a 24-foot-wide graveled road extending east from SW Elk Drive (see Figures C-2A and C-2B in Exhibit C) for approximately 960 feet before ending at the Facility's substation. Therefore, JCZO 401.3 does not apply.

401.4 Access Standards

Access shall comply with the emergency vehicle access standards of Section 426.2(E), the clear vision area standards of Section 403, and the requirements of Section 12.18 of the Jefferson County Code.

Response: Compliance with the emergency vehicle access standards of JCZO 426.2(E) and the clear vision area standards of JCZO 403 are addressed below. The plan for both access to the Facility from SW Elk Drive and for internal circulation has been reviewed by Mr. Brian Huff, Fire Chief/Fire Marshal with Jefferson County Fire District No. 1 (see the letter from Mr. Huff in

Attachment U-1 to Exhibit U). Mr. Huff expressed no concerns with access or circulation and did not request any plan revisions for the site plan. Mr. Huff stated to the Applicant, as noted in his letter (Attachment U-1 to Exhibit U), that if battery storage systems are included, the Fire District will be able to provide input regarding project design, fire suppression mechanisms, access, and water supply, prior to construction as part of final system design. In addition, the road design standards in Section 12.18 of the *Jefferson County Code* will be addressed in the Driveway Connection Permit application submitted to the County, prior to construction. Therefore, this criterion is met.

401.5 Driveway Connection Permits

- A. A Driveway Connection permit shall be obtained prior to the construction of any new driveway that accesses a county or local access road.*
- B. A Driveway Connection permit shall be obtained prior to issuance of a building permit for any new, remodeled or replacement building that will obtain access via an existing driveway that does not meet current driveway connection standards of Section 12.18 of the Jefferson County Code, unless the Public Works Director has authorized a variation of those standards.*
- C. Evidence that the Oregon Department of Transportation has approved the access shall be submitted prior to issuance of a building permit for any new, remodeled or replacement building that will obtain access from a state highway.*

Response: Prior to construction, the Applicant will apply for and obtain necessary Driveway Connection permits for the three gravel access road segments proposed for Facility access from the existing County road, SW Elk Drive. Facility access will not occur from a state highway and Oregon Department of Transportation's approval for access is not required. Therefore, the Facility complies with the applicable criteria under JCZO 401.5.

Section 402 – Transportation Improvements

402.4 Transportation Improvements Subject to Administrative Review

The following transportation improvements may be approved by the Planning Director in all zones under the Administrative Review procedures in Section 903.4, subject to compliance with the criteria in Section 402.7 and other requirements of this Section:

- D. Accessory transportation improvements that are incidental to a use allowed or conditionally approved in the zone that will provide safe and efficient access to the use.*

Response: As stated above, the Facility is located in the County's EFU A-1 zoning district and is a "Commercial utility facility for the purpose of generating power for public use by sale," which is considered a conditional use. Under OAR 660-033-0130(38)(f), "Photovoltaic solar power generation facility" includes, "...new or expanded private roads constructed to serve the photovoltaic solar power generation facility, office, operation and maintenance buildings, staging areas and all other necessary appurtenances." The Facility will have three main points of access from the existing County road, SW Elk Drive, for construction and operation as shown on the conceptual site plan (see Figures C-2A and C-2B in Exhibit C). These gravel access road segments are included as components of the Facility and are "accessory transportation improvements that are incidental to a use [...] conditionally approved."

The plan for access to the Facility from SW Elk Drive and for internal circulation has been reviewed by Mr. Brian Huff, Fire Chief/Fire Marshal with Jefferson County Fire District No. 1 (see the letter from Mr. Huff in Attachment U-1 to Exhibit U). Mr. Huff expressed no concerns with access or circulation and did not request any plan revisions for the site plan. Mr. Huff stated to the Applicant, as noted in his letter (Attachment U-1 to Exhibit U), that if battery storage systems are included, the Fire District will be able to provide input regarding project design, fire suppression

mechanisms, access, and water supply, prior to construction as part of final system design. In addition, the road design standards in Section 12.18 of the *Jefferson County Code* will be addressed in the Driveway Connection Permit application submitted to the County, prior to construction. Therefore, the Facility will accommodate safe and efficient access and complies with this criterion.

402.6 Application Requirements

The following information must be submitted as part of an application for a transportation improvement:

- A. *A tentative map showing the proposed location, width, and length of the improvement.*

Response: The Facility will have three main points of access from the existing County road, SW Elk Drive, for construction and operation as shown on the conceptual site plan (see Figures C-2A and C-2B in Exhibit C). Two points of access will be 20-foot-wide gravel access road segments into the southern end of the Facility. One of these access points extends into the portion of the Facility west of SW Elk Drive and the other extends into the southern end of the Facility east of SW Elk Drive. The graveled entrance/exit point west of SW Elk Drive ends within the Facility after approximately 120 feet and the graveled entrance/exit point east of SW Elk Drive ends within the Facility after approximately 140 feet. At the end of the access road segments, internal circulation will be via the 16-20 foot wide clear spaces between the rows of solar modules (see Figures C-2A and C-2B in Exhibit C).

The main access road providing access to the construction staging and laydown area, O&M enclosure, Facility substation, point of interconnection, and northern end of the Facility will be a 24-foot-wide graveled road extending east from SW Elk Drive (see Figures C-2A and C-2B in Exhibit C) for approximately 960 feet before ending at the Facility's substation. Therefore, this criterion is met.

- B. *Construction drawings showing the grade, typical cross section(s), any cut or fill and methods to accommodate stormwater runoff and drainage.*

Response: The Facility shown on 10-foot contours is provided on the conceptual site plan (see Figures C-2A and C-2B in Exhibit C). Drainage and erosion control are discussed in Exhibit I. Facility construction will be regulated by an erosion and sediment control plan and a 1200-C Construction Stormwater NPDES Permit that will require BMPs to minimize possible impacts to soils from wind and water erosion. Implementation of the mitigation measures described in Exhibit I will further minimize that potential. In addition, the rigorous reclamation measures described in Exhibit I will be instituted to restore the temporarily-disturbed near-surface soils at the Facility. Attachment I-1 to Exhibit I contains the NPDES permit application. Therefore, the Facility complies with JCZO 402.6(B).

- C. *A Title Report showing all existing easements of record within the proposed improvement area. The report shall be based on research going back in time without limitation, and must indicate all easements and encumbrances that affect the property.*

Response: Title reports showing existing easements of record within the Facility site boundary are provided in Attachment K-6. Therefore, this criterion is met.

- D. *If the proposed improvement is a new local access or private road, an engineer's design report identifying the construction standards necessary for the road to provide a minimum life of at least 25 years, necessary maintenance measures, recommended type of maintenance work to be done annually, estimated minimum annual maintenance cost, and location of road signs in accordance with Manual of Uniform Traffic Control (MUTC) standards. The design report shall take into consideration the terrain, soil, slope, runoff, drainage, and potential amount and type*

of traffic that will use the road. The design report shall indicate that the road will comply with the standards in Section 12.18 of the Jefferson County Code, unless the applicant's engineer or geologist determines that alternative specifications proposed in the design report are equivalent or superior to the standards in that Section.

Response: No new local access road or private roads, as defined in JCZO 105(B), will be constructed in conjunction with the Facility. Therefore, JCZO 402.6(D) does not apply.

E. Written authorization and consent for the improvement by all owners of property the improvement will cross, or other evidence of legal authority for the improvement.

Response: The Facility is located on tax lots 1013310000100 (owned by Binder, Bryce K Trust) and 1013300000600 (owned by Binder, LLC). Written authorization and consent for construction of the Facility from both landowners is provided in Attachment K-1. Therefore, the Facility complies with JCZO 402.6(E).

F. Written authorization from any city, county, state or federal agency with jurisdiction over any existing transportation facility that will be part of the proposed improvement(s). For instance, approval from the Oregon Department of Transportation is required for a proposed new road that will connect to a state highway. The authorization shall include a statement of any requirements or conditions that agency will impose as part of the improvement.

Response: As discussed above, the Facility will have three main points of access from the existing County road, SW Elk Drive, for construction and operation as shown on the conceptual site plan (see Figures C-2A and C-2B in Exhibit C). Prior to construction, the Applicant or the Applicant's contractor will obtain a Right-of-Way Permit from the Jefferson County Department of Public Work to develop the three proposed points of access from SW Elk Drive. Therefore, the Facility demonstrates compliance with this criterion.

G. If the proposal is for a new road, the application shall include a proposed road name, with two alternative names, in accordance with the specifications in Section 12.06 of the Jefferson County Code.

Response: No new roads, as defined in JCZO 105(B), will be constructed to support the Facility. Therefore, JCZO 402.6(G) does not apply.

H. A professionally prepared storm drainage plan showing the methods that will be used to accommodate runoff from the transportation improvement. The location of drainage swales, retention ponds, and all other parts of the proposed drainage system shall be shown on a site plan included in the drainage plan. Drainage facilities shall be designed to accommodate runoff from at least a fifty year storm, taking into consideration frozen ground conditions, without overloading existing drainage facilities or adversely affecting adjacent properties, streams, water bodies, irrigation ditches or other transportation facilities.

Response: The Facility will be accessed via three new all-weather compacted gravel access road segments. Drainage and erosion control are discussed in Exhibit I. Facility construction will be regulated by an erosion and sediment control plan and a 1200-C Construction Stormwater NPDES Permit that will require BMPs to minimize possible impacts to soils from wind and water erosion. Implementation of the mitigation measures described in Exhibit I will further minimize that potential. In addition, the rigorous reclamation measures described in Exhibit I will be instituted to restore the temporarily-disturbed near-surface soils at the Facility. Attachment I-1 to Exhibit I contains the NPDES permit application. Therefore, the Facility demonstrates compliance with this criterion.

402.7 Approval Standards

- A. *The improvement(s) will be consistent with any adopted Transportation System Plan for the area.*

Response: The three gravel access road segments associated with the Facility will not alter the design of SW Elk Drive and are not in a project area identified in the Transportation System Plan. Therefore, the Facility complies with JCZO 402.7(A).

- B. *Any road improvement(s) will comply with all applicable requirements of Title 12 of the Jefferson County Code.*

Response: The three new all-weather compacted gravel access road segments that will be constructed to access the Facility will comply with the applicable transportation improvement standards of Title 12 of the *Jefferson County Code* (Jefferson County, 2019). Road design standards in Section 12.18 of the *Jefferson County Code* will be addressed in the Driveway Connection Permit applications submitted to the County, prior to construction. Therefore, the Facility demonstrates compliance with JCZO 402.7(B).

- C. *Dead-end roads shall serve a maximum of 19 lots or parcels. Dead-end roads shall terminate in a cul-de-sac, hammerhead or other turnaround that complies with the emergency vehicle access standards of Section 426.2(E).*

Response: No dead-end roads will be constructed that serve more than one lot or parcel as part of the Facility. The main access road providing access to the construction staging and laydown area, O&M enclosure, Facility substation, point of interconnection, and northern end of the Facility will be a 24-foot-wide graveled road extending east from SW Elk Drive and ending in a hammerhead turnaround (see Figures C-2A and C-2B in Exhibit C). This hammerhead turnaround has been reviewed by Mr. Brian Huff, Fire Chief/Fire Marshal with Jefferson County Fire District No. 1 (see the letter from Mr. Huff in Attachment U-1 to Exhibit U). Mr. Huff expressed no concerns with this design and did not request any plan revisions. Therefore, the hammerhead turnaround complies with JCZO 402.7(C).

- D. *Private roads shall meet the following standards:*

1. *Private roads are allowed only in destination resorts.*
2. *A private road shall not be approved if a public road is needed, or is likely to be needed, for development of adjacent or nearby lands or for the extension of an existing public road.*
3. *A private road shall not be approved in a location planned for a public road in an adopted Transportation System Plan.*
4. *The travel surface of a private road shall be constructed so as to ensure egress and ingress for the parcels served during normal climatic conditions, in accordance with the standards in Section 12.18 of the Jefferson County Code.*

Response: No private roads, as defined in JCZO 105(B), will be constructed as part of the Facility. Therefore, JCZO 402.7(D) does not apply.

- E. *If the transportation improvement will be in an Exclusive Farm Use A-1, Exclusive Farm Use A-2, Range Land or Forest Management zone, the project will not force a significant change in, or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use, and is subject to the requirements of OAR 660-012-0065(5).*

Response: The three gravel access road segments constructed to access the Facility are located in the EFU A-1 zone and will not force a significant change in, or significantly increase the cost of,

accepted farm or forest practices on surrounding lands devoted to farm or forest use. See Section K.5.2, which provides a detailed response demonstrating the Facility's compliance with OAR 660-033-0130(5)(a) and (b). Responses to the provisions of JCZO 301.5(A) and (B) are similar and also detail the Facility's compliance with OAR 660-033-0130(5)(a) and (b).

The gravel access road segments are not subject to the requirements in OAR 660-012-0065(5) as they are not realignments of existing roads, new access roads or collectors built in a committed exception area, or transportation facilities serving local travel needs. In Section 5.2.3 below, the Applicant demonstrates compliance with OAR 660-012-0065(4). The criteria specific to OAR 660-012-0065(3)(a), as referenced in the rule, requires that accessory transportation improvements are allowed under ORS 215.283. As described in Section K.5.1.4, the Facility's three gravel access road segments shown on Figures C-2A and C-2B in Exhibit C are allowable on EFU land under ORS 215.283(3). The rule language applies specifically to accessory transportation improvements "required as a condition of development." Because the gravel access road segments are necessary for the operation and maintenance of the Facility, they are a necessary condition of the development of the commercial utility facility. Accordingly, the gravel access road segments are subject to the standards and requirements applicable to the principal use (the Facility). The standards and requirements applicable to the principal use are contained in OAR 660-033-0130(5) and (38), which are addressed in Section K.5.2.3, pertaining to compliance of the three gravel access road segments with the applicable criteria in OAR 660-033-0130(5) and (38). Therefore, the Facility demonstrates compliance with this criterion.

- F. Transportation improvements listed in Sections 402.4(J) through (N) shall only be approved in an Exclusive Farm Use A-1, Exclusive Farm Use A-2, Range Land or Forest Management zone if found to comply with the requirements of OAR 660-012-0065(5).*

Response: The three gravel access road segments constructed to access the Facility are located in the EFU A-1 zone, but are not listed in JCZO 402.4(J) through (N). The gravel access road segments are not subject to the requirements in OAR 660-012-0065(5) as they are not realignments of existing roads, new access roads or collectors built in a committed exception area, or transportation facilities serving local travel needs. Therefore, JCZO 402.7(F) does not apply.

- G. The project will comply with all other applicable standards of Chapter 4, such as flood plain or riparian protection provisions.*

Response: Compliance with applicable flood plain provisions under Chapter 4 and Section 316 of the JCZO, and riparian protection provisions under Section 419 of the JCZO is demonstrated throughout Section K.5.1.1. Therefore, JCZO 402.7(G) is met.

- H. The transportation improvement will not result in increased runoff that would adversely affect adjacent properties, streams, water bodies, irrigation ditches or other transportation facilities, or overload existing drainage facilities.*

Response: Drainage and erosion control are discussed more thoroughly in Exhibit I. In summary, construction of roads, photovoltaic arrays, and other Facility components will be regulated by an erosion and sediment control plan and a 1200-C Construction Stormwater NPDES Permit that will require BMPs to minimize possible impacts to soils from wind and water erosion. Implementation of the mitigation measures described in Exhibit I will further minimize that potential. In addition, the rigorous reclamation measures described in Exhibit I will be instituted to restore the temporarily-disturbed near-surface soils at the Facility. Therefore, the Facility complies with JCZO 402.7(H).

402.8 Conditions of Approval

- A. Additional or higher standards than required by Section 402.7 may be imposed if deemed necessary by the County to protect public safety, to ensure that the transportation improvement is constructed to provide a minimum service life of at*

least 25 years, to facilitate development in the area, or to improve the interconnectivity of the existing transportation system.

Response: The Applicant demonstrates that the three gravel access road segments associated with the Facility comply with the applicable substantive standards under Section 402.7 of the JCZO. The Applicant does not anticipate that additional conditions will be needed to ensure that the three gravel access road segments meet County standards, but acknowledges that the County may impose additional standards if deemed necessary. Therefore, the Applicant understands the criteria associated with Section 402.8 of the JCZO.

Section 403 - Clear-Vision Areas

- A. *In all zones, a clear-vision area shall be maintained on the corners of all property at the intersection of two roads, a road and a driveway, or a road and a railroad. A clear-vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding three and one-half feet (3½) in height, measured from the established road center line grade, except for authorized road signs and cyclone or other open construction fences which permit clear vision through the triangular area. Trees may be located in this area as long as all branches and foliage are removed to a height of eight (8) feet above the grade.*
- B. *A clear-vision area shall consist of a triangular area, two sides of which are lot lines intersecting at the corner of the lot, and the third side of which is a line across the corner of the lot joining the non-intersection ends of the other two sides. For purposes of this section, lot lines shall be considered to be the edge of the right-of-way.*
- C. *Any side of the triangular clear-vision area adjacent to a road, railroad, or access drive to a parking area shall be at least 30 feet. Any side of the clear-vision area adjacent to a residential driveway shall be at least 15 feet.*

Response: As described in response to the setback criteria under JCZO 301.10, the security fence is the outermost component of the Facility and will be at least 30 feet from the property lines. No Facility components capable of permanently obstructing visibility will be constructed within the clear-vision areas defined under JCZO 403, and existing clear-vision areas will be maintained where the three new gravel access road segments connect to SW Elk Drive. Therefore, the Facility demonstrates compliance with this criterion.

Section 404 - Fences

Fences in all zones shall comply with the following standards:

- A. *Fences located on or directly adjacent to any property line shall not exceed a vertical height of six feet above the existing natural grade at time of erection or construction unless they are made of wire or other material that is not sight- obscuring. Sight- obscuring fences that will exceed six feet in height shall meet setbacks from property lines required by the zone where the fence will be located.*
- B. *Any fence that will exceed six vertical feet in height above the existing natural grade requires a building permit.*
- C. *Any fence located within the clear vision area described in Section 403 shall be of open type construction to permit clear vision at the intersection.*
- D. *Fences in a Wildlife Overlay Zone shall comply with the fencing standards in Section 321.4.*

Response: Fencing associated with the Facility is described in Exhibit B and shown on the conceptual site plan on Figures C-2A and C-2B in Exhibit C. In summary, the Facility will be enclosed with a security fence, consisting of chain-link or notch-style fencing. The security fence will be either 6 feet tall with two stands of barbed wire, or 8 feet tall with no barbed wire. In either instance, the fence will not obscure sight. Should the security fence exceed 6 vertical feet in height, the Applicant will obtain a building permit. Therefore, the Facility complies with JCZO 404(A) through (C). No portion of the Facility is located within a Wildlife Overlay Zone, thus JCZO 404(D) does not apply.

Section 405 – Outdoor Lighting

All outdoor lighting, including for accessory facilities and the lighting of commercial signs, shall comply with the following:

- A. Any outdoor light shall be shielded to illuminate downward.*
- B. The outdoor light source (bulb or element) shall not be visible at or beyond the property line.*

Response: Outdoor lighting associated with the Facility, to the extent that any is installed, will be shielded to illuminate downward and to limit visibility from occurring at or beyond the property line. Therefore, the Facility complies with JCZO 405(A) and (B).

- C. Outdoor lights shall not exceed the height limit of the zone where the light will be located.*

Response: The development standards listed in JCZO 301 for the EFU A-1 zone, in which the Facility is located, do not include a height limit; therefore, JCZO 405(C) does not apply.

- D. Structures over 50 feet in height shall not be lighted unless required to be lighted by F.A.A. Structures over 50 feet in height that are required to be lighted by F.A.A. shall be shielded to illuminate upward.*

Response: No structures over 50 feet in height will be lighted as part of the Facility; therefore, JCZO 405(D) does not apply.

Section 406 - Sign Regulations

406.1 Regulations for all Signs

The following regulations shall apply to any sign erected, moved, or altered after adoption of this Ordinance. Official traffic control signs and instruments of the state, county, or municipality are exempt from all provisions of this Section.

- A. All outdoor advertising signs shall be in compliance with the provision of ORS Chapter 377 when applicable.*
- B. No outdoor advertising sign permitted by ORS 377 shall be erected within 100 feet of a residential dwelling without written consent of the owner and/or occupant of said dwelling.*

Response: No outdoor advertising signs will be constructed as part of the Facility. Therefore, JCZO 406.1(A) and (B) are not applicable.

- C. No sign shall be placed in a manner that will interfere with visibility or effectiveness of any official traffic sign or signal, or with driver vision at any access point or intersection.*

- D. *No sign shall cause glare, distraction or other driving hazards, or by position, shape, color or other characteristic be similar to any traffic signal.*
- E. *Light from a sign shall be directed away from roads and adjacent parcels. The light source shall be shielded to illuminate downward and the light source shall not be visible beyond the property line or parcel on which the sign is located. No sign may incorporate a bare incandescent bulb with wattage exceeding 20 watts, except as a shielded indirect light source. Illuminated signs require an electrical permit.*
- F. *Sign structures may be placed within the required setbacks from property lines provided they comply with the vision clearance standards of Section 403, but may not be placed within or overhang a dedicated right-of-way unless a permit approving the location has been issued by the Oregon Department of Transportation or County Public Works Department.*
- G. *No sign may be situated in a manner that results in the blanketing of an existing sign.*
- H. *A public agency, department, or entity with a significant public safety mission may be relieved of any sign regulation upon written application, a finding of how the relief enhances the public safety mission, and a finding that the relief poses no harm to the public within viewing distance. Under no circumstances will such a sign exceed 300 square feet.*

Response: The minimum signage necessary to identify the Facility will be used. No signage will interfere with traffic signals, driver vision, create a hazard, shine light into the road, incorporate a bare incandescent bulb with wattage exceeding 20 watts, or be placed within or overhang the road right-of-way. Therefore, the Facility complies with JCZO 406.1(C) through (H).

406.2 Prohibited Signs

The following types of signs are allowed in commercial, industrial and service community zones, but are prohibited in all other zones:

- A. *Moving or flashing signs or signs which incorporate video or fiber optic displays or other mediums that display changing or moving text or images.*
- B. *Anchored balloon or other inflatable signs.*
- C. *Roof-mounted signs.*

Response: As stated above, the Facility is located in the EFU A-1 zone. No moving, flashing, anchored balloon, inflatable signs, or roof-mounted signs will be installed as part of the Facility. Therefore, the Facility complies with JCZO 406.2.

406.3 Sign Size Standards

Sign area shall be calculated based on the overall dimensions of all panels that display messages. When the sign message is not mounted on a panel, the sign area shall be calculated by drawing a regular geometric shape around the message area. For signs that are incorporated into murals, awnings and similar architectural features, only the portion of the sign considered to contain a message will be calculated as sign area. Signs shall meet the following size standards:

- A. *Free-standing signs shall not exceed 35 feet or the height limit of the zone, whichever is less.*
- B. *Signs mounted above an entrance to a building shall have a minimum ground clearance of eight feet.*

- C. *Building-mounted signs shall not extend more than one foot above the exterior wall of the building.*
- D. *Temporary signs that are 32 square feet or smaller are permitted in any zone.*
- E. *In the Exclusive Farm Use A-1, Exclusive Farm Use A-2, Range Land, Forest Management, Park Management, Blue Lake, and Three Rivers Recreation Area Waterfront zones, one or more signs with a combined total area not exceeding 32 square feet are permitted on any tract. No more than one free-standing sign is permitted per parcel.*
- F. *In the County Commercial, County Industrial, Airport Management (except for Madras Municipal Airport), and Crooked River Ranch Commercial zones, one or more signs with a combined total area not exceeding 300 square feet are permitted on any parcel. No individual sign shall exceed 150 square feet in area. No more than one free-standing sign is permitted per parcel.*
- G. *In all other zones not specified in (E) and (F) except the Camp Sherman Rural Center and Camp Sherman Vacation Rental zones, one or more signs with a combined total area not exceeding eight square feet are permitted on any parcel.*

Response: The minimum signage necessary to identify the Facility will be used. This signage will comply with stated signage and size standards. In total, any signage used to identify the Facility will not exceed a combined 32 square feet. Therefore, the Facility complies with JCZO 406.3(A) through (G).

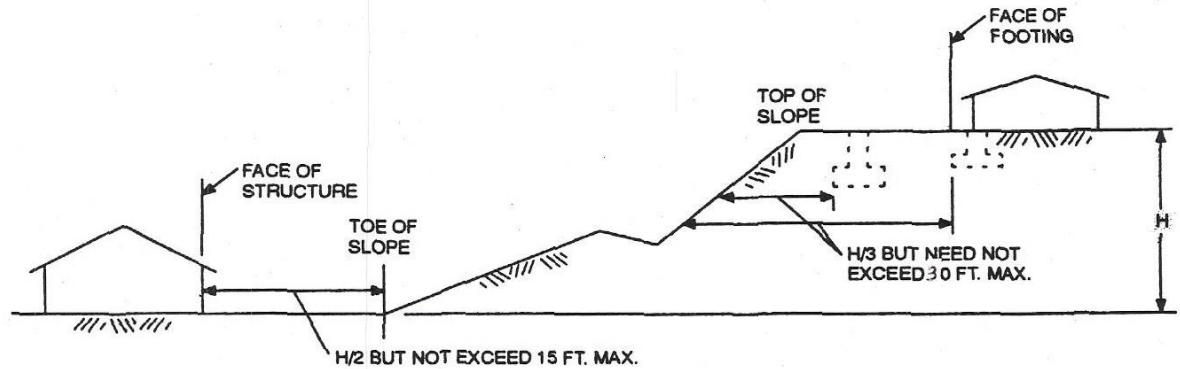
Section 412 - Scenic and Natural Hazard Rim Set Back

412.1 Applicability

- A. *Buildings and other structures, including decks, that will be located near the top or the toe of a rim are subject to the requirements of this section. A landform is considered to be a rim if it is more than ten feet in height and has a slope steeper than one unit vertical in three units horizontal (33.3 percent slope).*

Response: The Applicant will construct the Facility on a plateau above the rim as defined by JCZO 412.1(B). The solar array modules and tracking components of the Facility are considered structures, as defined in JCZO 105(B). However, the security fencing around the Facility is not considered a structure under JCZO 105(B). No structures associated with the Facility will be constructed within the Scenic and Natural Hazard Rim Set Back; however, due to the Facility's proximity to a rim, JCZO 412 applies and compliance with these provisions are demonstrated below.

- B. *Rims shall be identified according to the following definitions:*
 - 1. *Top of the rim is the elevated portion of the landform.*
 - 2. *Face of the rim is the precipitous (vertical or nearly vertical) boundary of the landform.*
 - 3. *Edge is the intersection of the top and face.*
 - 4. *Toe of the rim is the intersection of the face and the non-precipitous surface below the face.*
 - 5. *Following is a diagram of the terms defined in 1 through 4 above.*



Response: The Applicant acknowledges these definitions and used them to define the rim setback shown on Figure K-3 and Figures C-2A and C-2B (in Exhibit C).

412.2 Calculation of Setback

- A. The rim height shall be calculated as the average elevation difference between the edge and the toe of the rim, measured at points 30 feet on either side of the proposed structure.
- B. Setbacks from the rim edge shall be a distance equal to $1/3$ the average height of the rim, or 30 feet, whichever is less.
- C. The face of any structure shall be no closer to the rim toe than a distance equal to $1/2$ the average height of the rim, or 15 feet, whichever is less.

Response: Setbacks were calculated based on the criteria in JCZO 412.2(A) through (C), listed directly above. Pursuant to these provisions, the distance the Facility must be set back from the rim is 30 feet. As shown on Figures C-2A and C-2B in Exhibit C, no structures associated with the Facility are located within the Scenic and Natural Hazard Rim Set Back area. Therefore, the Facility complies with JCZO 412.

412.3 Modification of Setback

- A. Alternate setbacks and clearances are permitted subject to approval of the Building Official. The Building Official may require that a report and certification from a licensed engineer be submitted stating that the proposed location of the building will provide vertical and lateral support for the footings without detrimental settlement. The report shall take into consideration rim material, height, slope gradient, load intensity and erosion characteristics.
- B. Modifications to the setbacks shall not be issued for properties within one-half mile of the top of bank of the portions of the Metolius, Deschutes, John Day or Crooked Rivers that are designated state scenic waterways or federal wild and scenic rivers if the structure would be visible from the river.

Response: No modifications to the setback are requested. All portions of the Facility are greater than 30 feet from the rim (see Figure K-3 and Figures C-2A and C-2B in Exhibit C). Therefore, JCZO 412.3 does not apply.

Section 413 - Improvement Guarantees and Bonding Requirements

413.1 Bonding Agreement

- A. *As an alternative to completing required improvements, such as construction of roads, paving of parking areas, or installation of landscaping, prior to beginning development of a property, the Planning Director, Planning Commission or Board of Commissioners, after consultation with affected agencies, may allow the developer to enter into a bonding agreement. The agreement shall specify the time period in which the improvements will be made and the final date for their completion, describe the items to be completed, stipulate the minimum dollar amount of the bond or cash deposit, and provide that if work is not completed within the period specified, the County may complete the work and recover the full cost and expense from the developer. The bonding agreement shall provide for the indemnification of the County from claims of any nature arising or resulting from the performance of any acts required by the County to be done in accordance therewith, in a form acceptable to County Legal Counsel, who is authorized to act on behalf of the County to approve and sign such agreements.*
- B. *The bonding agreement shall remain in force and effect until all improvements have been completed and accepted by the County.*

413.2 Performance Bond

- A. *To assure full performance of the improvement agreement, the developer shall provide an assurance for a sum sufficient to cover 135 percent of all costs of included improvements and repairs that may be required to existing roads and any other public facilities damaged in the development.*
- B. *The performance bond shall be one of the following:*
 - 1. *A corporate surety bond executed by a surety company authorized to transact business in the state of Oregon, in a form approved by the County Legal Counsel;*
 - 2. *Cash deposit with the County Treasurer;*
 - 3. *Cash deposit with an escrow agent authorized to transact business in the State of Oregon, subject to escrow instructions approved by the County Legal Counsel that require the escrow agent to release the money only upon the direction of the County; or*
 - 4. *Certification, an irrevocable letter of credit, or assignment of deposit or loan disbursement agreement from a title company, bank, savings and loan association or other reputable lending institution, in a form approved by the County Legal Counsel, that money is being held to cover the cost of the improvements, and that the money will be released only upon the direction of the County.*
- C. *Upon completion of independent segments or phases of the construction, portions of the assurance may be released by the county, provided that the resultant assurance is adequate to cover 135 percent of the cost of completing the remaining improvements.*
- D. *If the developer fails to carry out provisions of the improvement agreement, the County may declare the performance bond or cash deposit forfeited and cause all required construction or repair to be done. If the amount of the performance bond or cash deposit exceeds the cost and expense incurred, the remainder shall be released. If the amount of the performance bond or cash deposit is less than the cost to the County to complete the improvements, the developer shall be liable to the County for the difference.*

Response: These provisions provide that Jefferson County may require a performance bond or other assurances. The Applicant will satisfy the County's standards by meeting the Council's financial standard at OAR 345-022-0050. Exhibit M outlines the type and amount of the Applicant's proposed bond or letter of credit and provides evidence that the Applicant has a reasonable likelihood of obtaining the proposed bond or letter of credit in the amount proposed before beginning construction of the Facility. Therefore, the Applicant demonstrates compliance with these criteria.

Section 414 - Site Plan Review

414.1 Purpose

The purpose of site plan review is to provide for administrative review of the design of certain developments and improvements in order to promote functional, safe, innovative and attractive site development that is compatible with the natural and man-made environment and is consistent with applicable requirements of this Ordinance.

Response: The Applicant has elected to seek a Council determination of compliance under ORS 469.504(1)(b). Under this election, Exhibit K demonstrates compliance with the Council's land use standard by showing that the Facility complies with the County's applicable substantive criteria. The Applicant demonstrates in the responses below that the Facility is consistent with the applicable site plan review requirements of the JCZO.

414.2 Procedure:

- A. *The requirements of this Section apply when site plan review is required for a use that is administratively or conditionally permitted in a zone. The requirements apply to new development; a change in use of an existing building; the addition of outdoor uses not previously reviewed, such as storage or parking; or an addition to an existing building of more than 500 square feet.*

Response: As stated above, the Facility is located in the County's EFU A-1 zoning district and is a "Commercial utility facility for the purpose of generating power for public use by sale" that includes a "power generation facility," which is a conditional use in the EFU A-1 zone. Accordingly, the Applicant demonstrates in responses below that the Facility and related or supporting facilities meet the applicable site plan review criteria provided in the JCZO.

- B. *An application for site plan approval will be processed under the Administrative Review procedures of Section 903.4 unless it is submitted concurrently with an application that requires a higher level of review.*
- C. *No building permit shall be issued until the site plan has been approved in accordance with this section and no certificate of occupancy shall be issued unless the development complies with the approved site plan and all conditions of approval.*
- D. *Approval of a site plan shall be valid for two (2) years from the date of final approval. An extension may be granted by the Planning Director, for good cause, based upon a written request from the applicant made prior to the expiration of the original two year approval period. Notice of a decision to grant an extension shall be provided in accordance with Section 906.4. If construction is commenced by issuance of an approved building permit, the site plan shall stay in full force and effect. If not, the site plan approval shall expire.*
- E. **Site Plan Review Committee-Approval Authority:**

The Planning Director, Director of Public Works, County Sanitarian, County Building Official, and a representative from the Jefferson County Fire Protection District or other fire district with jurisdiction over the property shall constitute the site plan review

committee. This committee shall have the authority to review the tentative site plan for compliance with the requirements of this Ordinance, state and federal regulations, and may recommend that the application be modified, approved, approved with conditions, or denied.

- F. An approved site plan may be amended through the same procedure as in the initial approval of such site plan; except, that minor alterations or modification to a previously approved site plan may be approved by the Planning Director; provided that, in the judgment of the Planning Director, such modifications or alterations do not represent deviations of a substantial nature.*

Response: The Applicant acknowledges the statements in JCZO 414.2(B) through (F).

414.3 Application Requirements

An application for site plan review must include 8 copies of a tentative plan that includes the information listed below. Additional information may be required if requested by the Site Plan Review Committee. The tentative plan must be clearly and legibly drawn on white paper to a standard engineer's scale (i.e., 1" = 100', 1" = 400' etc.). The scale used shall be large enough so that all required information is clearly legible. Separate sheets may be submitted showing different facets of the site plan, such as landscaping, parking, drainage, etc. The tentative plan must contain the following:

- A. The words "Tentative Site Plan", the property owner's name, the township, range, section, and tax lot number of the property, the date, a north point, and the scale of the plan.*
- B. Lot dimensions and orientation.*

Response: The Facility and related or supporting facilities are shown on the conceptual site plan ("Tentative Site Plan") on Figures C-2A and C-2B in Exhibit C. Figure K-2 shows the township, range, section, tax lot numbers, date, north arrow, scale, lot dimensions and orientation of the Facility within the 0.5-mile land use analysis area. Therefore, the Facility demonstrates compliance with JCZO 414.3(A) through (B).

- C. The location, size and purpose of all existing and proposed easements.*

Response: The existing right-of-way and easement boundaries, such as the easement associated with Portland General Electric's (PGE's) 230-kV Pelton to Round Butte transmission line, are shown on the conceptual site plan on Figures C-2A and C-2B in Exhibit C. Therefore, the Facility demonstrates compliance with this criterion.

- D. The location of any proposed fire protection system, hydrants or water supply available for fighting fire.*

Response: Fire protection is thoroughly discussed in Exhibit U, and in more detail below in response to JCZO 423. In summary, the site will be equipped with fire protection equipment in accordance with the Oregon Fire Code. In addition, the Jefferson County Fire Department (JCFD) has reviewed access and circulation of the Facility and has not requested any changes to the site plan (see Exhibit U). The site plan is included as Figures C-2A and C-2B in Exhibit C, and the JCFD letter of support for the Facility is included as Attachment U-1 to Exhibit U. Therefore, the Facility demonstrates compliance with this criterion.

- E. Location and dimensions of all existing and proposed buildings and structures, with distances between buildings and setbacks from property lines clearly shown.*
- F. The location of all buildings and other development on abutting parcels that is within ten feet of the subject property.*

G. Existing and proposed walls and fences; location, height and materials.

Response: The Facility site plan, included as Figures C-2A and C-2B in Exhibit C, includes the information listed in JCZO 414.3(E) through (G). Therefore, the Facility complies with these criteria.

H. Off street parking and loading facilities, in accordance with Sections 423 and 424, including:

- 1. Location, dimensions and methods of improvement of all driveways and parking areas.*
- 2. Number of spaces and internal circulation pattern.*
- 3. Access: Pedestrian, vehicular, service; and the location of all points of ingress and egress.*
- 4. Loading: Location, dimensions, number of spaces, internal circulation and access from public right of way.*

Response: JCZO 424 does not apply. The Facility will be monitored remotely and no full-time staff will be present. Vehicles traveling to the site for O&M activities will park in the staging and laydown area shown on Figures C-2A and C-2B in Exhibit C. Therefore, no off-street parking is required and JCZO 423 does not apply to the Facility. Thus, JCZO 414.3(H) is not applicable to the Facility.

I. The location, size, and height of all proposed signs, and information on whether each sign will be lighted. Signs must comply with the sign standards in Section 406.

Response: Signage for the Facility is discussed above in response to JCZO 406. In summary, the minimum signage necessary to identify the Facility will be used. All signage will comply with the standards set forth in JCZO 406. Therefore, the Facility complies with JCZO 414.3(I).

J. Lighting: General nature, location and hooding devices (not including interior building lighting). All exterior lighting sources are to be shielded to illuminate downward and the light source shall not be visible beyond the property boundary in accordance with the standards in Section 405.

Response: Lighting for the Facility is thoroughly discussed above, in response to JCZO 405. In summary, outdoor lighting associated with the Facility will be shielded to illuminate downward and the light will not be visible at or beyond the property line. Therefore, the Facility complies with JCZO 414.3(J).

K. The location, dimensions and methods of improvement for all property to be dedicated to general public purposes or to public utilities.

Response: No property associated with the Facility will be dedicated to general public purposes or to public utilities. Therefore, JCZO 414.3(K) does not apply.

L. A detailed plan for any required or proposed landscaping that shall clearly illustrate:

- 1. Plants and tree species, their initial sizes and other proposed landscaping materials.*
- 2. The location and dimensions of all areas to be devoted to landscaping, and location of any automatic sprinkler systems.*

Response: The Applicant has not identified substantive applicable criteria in Jefferson County that requires landscaping for the Facility. No landscaping is proposed for the Facility. Therefore, JCZO 414.3(L)(1) and (2) do not apply.

M. Outdoor storage and activities, if permitted in the zone: Type, location and height of screening devices.

Response: The Facility's Operation & Maintenance enclosure is located in the center of the site and is shown on the site plan included as Figures C-2A and C-2B in Exhibit C.

N. Topographic information for any area with slopes exceeding 10 percent. Contour intervals shall be ten feet or smaller.

Response: Topographic contours are shown on the conceptual site plan of the Facility, included as Figures C-2A and C-2B in Exhibit C. Therefore, the Facility complies with JCZO 414.3(N).

O. Drainage plan, in accordance with the requirements of Sections 414.4, or evidence that stormwater runoff will be accommodated by an existing storm drainage system.

Response: The drainage plan requirements of Section 414.4 are discussed in detail below. In summary, the construction of the Facility will adhere to the erosion and sediment control plan included as Attachment I-1 in Exhibit I. Therefore, the Facility complies with JCZO 414.3(O).

P. Identification of proposed trash storage locations, including proposed enclosure design construction and access for pickup purposes.

Response: No trash storage locations are proposed. Trash generated during construction of the Facility will be collected on site and hauled to an off-site dump location. Therefore, JCZO 414.3(P) does not apply.

Q. Location of all existing and proposed utilities and septic systems on or abutting the property.

Response: The site of the Facility is undeveloped, with the exception of PGE's existing 230-kV Pelton Dam to Round Butte transmission line, shown on Figure K-2 and Figures C-2A and C-2B in Exhibit C. Aside from this existing transmission line, no existing utilities or septic systems are onsite, and no new utilities or septic systems are proposed. Therefore, the Facility complies with JCZO 414.3(Q).

R. Elevation drawings showing the exterior appearance of all proposed buildings.

Response: As described in Exhibit B, the only proposed component of the Facility with a floor, walls, and roof is the O&M enclosure. The O&M enclosure will consist of a single, 8.5-foot-tall, 320-square-foot dry-storage shed intended for period maintenance activities and will not be occupied by staff. No full-time staff will be present at the Facility. Therefore, this criterion is met.

414.4 Drainage

A. Applications for site plan review shall include a drainage plan prepared by a registered professional engineer or other expert that contains the following information:

- 1. The methods to be used to minimize the amount of runoff, siltation and pollution created during construction.*
- 2. The methods that will be used to prevent runoff from the completed development onto adjoining properties, streams or rights-of-way.*

3. *Evidence that the drainage system will be adequate to handle runoff from a five year frequency storm.*
- B. *All runoff shall be retained on site unless easements are obtained to allow a detentions pond, bioswale or other method of stormwater retention to be located on another property.*
- C. *Drainage shall be designed to prevent water ponding unless a permanent retention or detention pond will be used. Drainage retention or detention ponds shall have slope edges not exceeding 1:3. Adequate security measures must be provided to prevent a safety hazard if ponds are used.*
- D. *The drainage system shall incorporate methods to filter runoff from parking areas and access roads to prevent pollution of surface or subsurface waters.*

Response: Drainage and erosion control are discussed more thoroughly in Exhibit I. In summary, construction of roads, photovoltaic arrays, and other Facility components will be regulated by an erosion and sediment control plan and a 1200-C Construction Stormwater NPDES Permit that will require BMPs to minimize possible impacts to soils from wind and water erosion. Implementation of the mitigation measures described in Exhibit I will further minimize that potential. In addition, the rigorous reclamation measures described in Exhibit I will be instituted to restore the temporarily-disturbed near-surface soils at the Facility. Therefore, the Facility complies with JCZO 414.4.

414.5 Traffic Impact

A Traffic Impact Study in accordance with Section 421 may be required if, in the opinion of the Planning Director, the proposed development may result in traffic levels that are inconsistent with the functional classification of a road or would reduce the performance standard of a road or intersection below acceptable performance levels (LOS C), or if access to the property may cause a safety hazard.

Response: Traffic impacts are more extensively discussed in Exhibit U, and the need for a Traffic Impact Study is also addressed below, in response to JCZO 421. In summary, traffic or transportation impacts resulting from the Facility will be short-term in nature and occur only during construction (approximately 9 months). As demonstrated in response to JCZO 421 (and in Exhibit U), traffic and transportation impacts resulting from the Facility will be minimal and short term. Therefore, the Facility will not require a traffic impact study and JCZO 414.5 is not applicable.

414.6 Approval Standards:

The Site Plan Review Committee shall review the tentative site plan for compliance with the following standards:

- A. *All provisions of this zoning ordinance and other applicable regulations are compiled with.*

Response: The Applicant's responses provided throughout Exhibit K demonstrate compliance with applicable JCZO provisions and other applicable regulations. Therefore, this criterion is met.

- B. *Elements of the site plan are arranged so that:*
 1. *Traffic congestion is avoided.*
 2. *Pedestrian and vehicular safety and welfare are protected.*
 3. *Significant features and public amenities are preserved and maintained.*

4. *Surface drainage systems are designed so as not to adversely affect neighboring properties, roads, or surface and subsurface water quality, in accordance with the requirements of Section 414.4.*
5. *Structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, etc.), loading and parking and similar accessory areas shall be buffered or screened to minimize adverse impact on neighboring properties.*

Response: At no point during the Facility's construction, operation, or reclamation will it be open to the public. Within the site, minimal traffic will be generated, and no pedestrians (other than workers on site) will be present. During operation, the Facility is not anticipated to require full-time O&M staff. The Facility will be monitored remotely, with two to four part-time technicians at a time deployed on an as-needed basis for maintenance and repairs who will navigate to the site in accordance with the Facility's safety procedures. Drainage and erosion control are thoroughly discussed in both Exhibit I and above, in response to JCZO 414.4. In summary, the erosion and sediment control plan, included as Attachment I-1 in Exhibit I, will be implemented to minimize adverse impacts to neighboring properties, roads, or surface and subsurface water quality. As shown on the site plan included as Figures C-2A and C-2B in Exhibit C, the Facility components have been designed and configured to minimize adverse impacts to neighboring properties by siting taller structures (the substation and O&M enclosure) toward the center of the site. Therefore, the Facility complies with JCZO 414.6(B).

- C. *The development will not result in traffic volumes that will reduce the performance standard of a transportation facility below the minimum acceptable level identified in the Transportation System Plan (LOS C), and will comply with all applicable standards in Section 12.18 of the Jefferson County Code. This standard may be met through a condition of approval requiring improvements to the transportation facility.*

Response: As mentioned above, traffic impacts and volumes as they relate to the Facility are thoroughly discussed in Exhibit U. In summary, the Facility is not likely to result in a performance reduction of the County's transportation facilities used during operations due to the relatively low existing traffic volumes and the likelihood that trips to the Facility will be distributed throughout the day, resulting in a less concentrated impact. Therefore, this criterion is met.

- D. *The site plan application shall demonstrate how the proposal will avoid or mitigate adverse impacts to agricultural or forestry uses on adjacent property.*

Response: In response to JCZO 301.5(A) and (B), the Applicant demonstrates that the Facility will not force significant change in farm or forestry practices within 0.5-mile of the Facility boundary. No lands cultivated for farm use occur within the Facility site boundary or surrounding 0.5-mile land use analysis area shown on Figure K-8. The closest cultivated agricultural land occurs approximately 0.6 mile north of the Facility site boundary on the opposite side of Willow Creek Canyon. A description of farm practices on surrounding lands within the 0.5-mile land use analysis area is provided in Section K.5.2 in response to OAR 660-033-0130(5) and shown on Figure K-8. Therefore, this criterion is met.

414.7 Conditions of Approval

- A. *In granting approval of a site plan, the County may impose conditions of approval deemed necessary to comply with the requirements of this Ordinance.*
- B. *Installation of sprinklers or fire-fighting water supplies may be required when recommended by the appropriate fire protection agency.*
- C. *A survey may be required if there is a question about the location of a property line, easement or other feature.*

- D. A bonding agreement in accordance with the provisions of Section 413 may be required to assure that conditions attached in granting approval of a site plan are met.*

Response: While the Applicant does not anticipate that additional conditions will be needed to ensure compliance with the County's applicable substantive site plan review criteria, the Applicant will work with the SAG and ODOE staff to implement appropriate conditions, if necessary. In addition, the Applicant is working with the JCFD to ensure that the Facility complies with fire safety standards, and has secured a letter from the JCFD stating they can provide protection services once the Facility is annexed into the JCFD service area (the letter from Mr. Huff in Attachment U-1 to Exhibit U). The Applicant has completed an American Land Title Association (ALTA) survey to determine property boundaries shown on the conceptual site plan on Figures C-2A and C-2B in Exhibit C. Bonding is thoroughly discussed in Exhibit M. In summary, the Applicant will have a bond in place that satisfies Council standards. Therefore, the Facility demonstrates compliance with JCZO 414.7(A) through (D).

Section 415 - Soil or Rapid Moving Landslide Hazard Procedures

- A. If during the planning, sanitation, or building permit process, unusual soil or geologic conditions that may present a hazard to the structure are discovered, such conditions shall be noted by the department. These conditions include but are not limited to slope, soil instability, shrink-swell, and high water table.*
- B. The Planning Department shall inform the applicant, and direct the applicant to the area Natural Resource Conservation Service (NRCS) or the State Department of Geology and Mineral Industries (DOGAMI) for further review of the soils and/or landslide area. If the NRCS or DOGAMI determines that a hazard is present, they may suggest certain mitigation measures, or recommend to the Planning Department that more extensive hazard mitigation work be done. Upon such a recommendation the county may require certification by a soils engineer, geologist or other appropriate professional that the structure is adequately protected from the hazard, or does not disrupt the natural setting so that it creates a hazard. If the area contains a DOGAMI designated rapid landslide area, development may not be permitted.*
- C. If required, the above certification shall be accepted by the county before permits are issued. If construction has begun, construction shall not proceed until certification is received.*
- D. Requirements made pursuant to this section may be appealed in conformance with Chapter 9 of this Ordinance.*

Response: Geology and Soil Stability are thoroughly discussed in Exhibit H. In summary, the construction and operation of the Facility will not adversely affect or aggravate the geological or soil conditions within the Facility site boundary or surrounding vicinity. The DOGAMI standards are written into Exhibit H and the Applicant demonstrated the Facility's compliance with these standards. In addition, DOGAMI will review Exhibit H to ensure consistency and compliance. Therefore, the Facility complies with JCZO 415.

Section 416 - Grading, Fill and Removal

416.2 Grading Permits Required

A grading permit shall be obtained prior to filling, excavation, drilling or dredging operations involving more than 50 cubic yards of material, except for the following:

- A. Grading in an isolated, self-contained area, provided there is no danger to the public and the grading will not adversely affect adjoining properties.*

- B. An excavation below finished grade for basements and footings of a building authorized by a valid building permit. This exemption does not apply to fill using the material that was excavated.*
- C. Cemetery graves.*
- D. Solid waste disposal sites approved by DEQ.*
- E. Excavations for wells or trenches for utilities.*
- F. Mining, quarrying, excavating, processing or stockpiling rock, sand, gravel, aggregate or clay, provided such activities have been approved under other sections of this Ordinance.*
- G. Exploratory excavations performed under the direction of a registered design professional.*
- H. Grading, fill or removal done as part of a transportation improvement approved by the County Public Works Director.*

Response: As listed in Table C-1 of Exhibit C, construction of the Facility will result in a total permanent disturbance of more than 50 cubic yards of material. Prior to construction, the Applicant will obtain a grading permit from the County.

Section 417 - Historic Resource Protection

417.1 Applicability

The provisions of this section apply to buildings, structures, objects or sites that have been designated as significant historic resources in the Comprehensive Plan Goal 5 inventory, or that are listed in the National Register of Historic Places.

Response: No buildings, structures, objects, or sites designated as significant historic resources in the Comprehensive Plan Goal 5 inventory, or that are listed in the National Register of Historic Places, are located within the Facility's land use analysis area. Therefore, JCZO 417 does not apply.

Section 418 - Airport Protection (see JCZO 418)

Response: JCZO 418 uses provisions of 49 U.S.C., Section 44718 and where applicable Title 14 of the Code of Federal Regulations, part 77, as a baseline for establishing development restrictions for proposed uses and structures within the protection zone areas of airports within Jefferson County. The Federal Aviation Administration has conducted an aeronautical study of the Facility under part 77 and did not identify any hazards to air navigation and issued No Hazard Determinations for the Facility (see Attachment E-1 to Exhibit E). Therefore, the Facility complies with JCZO 418.

Section 419 – Riparian Protection

419.1 General Requirements

- A. Except as allowed by subsections 419.2 through 419.5, no building, structure or other development, including grading or placement of impervious surfaces, shall be located closer than 100 feet from the top of bank of the Upper Deschutes River, Middle Deschutes River, Lower Crooked River, Metolius River or John Day River, or closer than 75 feet from the top of bank of any other fish-bearing water area as listed in the Comprehensive Plan, including perennial and intermittent fish-bearing streams, lakes, ponds and impoundments, but excluding man-made farm ponds.*

Response: Lake Simtustus and Willow Creek are both located within the Facility's 0.5-mile land use analysis area and are listed in the JCCP as fish-bearing water areas. However, as shown on Figure K-3, no development associated with the Facility is located within 75 feet of either Lake Simtustus and Willow Creek. Therefore, JCZO 419.1 does not apply.

B. A riparian protection area shall be established within 75 feet from the top of bank of the Upper Deschutes River, Middle Deschutes River, Lower Crooked River, Metolius River or John Day River, and within 50 feet from the top of bank of any other fish-bearing water area listed in the Comprehensive Plan, including perennial and intermittent fish-bearing streams, lakes, ponds and impoundments, but excluding man-made farm ponds. In order to protect stream corridors and riparian habitat, use of fertilizers, herbicides and pesticides is prohibited within this area. All existing vegetation shall be retained within the riparian protection area, except as allowed by subsections 419.2 through 419.5 and as follows:

- 1. Non-native vegetation may be removed and replaced with native plant species.*
- 2. Vegetation may be removed if necessary for the development of water-related or water-dependent uses.*
- 3. Vegetation may be removed for forestry activities that have been granted a permit under the Forest Practices Act or for farm uses on lands zoned Exclusive Farm Use A-1, Exclusive Farm Use A-2 or Range Land.*

Response: As stated above, Lake Simtustus and Willow Creek are both located within the Facility's 0.5-mile land use analysis area and are listed as fish-bearing water areas in the JCCP. The portions of any riparian protection areas (50 feet from each respective water body) that occur within the land use analysis area are shown on Figure K-3. No development associated with the Facility is located within the riparian protection area of either Lake Simtustus or Willow Creek. Therefore, the provisions of JCZO 419.1(B) do not apply.

419.6 Development Involving a Wetland

The County will notify the Department of State Lands within five working days of the acceptance of any complete application for any of the following that are wholly or partially within areas identified as wetlands on the National Wetlands Inventory map. In addition, prior to approval of any of the following the County will provide written notice to the applicant and property owner stating that the property may contain wetlands and may require a state and federal permit:

- A. Subdivisions;*
- B. Building permits for new structures;*
- C. Other development permits that allow physical alteration of the land involving excavation and grading, including permits for removal or fill, or both, or development in flood plains and floodways;*
- D. Conditional use permits and variances that involve physical alterations to the land or construction of new structures; and*
- E. Planned unit developments.*

Response: As described in Exhibit J, no areas identified as wetlands are located within the Facility boundary and no new structures associated with the Facility are sited in wetlands. Therefore, JCZO 419.6 does not apply.

419.7 State Scenic Waterways

- A. *The following river segments are designated State Scenic Waterways:*
 1. *The Metolius River from Metolius Springs to Candle Creek.*
 2. *The Deschutes River from the south county line to Lake Billy Chinook.*
 3. *The Deschutes River from Pelton Dam to the north county line.*
 4. *The John Day River.*
- B. *The County will notify the Oregon Parks and Recreation Department upon receiving an application for a land division, building permit, development or other change in land use involving land within one-fourth mile of the bank of a state Scenic Waterway.*
- C. *All new development within one-fourth mile of the bank of a state Scenic Waterway shall be in compliance with any management plan adopted by the Oregon Parks and Recreation Department for the waterway. Pursuant to ORS 390.845(3), the property owner is required to provide a written notice to the Parks and Recreation Department, including a detailed description of any proposed use involving land within one-fourth mile of the bank of a state Scenic Waterway, prior to placing any building or structure, modifying an existing building or structure, clearing, leveling, filling or excavating, engaging in the cutting of trees, mining, prospecting, constructing roads, railroads, utilities, or putting the land to a use to which the land was not being put before December 3, 1970. The proposed improvement or change in land use shall not be made or work started sooner than one year after such notice unless the Parks and Recreation Department has given its written approval of the proposal.*
- D. *Buildings proposed within one-half mile of the top of bank of a state scenic waterway shall be finished in natural wood or earth tone colors if the building will be visible from the waterway. The finish shall be chosen to enable the structure to blend with the surrounding landscape and to be as unobtrusive as possible.*

Response: The Facility is proposed approximately 4.2 miles from the nearest state scenic waterway, which is “The Deschutes River from the south county line to Lake Billy Chinook.” No portion of the Facility is proposed within one-half mile of this state scenic waterway. Therefore, these criteria do not apply. However, “The Deschutes River from the south county line to Lake Billy Chinook,” also known as the Lower Deschutes Wild and Scenic River, is addressed as a protected area, significant or important scenic resource, and important recreational opportunity in Exhibits L, R, and T, respectively. These Exhibits conclude that the Facility will not have a significant adverse impact on the Lower Deschutes Wild and Scenic River. Therefore, JCZO 419.7(B) through (D) do not apply.

419.8 Federal Wild and Scenic Rivers

- A. *The following river segments are designated Federal Wild and Scenic Rivers:*
 1. *The Metolius River from Metolius Springs to Lake Billy Chinook.*
 2. *The Deschutes River from the south county line to Lake Billy Chinook.*
 3. *The Deschutes River from Pelton Dam to the north county line.*
 4. *The John Day River.*
 5. *The Crooked River from the south county line to Dry Creek.*

- B. Upon receiving an application for a land division, building permit, development or other change in land use involving land within one-fourth mile of the bank of a Federal Wild and Scenic River, the County will notify the Bureau of Land Management in the case of the Deschutes, John Day or Crooked Rivers, or the US Forest Service in the case of the Metolius River. Comments and recommendations from those agencies will be considered in the review of the application.*
- C. Buildings proposed within one-half mile of the top of bank of a federal wild and scenic river shall be finished in natural wood or earth tone colors if the building will be visible from the river. The finish shall be chosen to enable the structure to blend with the surrounding landscape and to be as unobtrusive as possible.*

Response: The Facility is proposed approximately 4.2 miles from the nearest federal wild and scenic waterway, which is “The Deschutes River from the south county line to Lake Billy Chinook.” No portion of the Facility is proposed within one-half mile of this state scenic waterway. Therefore, these criteria do not apply. However, “The Deschutes River from the south county line to Lake Billy Chinook,” also known as the Lower Deschutes Wild and Scenic River, is addressed as a protected area, significant or important scenic resource, and important recreational opportunity in Exhibits L, R, and T, respectively. These Exhibits conclude that the Facility will not have a significant adverse impact on the Lower Deschutes Wild and Scenic River. Therefore, JCZO 419.7(B) and (C) do not apply.

Section 420 - Endangered Species

Upon receipt of an application for an action or development that will disrupt habitat or the breeding site of a species listed as endangered by the U.S. Fish & Wildlife Service, the County will place a hold on the Permit until the applicant develops a program to protect the site or habitat or both. The Oregon Department of Fish & Wildlife will be consulted in the development and approval of the plan.

Response: Exhibit Q provides a detailed discussion of the Facility’s potential impacts on threatened and endangered plants and animals, including species listed as endangered by the USFWS. In summary, no plant or animal species federally-listed as endangered have been identified or are likely to occur within the analysis area of the Facility. Thus, the Applicant will not develop a protection program and does not propose any mitigation measures. Therefore, JCZO 420 does not apply to the Facility.

Section 421 – Traffic Impact Studies

A traffic impact study may be required as part of an application for Site Plan Review, a conditional use permit, a land division, or a zoning map amendment. The study shall be prepared by a licensed professional engineer with expertise in traffic engineering. The study shall address the following:

- A. The projected traffic volume in Average Daily Trips (ADT) that will be generated by the proposed development, based on the current edition of the Institute of Transportation Engineers Trip Generation manual or similar authority, including a breakdown of the projected ADT of vehicles entering the site from different directions and the direction vehicles will go when exiting the site.*
- B. The existing traffic volumes and level of service of the transportation facility, and how these will change if the proposed development is approved.*
- C. The existing roadway and intersection conditions, and the future conditions if the proposed development is approved, taking into consideration both the traffic volume and the weight of vehicles associated with the proposed use.*
- D. Recommended mitigation measures if the proposed development will adversely affect a transportation facility*

Response: Traffic impacts are discussed in Exhibit U. In summary, traffic impacts during Facility operation are not anticipated. The Facility is not anticipated to require full-time O&M staff. The Facility will be monitored remotely, with two to four part-time technicians at a time deployed on an as-needed basis for maintenance and repairs. Operational trips will occur on an as-needed basis, and will include O&M staff traveling to work in their personal vehicles along with specialized personnel who may travel in light-duty trucks. Delivery trucks may also access the site on occasion, but are not anticipated to occur daily. Once completed, the Facility will require far fewer trips and personnel than during construction. Assuming a maximum of four workers during operations, each with two round-trips into and out of the Facility per day, a worst-case increase in daily traffic from the Facility would include an additional 16 trips (8 inbound and 8 outbound) to traffic volumes. Table U-6 presents the anticipated worst-case increase in traffic trips as a result of Facility operation. As demonstrated here (and in Exhibit U), traffic and transportation impacts resulting from the Facility will be minimal and short term. Therefore, the Facility will not require a traffic impact study and JCZO 421 is not applicable.

Section 423 – Off-Street Parking Requirements

423.1 Applicability

At the time of erection of a new structure or at the time of enlargement or change in use of an existing structure, off-street parking spaces shall be provided in accordance with this Section.

Response: The Facility will be monitored remotely, with two to four technicians at a time deployed on an as-needed basis for maintenance and repairs. No full-time staff will be present at the Facility. Vehicles traveling to the site for O&M activities will park in the staging and laydown area shown on Figures C-2A and C-2B in Exhibit C. Therefore, no off-street parking is required and JCZO 423 does not apply to the Facility.

Section 426 - Fire Safety Standards

426.1 Purpose

The requirements of this Section are established to provide minimal standards for the protection of buildings from fire hazard. Compliance with these standards will assist designated rural fire protection personnel or a property owner in reducing fire suppression activities that may be required to protect dwellings and structures, and help prevent the spread of fire to surrounding lands.

Response: Fire protection and emergency response is discussed in Exhibit U. A summary of fire protection standards to be implemented at the Facility are provided below, in response to applicable criteria.

426.2 Mandatory Standards

The following fire safety standards are mandatory for all new construction in the unincorporated areas of Jefferson County, unless a variance has been granted in accordance with Section 426.5. New construction includes additions to existing buildings and replacement buildings.

A. Roof Coverings

New buildings, reroofing of existing buildings, and additions to buildings that will have a roof area more than 50 percent of the existing roof area, shall have Underwriter's Laboratory rated Class A or B roofing or equivalent, or tile or metal roofing. Wood roofing of any type, including pressure treated wood shingles or shakes, is prohibited.

Response: The O&M enclosure will be equipped with a corrugated steel roof. Therefore, this criterion is met.

D. Fire Fighting Protection

Where possible, dwellings shall be located within a fire district that provides structural fire protection. If the property is not in a fire district, the following standards shall be met:

- 1. The property owner shall provide evidence that they have requested that the nearest fire district either annex the property, or provide fire protection by contract if annexation is not possible. If the fire district will not provide protection, the County may require alternative fire protection measures, including one or more of the recommended standards in Section 426.3.*
- 2. The property owner shall sign and record in the deed records for the County a Waiver of Remonstrance and Agreement binding the landowner, and the landowner's successors in interest, acknowledging that the property is in an area where no fire protection will be provided and agreeing to hold Jefferson County harmless for any damage to life or property caused by fire.*

Response: The proposed Facility is not a dwelling. Therefore, JCZO 426(D) does not apply.

E. Emergency Vehicle Access

Access to within 50 feet of all buildings shall be constructed to the following standards unless a variance has been granted in accordance with Section 426.5. However, existing access to a lawfully established building that does not meet these standards need not be upgraded to comply with the standards when an improvement to the building or a proposed accessory building is valued at less than \$10,000, provided that the existing access is adequate to provide ingress and egress by fire protection vehicles.

- 1. Access roads and driveways serving a single residence shall have a surface width of at least 12 feet. The width shall be increased to a minimum of 14 feet in curves with a centerline radius of less than 150 feet to ensure emergency vehicles remain on an all-weather surface. The area extending at least 10 feet from each side of the driveway's centerline shall be kept clear of obstructions and shall be maintained as a fuel break. Driveways more than 250 feet in length shall include turnouts at 150 foot intervals or lesser distance as needed to allow visibility. Turnouts shall be at least 10 feet in width and 50 feet in length, and shall meet the same load requirements as required by subsection (4).*
- 2. Access roads and driveways serving more than one residence shall have a surface width of at least 20 feet.*
- 3. Commercial or industrial buildings that will have any portion of an exterior wall more than 150 feet from an existing road shall have an emergency vehicle access drive with a surface width of at least 20 feet.*
- 4. A minimum clear height of at least 14½ feet shall be maintained for the entire width of the driveway.*
- 5. Access shall be designed and constructed to maintain a minimum 75,000 pound load carrying capacity. If not designed by an engineer, driveways shall be constructed of a minimum of 5 compacted inches of crushed rock meeting*

ODOT material standards. The road shall be compacted until a loaded 10 cubic yard dump truck ceases to deflect the road.

6. *Maximum finished grade shall be no greater than 10 percent unless approved by the fire chief. Grade shall not exceed 4 percent in turnarounds. Any portion of the access with a grade greater than 8 percent shall be surfaced with 1.5 inch class C asphalt mix, 0-11 oil mat, or four inch fiber mesh reinforced Portland cement concrete.*
7. *Curves shall have a minimum centerline radius of 55 feet, including the intersection of a driveway with a public road.*
8. *Gates shall be a minimum of 20 feet wide, and shall be of a swinging or sliding type constructed of materials that allow manual operation by one person. Electric gates shall be equipped with a Knox box purchased from the fire district.*
9. *Dead-end access roads and driveways more than 150 feet in length shall terminate in a 120-foot hammerhead, 60-foot "Y" or 96-foot diameter cul-de-sac or alternative turnaround arrangement as shown in the following diagrams. Turnarounds shall also be provided every ½ mile on dead-end access roads and driveways exceeding one mile in length. The turnaround area shall meet the same load requirements as required by subsection (4).*

Response: Access to the O&M enclosure has been designed to provide adequate emergency vehicle access, as shown on the site plan included as Figures C-2A and C-2B in Exhibit C. In addition, Mr. Brian Huff of the JCFD has reviewed access to the Facility from SW Elk Drive and for internal circulation of the Facility. Mr. Huff expressed no concerns with access or circulation and did not request any plan revisions for the site plan. Mr. Huff stated to the Applicant, as noted in his letter (Attachment U-1 to Exhibit U), that if battery storage systems are included, the Fire District will be able to provide input regarding project design, fire suppression mechanisms, access, and water supply prior to construction as part of final system design. Therefore, these criteria are met.

F. Address Signs

An address sign shall be posted at the point where a driveway leaves a road, in such a manner as to be visible to vehicles approaching from both directions. A directional address sign must also be posted at the junction where an individual driveway leaves a shared driveway. Address signs shall contain white, reflective numbers at least 3 inches in height on a green background.

Response: Adequate signage, which meets the provisions of this criterion and does not conflict with the clear-vision standards in JCZO 403, will be posted to identify the Facility from the road. Therefore, this criterion is met.

G. Fuel Breaks

Irrigated agricultural land and properties that are inside an Urban Growth Boundary are exempt from the fuel break requirements, but must comply with all other fire safety standards. Fuel breaks shall not be developed within riparian protection areas required by Section 419.1. In all other areas, fuel breaks are required that meet the following standards, unless a variance has been granted in accordance with Section 426.5:

1. *A primary fuel break shall be developed and maintained around all buildings. The fuel break shall be at least 30 feet wide, or to the property line, whichever is the shortest distance. The fuel break shall be measured from the furthest extension of the structure, including attached carports, the*

outside edge of a deck, and the edge of roof eaves. The goal within the primary fuel break is to remove fuels that will produce flame lengths in excess of one foot. Brush, downed limbs and other dead plant material must be removed. The primary fuel break should contain primarily non-flammable ground cover such as asphalt, concrete, rock, brick, bare soil, green grass, or succulent ground cover. Combustible ground cover or plant materials, such as bark mulch or accumulated leaves and needles, are prohibited within twelve inches of buildings. Herbaceous plants such as groundcovers, bedding plants, bulbs and perennial flowers are permitted provided they are kept green during the fire season. Dry grass is allowed if kept less than four inches in height. Isolated groupings of deciduous ornamental shrubbery and trees, native trees or other low plants (less than 24 inches) are allowed when maintained in a green condition free of dead plant material and ladder fuels, and provided they are arranged and maintained in such a way that minimizes the possibility a fire can spread to adjacent vegetation. Healthy trees are permitted, provided they are pruned to remove branches that are dead or that are less than 10 vertical feet above the ground. A 15-foot clearance between tree limbs and stovepipes or chimney outlets must be maintained. No branches may overhang within 25 vertical feet of a roof. Areas under decks shall be kept free of firewood, stored flammable materials, leaves and needles.

2. *A fuel break shall be developed and maintained immediately adjacent to any driveway that is more than 150 feet in length. The fuel break shall extend at least ten feet from each side of the centerline of the driveway, or to the property line, whichever is the shortest distance. A minimum clear height of at least 14½ feet shall be maintained for the entire width of the driveway and fuel break. The driveway fuel break shall meet the same requirements as outlined in subsection (1) for ground cover and limbing of trees.*

Response: Vegetation around the O&M enclosure will be maintained to minimize fire potential. In addition, as discussed in Section B.1.5 in Exhibit B and Section U.3.9 in Exhibit U, other measures will be taken to minimize fire potential during construction and operation of the Facility. Furthermore, the JCFD has provided a letter stating they have no concerns with the Facility layout, will provide fire protection services once the Facility is annexed into the service area, and the Facility “will have a positive impact on the area, helping to reduce the hazard from wildfire.” Therefore, these criteria are met.

H. Storage of Flammable Materials

The area under decks and stairways shall be kept free of flammable material, including leaves and needles. Firewood and lumber piles shall be kept at least 20 feet away from buildings from April 1 through November 1, unless kept within a fully enclosed building.

Response: As described in Exhibit B, the transformers are the only structures that contain oil, and appropriate spill containment will be integrated into operation protocols. No flammable materials will be kept on site. Batteries, if deployed, will be contained within a container structure similar to a shipping container, and will be outfitted with chemical fire suppression capabilities. No leaves or needles are expected to accumulate at the Facility, as there are no trees on site. No firewood or lumber piles will be stored on site, as employees will not live at the Facility or be permitted to burn fires. Therefore, this criterion is met.

426.3 Recommended Standards

The following fire safety standards are recommended in all areas that are susceptible to a wildfire, and one or more of the standards may be required in areas with a high wildfire hazard when a fire district will not provide structural fire protection:

- A. *All permanent openings into and under the structure, including the area under decks, shall be completely covered with noncombustible, corrosion-resistant, mesh screening material which has openings no greater than ¼ inch in size.*
- B. *Eaves shall be boxed in.*
- C. *Fire resistant building materials such as stucco or fiber-cement siding shall be used.*
- D. *An automatic fire sprinkler system shall be installed.*
- E. *Onsite firefighting equipment and water storage shall be provided. The water supply shall contain at least 4,000 gallons at all times. Road access to within 15 feet of the water source shall be provided for fire apparatus, with a turnaround adequate to accommodate the firefighting equipment. Permanent signs shall be posted along the access route to show the location of the emergency water source. If providing road access to the water source is not feasible, the water source shall be equipped with a minimum 2 ½ inch dry standpipe assembly equipped with NST (National Standard Thread) fittings to enable fire equipment to draught water.*
- F. *A minimum 20 foot secondary fuel break shall be created around buildings. The secondary fuel break shall extend in all directions around the primary fuel break required by Section 426.2(G). An additional 50 feet, for a total of 100 feet of fuel break, shall be created when the slope around a dwelling exceeds 20 percent. This additional 50 feet is required downhill and to each side of the dwelling, but is not required uphill of the dwelling. The goal of the secondary fuel break is to reduce fuels so that the overall intensity of a wildfire will be lessened and the likelihood of crown fires and crowning is reduced. Healthy trees are permitted, provided they are pruned to remove branches that are dead or that are less than 10 vertical feet above the ground. Small trees and shrubs growing underneath larger trees must be removed or pruned to less than 1/3 the height of the lowest branch of the larger trees. Understory vegetation may include lawns or groundcover maintained at less than 12 inches in height, and low shrubs arranged in a manner so that fire cannot spread between plantings or into trees. Brush and dead plant material must be removed.*
- G. *Open fires and use of burn barrels shall not occur unless in compliance with Jefferson County fire District standards.*
- H. *LPG tanks shall be placed according to state Fire Marshall standards.*

Response: Fire protection, safety standards, and prevention measures are thoroughly discussed in Section B.1.5 in Exhibit B and in Exhibit U. In summary, there could be some risk of accidental grass fires on the site during construction. To combat this risk, measures taken to prevent grass fires during construction will include construction vehicles using established roads to keep vehicles away from dry grassland areas, using diesel vehicles whenever possible (to prevent potential ignition by catalytic converters), avoiding idling vehicles in grassy areas, and keeping cutting torches and similar equipment away from grass. Potential fire hazards from operation of the Facility include the possibility of electrical fire, in which case the fire will be monitored to ensure it doesn't spread, but it will not be extinguished.

The JCFD has reviewed the site plan of the Facility and has not expressed concerns or requested changes. The Fire Chief/Marshal of the JCFD, Mr. Brian Huff, stated in a letter (included as Attachment U-1 to Exhibit U) that the Facility "will have a positive impact on the area, helping to reduce the hazard from frequent wildfires in the area." Therefore, the Facility demonstrates compliance with these criteria.

426.4 Timing of Compliance with Standards

- A. *Compliance with the standards in subsections 426.2 (A) through (D) will be verified at the time of application for a building permit. Building permits will not be issued unless the building plans clearly show that the standards will be met.*
- B. *The standards in subsections 426.2 (E) through (G) must be met at or prior to beginning framing of the building, or prior to placement of a manufactured home. No building inspections other than for the forms and foundation will be approved until the standards are met.*
- C. *If the proposal is for an agricultural building or equine facility that is exempt from obtaining building permits, the applicant shall provide evidence that all standards are met at the time of application for the exemption. The exemption will not be approved until the standards are met.*

Response: In the responses above, the Applicant has demonstrated compliance with the applicable criteria. Therefore, the Facility complies with JCZO 426.4.

426.5 Variances to Fire Safety Standards

An application for a variance to any of the fire safety standards in this Section shall be processed under the variance procedures in Section 508. The County will notify fire agencies of the proposed variance and will consider their comments and recommendations when deciding whether the variance should be approved. Conditions may be placed on any approval of a variance to fire safety standards when deemed necessary to reduce fire hazards.

Response: The Applicant is not requesting a variance to any of the fire standards. Therefore, this criterion does not apply.

Section 429 - Archaeological Preservation

Purpose: Archaeological sites are acknowledged to be a finite, irreplaceable and nonrenewable cultural resource, and are an intrinsic part of the cultural heritage of Jefferson County and the people of Oregon. This section shall apply to existing or newly discovered archaeological sites and objects in Jefferson County. The intent of this section is to provide a means of protecting archaeological resources to sustain the County's cultural heritage.

429.1 Definitions

Terms used in this section are defined in ORS 358.905 and 97.740.

429.2 Management by County

- A. *Jefferson County shall refrain from dissemination of site-specific inventory information concerning identified archeological sites except as required by Oregon Public Records Law. Rather, Jefferson County shall manage development in these areas so as to preserve their value as archeological resources.*
- B. *Jefferson County may enter into collaborative agreements for the protection of archeological objects and sites with Indian Tribes or any other entity establishing a right to protect the non-renewable resources subject to this Section.*

Response: The Applicant acknowledges these statements.

429.3 Permitted Action

- A. *A person may not excavate, injure, destroy or alter an archaeological site or object, or remove an archaeological object located on public or private land unless that activity is authorized by a permit issued by the State Parks and Recreation Department under ORS 390.235.*
- B. *A person may not make an exploratory excavation on public lands to determine the presence of an archaeological site or remove from public lands any material of an archaeological, historical, prehistorical or anthropological nature without first obtaining a permit issued by the State Parks and Recreation department under ORS 390.235.*
- C. *A person may not excavate an archaeological site on privately owned property unless that person has the property owner's written permission.*
- D. *Except for a proposed excavation by a professional archaeologist as provided in ORS 97.750, no person shall willfully remove, mutilate, deface, injure or destroy any cairn, burial, human remains, funerary object, sacred object or object of cultural patrimony of any native Indian. Persons disturbing native Indian cairns or burials through inadvertence, including by construction, mining, logging or agricultural activity, shall at their own expense reinter the human remains or funerary object under the supervision of the Confederated Tribes of the Warm Springs Reservation of Oregon.*
- E. *Collection of an arrowhead from the surface of public or private land is exempt from obtaining a state permit if the collection can be accomplished without the use of any tool.*

Response: Historic, cultural, and archaeological resources are discussed in Exhibit S. In summary, the evidence provided in Exhibit S (including the Attachment S-1 *Results of Phase I Cultural Resources Survey for the Madras Solar Energy Facility, Jefferson County, Oregon* [confidential and not for public distribution] and the Attachment S-2 *Inadvertent Discovery Plan*) demonstrates that construction, operation, and retirement of the Facility are not likely to result in significant adverse impacts to historic, cultural, or archaeological resources listed on, or would likely be listed on, the National Register of Historic Places.

The Applicant does not propose to excavate archaeological sites or objects. In the event of an inadvertent archaeological discovery, construction activities will cease, and the procedures outlined in Attachment S-2 of Exhibit S will be followed. Therefore, the Facility demonstrates compliance with these criteria.

429.4 Notification Required

- A. *Any permitted person who conducts an archaeological excavation associated with a prehistoric or historic American Indian archaeological site shall notify the Confederated Tribes of the Warm Springs Reservation and follow the requirements of ORS 358.950.*
- B. *If a person who is conducting an archaeological investigation finds a sacred object or object of cultural patrimony, the person shall notify in writing the State Historic Preservation Officer and the Confederated Tribes of the Warm Springs Reservation.*
- C. *If an archeological site, native Indian sacred object, funerary object, or object of cultural patrimony is encountered during the process of development, including by construction, excavating, logging or agricultural activity, whether the site or object was previously known to exist or not, development shall immediately stop and the Confederated Tribes of the Warm Springs Reservation and the Commission on Indian Services shall be immediately notified.*

- D. If human remains are encountered during excavation of an archaeological site on privately owned property, or if development, including construction, excavating, logging or agricultural activity accidentally exposes human remains, all excavation and development shall cease and the Oregon State Police, the State Historic Preservation Office, the Confederated Tribes of the Warm Springs Reservation and the Commission on Indian Services shall be notified as required by ORS 97.740 to 97.990.*

Response: The Applicant does not propose archaeological excavation as part of Facility construction. Therefore, JCZO 429.4(A) through (D) do not apply. In the event of an inadvertent archaeological discovery, construction activities will cease, and the procedures outlined in Attachment S-2 of Exhibit S will be followed.

Section 433 – Photovoltaic Facilities

All photovoltaic facilities shall meet the requirements of OAR 660-033-130(38), are a conditional use subject to Chapter 6 Conditional Use, and all other applicable criteria for the development under the Jefferson County Zoning Ordinance.

Response: The Facility is a “photovoltaic facility.” The Applicant demonstrates compliance with the applicable substantive requirements of OAR 660-033-130(38) in Section 5.2.3.

Conditional use provisions applicable to the Facility are addressed below, in response to JCZO 601, 602, and 603. Other applicable criteria for development under the JCZO are addressed above, in Section K.5.1.1 of Exhibit K.

Section 505 – Goal Exceptions

A Goal exception is a decision to exclude certain land from the requirements of one or more applicable statewide planning goals. An exception is required to rezone land from a Resource zone to a different zone; to change the existing types of uses, densities, or services allowed in a zone or on a parcel; to amend the Transportation System Plan to change the functional classification, capacity or performance standard of a transportation facility; and similar changes. An application for a goal exception shall be processed under the procedures for an amendment in the Comprehensive Plan, and must comply with the requirements for exceptions in OAR 660-004.

Response: The Facility does not meet JCZO 301.4(H), as it will preclude more than 12 acres of high-value farmland or 20 acres of other land from commercial farm use. The Applicant demonstrates below in Section K.5.4 that an exception to Statewide Planning Goal 3 is justified.

Pursuant to OAR 660-033-0130(38)(g) and (i), a photovoltaic solar power generation facility cannot use, occupy, or cover more than 12 acres of high-value farm land or 20 acres of arable land from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. As discussed above, the Facility site is located within both an exclusive farm use zone and the NUID and therefore, by law, the land within the Facility site boundary is considered high-value farmland under ORS 195.300(10)(c)(B). The CES report provided as Attachment I-3 to Exhibit I demonstrates that, while the majority of the site consists of Class VI nonarable soils, over 20 acres of land within the Facility site boundary is Class IV soils and is considered arable. Regardless of what percentage of the soils within the Facility site boundary are considered arable, the exception threshold is met based on the Facility’s location within an exclusive farm use zone and the NUID (see Attachment K-4). Thus, the Facility will permanently occupy more than 12 acres of high-value farmland or 20 acres of arable land. Pursuant to OAR 660-033-130(38)(g) and (i), constructing the Facility requires an exception to Statewide Planning Goal 3.

The need for an exception arises when a goal does not permit a particular use or, as in this case, does not permit a use over a certain size. For local jurisdictions, the exceptions process is authorized by Goal 2 (Land Use Planning) and ORS 197.732, and governed by the criteria in

OAR 660-004-0000, et seq. The Council may find goal compliance for a facility that does not otherwise comply with a statewide planning goal by taking an exception. Notwithstanding the requirements in ORS 197.732, the Council may take an exception if it makes specific findings under ORS 469.504(2)(a), (b), or (c). In the following sections, the Applicant demonstrates that a Goal 3 exception is warranted under ORS 469.504(2)(c) and OAR 345-022-0030(4)(c). An exception is warranted to allow a locationally dependent facility that will fulfill important state and county goals by providing renewable energy while minimizing impacts on local farming practices.

Section 601 – Authorization to Grant or Deny Conditional Uses

- A. *Uses listed in this Ordinance as requiring conditional use approval are not outright permitted uses. They may be allowed only if found to comply with the approval criteria in Section 602. An application for a conditional use permit shall be reviewed by the Planning Commission at a public hearing, in accordance with the procedures in Section 903.5. The Planning Commission may approve, approve with conditions, or deny the application.*
- B. *A use that was established prior to the effective date of this ordinance, but that is now classified as a conditional use in the zone, may continue without additional County approval.*
- C. *Any proposal to change or expand a conditional use requires submittal of an application, which will be processed as if it were for a new conditional use. In the event the application is denied, the use may continue at its previous level and scope.*

Response: As stated above, in response to JCZO 301.4(H), the Facility is located in the EFU A-1 zone and is a “commercial utility facility for the purpose of generating power for public use by sale.” The Facility is considered a new conditional use in the EFU A-1 zone. The Applicant demonstrates the Facility’s compliance with JCZO 602 below.

Section 602 – Approval Criteria

Conditional use applications must show compliance with approval criteria of the underlying zone and this Section. The burden of proof is on the applicant to submit sufficient information to demonstrate that the application complies with the approval criteria. For instance, a traffic impact study in accordance with Section 421 may be needed to show compliance with criterion (D). An applicant may demonstrate that the approval criteria will be satisfied through the imposition of clear and objective conditions of approval, in accordance with Section 603. The following criteria must be met:

Response: The Applicant addresses the approval criteria in the underlying zone (EFU A-1) above, in response to JCZO 301. Conditional use criteria are addressed below, in response to JCZO 602 (A) through (F) and JCZO 603.

- A. *The proposal is consistent with all applicable standards and criteria of the Zoning Ordinance;*

Response: The Applicant demonstrates compliance with applicable standards and criteria of the JCZO throughout Section K.5.1.1 of Exhibit K. Therefore, the Facility complies with this criterion.

- B. *Taking into account location, size, design and operating characteristics, the proposal will have a minimal adverse impact on the (a) livability, (b) value, and (c) appropriate development of abutting properties and the surrounding area compared to the impact of development that is permitted outright. In cases where there is a finding of overriding public interest, this criterion may be deemed met when any adverse impact resulting from the use will be mitigated or offset to the maximum extent practicable;*

Response: The Facility will not have adverse impacts on the livability, value, and appropriate development of abutting properties and the surrounding area when compared to other types of development permitted outright in the EFU A-1 zone designation. For example, uses permitted outright under JCZO 301.2 in the County's EFU A-1 zoning district may include (H) operations for the exploration and production of geothermal resources and oil and gas, (I) operations for the exploration of minerals, (L) utility facility service lines and accessory facilities or structures, and (N) a site for the takeoff and landing of model aircraft and associated buildings and facilities.

Livability: The Facility will have minimal adverse impact on the livability of abutting properties and the surrounding area. To assess the livability of abutting properties and the surrounding area, the Applicant considered nuisance-related issues such as scenic resources (i.e., visual impacts), noise, air emissions, and hazardous waste. Visual impacts associated with the Facility are thoroughly discussed in Exhibit R. In summary, the Facility will not result in significant adverse impacts on scenic and aesthetic values within the scenic resources analysis area, as it is only minimally visible from two scenic resources. Noise impacts associated with the Facility are thoroughly discussed in Exhibit X. Aside from the short-term noise generated during construction, due to the inherently quiet nature of the Facility, minimal noise will be generated during operation. Impacts to recreational opportunities associated with the Facility are discussed in Exhibit T. In summary, no significant adverse impacts on important recreational opportunities will result from Facility design, construction, and operation. It is reasonable to assume that other uses permitted outright, such as production of oil and gas, mineral exploration, and aircraft facilities could have greater visual, noise, air emissions, and hazardous waste impacts than those addressed throughout this ASC. Due to the clean energy nature of the Facility, no air emissions or hazardous waste will be generated as a result of its operation. Thus, the Facility will have a minimal adverse impact on the livability of abutting properties and the surrounding area.

Value: The Facility directly abuts land zoned EFU A-1. As discussed at the beginning of Section K.5.1.1 in response to JCZO 301.5, the Facility will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. Thus, the Facility will have no adverse impact on the value of abutting properties and the surrounding area in comparison to other types of development permitted outright in the EFU A-1 zone designation.

Appropriate Development: No parcels within the 0.5-mile land use analysis area are zoned for residential use. As stated above, the Facility directly abuts parcels zoned EFU A-1. Adjacent to the east, north, and west sides of the Facility site boundary, the topography consists of canyon rims and steep cliffs, which render these parcels unable to be developed. To the south, the parcels are zoned EFU A-1; construction and operation of the Facility will not affect the ability of landowners to use these parcels for farm practices. Public services and traffic impacts associated with the Facility are discussed in Exhibit U. In summary, the Facility will not significantly impact the ability of surrounding communities to provide the following services: sewers and sewage treatment, water, stormwater drainage, solid waste management, housing, transportation and traffic safety, police protection fire protection and emergency response, health care, and schools. Thus, the Facility will have a minimal adverse impact on the appropriate development of abutting properties and the surrounding area in comparison to other types of development permitted outright in the EFU A-1 zone designation.

The State of Oregon (State) has been planning to expand the use of renewables statewide since 2005. Currently, the state has a renewable portfolio standard in place that requires 50% of the energy used by Oregonians to come from renewable resources by 2040. Construction and operation of the Facility is helping the State meet these renewable energy goals.

- C. Adequate facilities and services are available or can be made available to serve the proposed use, including, but not limited to, water supply, sewage disposal, electric power, law enforcement service and fire protection;*

Response: Availability of water supplies, sewage disposal services, law enforcement services, and fire protection services to support the construction and operation of the Facility are discussed in Exhibit U. In summary, water for construction and operation of the Facility is available and will be obtained from the Deschutes Valley Water District. During construction, temporary sewage

disposal services will be provided by a portalet provider. No water or sanitary facilities are proposed to be constructed, thus no permanent sewage services or water providers are needed. The Jefferson County Sheriff (JCS) has provided a letter, included in Exhibit U as Attachment U-2, which states that the Facility is located within the JCS service area and confirms the ability of JCS to provide law enforcement services. The JCFD has provided a similar letter, included in Exhibit U as Attachment U-1, which states that the JCFD can provide fire protection services once the parcels on which the Facility area is located are annexed into the JCFD service area. Electric power needs of the Facility during operation will be offset by the energy generated by the solar panels. Therefore, adequate facilities and services are available to serve the Facility during its construction and operation.

- D. The development will not result in traffic volumes that will reduce the performance standard of a transportation facility below the minimum acceptable level identified in the Transportation System Plan (LOS C), and will comply with all applicable standards in Section 12.18 of the Jefferson County Code. This criterion may be met through a condition of approval requiring improvements to the transportation facility.*

Response: Traffic impacts are discussed in Exhibit U. In summary, traffic impacts during Facility operation are not anticipated. Operational trips will occur on an as-needed basis, and will include O&M staff traveling to work in their personal vehicles along with specialized personnel who may travel in light-duty trucks. Delivery trucks may also access the site on occasion, but are not anticipated to occur daily. Once completed, the Facility will require far fewer trips and personnel than during construction. Assuming a maximum of four workers during operations, each with two round-trips into and out of the Facility per day, a worst-case increase in daily traffic from the Facility would include an additional 16 trips (8 inbound and 8 outbound) to traffic volumes. (However, this worst-case increase is highly unlikely to ever materialize, as solar facilities are typically unstaffed during operation, except for instances of maintenance and repairs.) Table U-6 presents the anticipated worst-case increase in traffic trips as a result of Facility operation. As demonstrated here (and in Exhibit U), traffic and transportation impacts resulting from the Facility will be minimal and short term. As such, the Facility is not likely to result in the reduction of performance due to the relatively low existing traffic volumes, and the likelihood that operations trips will be distributed throughout the day, constituting a less-concentrated impact. Therefore, the Facility complies with JCZO 602(D).

- E. The parcel where the use will be located is of sufficient size to accommodate buildings, required setbacks, off-street parking, and other features deemed necessary by the Planning Commission; and*

Response: The Facility is located on tax lots 1013310000100 and 1013300000600, which are approximately 317.98 acres and 161.47 acres, respectively. These tax lots are a combined total of approximately 479.45 acres and the area within the Facility site boundary is approximately 284 acres; therefore, the parcels where the Facility is located are of sufficient size to accommodate the use. In addition, Facility components will be located at least 30 feet from property lines, as shown on Figures C-2A and C-2B in Exhibit C; therefore, the Facility complies with the setback standards of JCZO 301.10. As demonstrated above, in response to JCZO 423, no off-street parking is required because no full-time employees will be staffed at the Facility and parking can be provided on site for occasional O&M trips. Therefore, the Facility complies with JCZO 414.3(H).

Other applicable standards of the JCZO are addressed throughout Section K.5.1.1 in Exhibit K.

- F. The parcel where the use will be located is in appropriate geographic relationship to the area that will be served.*

Response: The energy generated at the Facility could potentially be distributed to a large geographic area. The Facility has been sited along PGE's existing 230-kV Pelton Dam to Round Butte transmission line, as shown on Figure K-2. This location was chosen because it allows the Facility to utilize an existing transmission line and eliminates the need to construct a new transmission line, which in turn reduces the Facility's impacts. In addition, the Facility was sited in

Central Oregon due to the availability of solar resources, as demonstrated by the solar resource map included as Attachment K-7. Therefore, locating the Facility at the proposed location constitutes an appropriate geographic relationship.

K.5.1.2 Applicable Substantive Criteria from the Jefferson County Comprehensive Plan

Goal 3: Agricultural Lands

Goal: To preserve and maintain agricultural lands.

Policy 1: Protect agricultural and range land which presently is under production, or has the potential to be productive.

Response: Attachment K-1 is a letter from the landowner of the Binder tract, Mrs. Darlene Binder. In the letter, Mrs. Binder verifies that the land within the Facility site boundary and Binder tract was cultivated for dryland wheat prior to 1985. Property within the Binder tract was under the USDA's Conservation Reserve Program (CRP) between approximately 1985 to 1995 and was seeded with crested wheat grass. Since 1995, properties within the Binder tract have been used for pasture grazing only once and no cultivation or other farm practices have occurred on the tract within approximately 25 years. The Facility site does not have any water rights and there is no realistic potential for water rights in the future. The site, therefore, has no history of irrigation.

Construction, operation, and maintenance of solar panels and associated equipment at the Facility will not change existing land use practices on lands surrounding the Facility site boundary. The Facility will not necessitate relocating any access routes or farm infrastructure on neighboring properties within the land use analysis area, and will not result in changes to practices for planting, irrigating, fertilizing, or harvesting. Because the Facility will not change farm practices on surrounding lands, the Facility will not increase the cost of farm practices on surrounding lands. In the letter provided as Attachment K-1, Mrs. Binder verifies the Facility site has limited productivity because it is not irrigated and has not been used for commercial farm or ranching operations in over 30 years. Mrs. Binder states:

...We have worked with Madras PV1, LLC to identify a Facility site that will not preclude or impair access to farm operations associated with adjacent landowners. Specifically, we do not anticipate any changes to farm operations occurring on surrounding lands as a result of construction or operation of the proposed Facility. Based on the lack of irrigation and water rights, we support the Facility site as a higher and better use of the land and as a means to concentrate renewable energy development off of more productive farmland...

Based on the evaluation provided above, the Facility will not create unnecessary negative impacts on agricultural and range land that presently is under production, or has the potential to be productive. The Facility's compliance with the EFU A-1 zoning designation criteria under JCZO 301 is demonstrated above. Furthermore, the proposed Facility complies with OAR 660-033-0130(5) and the identical provisions of JCZO 301.5(A) and (B), and ORS 215.296(1). Therefore, the Facility is consistent with Goal 3, Policy 1 of the JCCP.

Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces

Goal: To conserve open space and protect natural and scenic resources.

Policy 2: Protect water resources and fish habitat in the County.

Response: The Facility site does not contain fish habitat (Exhibit P). The wetland delineation conducted for the Facility concluded that the site contains the headwaters of three ephemeral drainages that flow down steep slopes into the adjacent canyons; no Facility components will be situated in these areas. In addition, the wetland delineation also concluded that no wetlands exist

within the Facility site (Exhibit J). Therefore, the Facility is consistent with the Goal 5, Policy 2 of the JCCP.

Policy 5: Protect designated sensitive bird nesting sites

- 5.1 *The Program to meet Goal 5 that was approved during the goal 5 process should be followed in order to prevent impacts to designated nesting sites from development activities.*
- 5.2 *The following guidelines should be used to regulate when construction and other development activities may occur without disturbance to nesting birds. The protected period is when no construction activity should occur. The early release date is when construction may start if ODFW verifies that the nest is not currently being used:*

<i>Species</i>	<i>Protected Period</i>	<i>Early Release</i>
<i>Bald Eagle</i>	<i>Jan 15 - Aug. 31</i>	<i>May 1</i>
<i>Golden Eagle</i>	<i>Feb. 1 - Aug. 31</i>	<i>May 1</i>
<i>Prairie Falcon</i>	<i>March 1 - Aug. 30</i>	<i>June 1</i>

Response: The County's BH Overlay Zone specific to County Site No. 26 is shown on Figure K-3 and overlaps with a portion of previously undeveloped tax lot 1013300000600. Therefore, the applicable substantive provisions of JCZO 322 and the Program to Meet Goal 5 apply to the Facility. The Applicant demonstrates consistency with policies 5.1 and 5.2 of the JCCP in response to the applicable substantive criteria under JCZO 322(2) and (4) above.

Policy 6: Federal Wild and Scenic Rivers should be protected.

Response: The Facility will not impact any Federal Wild and Scenic Rivers. As discussed above, in response to JCZO 419.8, the Facility is proposed approximately 4.2 miles from the nearest federal wild and scenic waterway, which is "The Deschutes River from the south county line to Lake Billy Chinook," also known as the Lower Deschutes Wild and Scenic River (Lower Deschutes). The Lower Deschutes is addressed as a protected area, significant or important scenic resource, and important recreational opportunity in Exhibits L, R, and T, respectively. These Exhibits conclude that the Facility will not have a significant adverse impact on the Lower Deschutes Wild and Scenic River. Therefore, the Facility is consistent with Goal 5, Policy 6 of the JCCP.

Policy 7: Cooperate with state management of the State Scenic Waterways Program.

Response: The Facility will not impact any State Scenic Waterways. As discussed above, in response to JCZO 419.7, the Facility is proposed approximately 4.2 miles from the nearest state scenic waterway, which is "The Deschutes River from the south county line to Lake Billy Chinook," also known as the Lower Deschutes Wild and Scenic River (Lower Deschutes). The Lower Deschutes is addressed as a protected area, significant or important scenic resource, and important recreational opportunity in Exhibits L, R, and T, respectively. These Exhibits conclude that the Facility will not have a significant adverse impact on the Lower Deschutes Wild and Scenic River. Therefore, the Facility is consistent with Goal 5, Policy 6 of the JCCP.

Policy 8: Protect groundwater resources in the County.

Response: The Facility's impacts on water resources are discussed in Exhibit U. In summary, the Facility will have no groundwater emissions. During construction, water will be used for dust suppression and it will evaporate or infiltrate into the ground. During operation, water will be used twice a year to wash panels and this water will evaporate or infiltrate into the ground. Panel

washing will be regulated under a 1700-D NPDES permit. Therefore, the Facility is consistent with Goal 5, Policy 8 of the JCCP.

Policy 9: Recognize the importance of established recreational trails within the County.

9.1 *The potential adverse impact that proposed development would have on recreational trails should be considered in the land use approval process.*

Response: The Facility's impacts on recreational opportunities are discussed in Exhibit T. Within the 5-mile analysis area, two established recreational trails exist: the Madras Mountain Views Scenic Bikeway and the Willow Creek Canyon Trail. As concluded in Exhibit T, the Facility will have no significant adverse impacts on these recreational trails. Therefore, the Facility is consistent with Goal 5, Policies 9 and 9.1 of the JCCP.

Policy 12: Protect existing energy sources and allow development of new sources in appropriate locations.

Response: The renewable energy Facility will use solar resources in Jefferson County to generate clean electric power for public use. Therefore, the Facility is consistent with this policy.

Policy 13: Recognize the importance of cultural and archaeological resources.

Response: A cultural and archaeological survey of the Facility site was completed on November 26, 2018. Results of this survey and discussion of potential cultural and archaeological impacts resulting from the Facility are discussed in Exhibit S. In summary, no cultural or archaeological resources were found within the analysis area; thus, the construction, operation, and retirement of the Facility are not likely to result in significant adverse impacts to cultural or archaeological resources. Therefore, the Facility is consistent with Goal 5, Policy 13 of the JCCP.

Policy 14: Protect historic resources in the County.

Response: As discussed above, in response to JCZO 417, no buildings, structures, objects, or sites designated as significant historic resources in the Comprehensive Plan Goal 5 inventory, or that are listed in the National Register of Historic Places, are located within the Facility's land use analysis area. Therefore, the Facility is consistent with this policy.

Policy 16: Protect scenic resources.

Response: Impacts from the Facility on scenic resources were thoroughly analyzed in Exhibit R. In summary, scenic resources were identified within the scenic resource analysis area, but construction and operation of the Facility will not result in significant adverse impacts on scenic resources and values within the scenic resource analysis area. Therefore, the Facility is consistent with Goal 5, Policy 16 of the JCCP.

Goal 6: Air, Water and Land Resources Quality

Goal: To maintain and improve the quality of the air, water, and land resources of the state.

Policy 1: Protect the quality of air, water and land resources in the County.

Response: The renewable energy Facility will use solar resources in Jefferson County to generate clean electric power for public use. During construction, there will be limited air emissions from dust and construction equipment. During operation, there will be no air emissions. There will be limited water emissions during construction, and they will be regulated under a 1200-C permit and an erosion sediment control plan. Therefore, the Facility is consistent with Goal 6, Policy 1 of the JCCP.

Goal 7: Areas Subject to Natural Hazards

Goal: To protect people and property from natural hazards.

Policy 2: Reduce potential hazards to life and damage to property from flooding.

Response: The Facility is outside Jefferson County and FEMA mapped flood hazard areas. Therefore, Goal 7, Policy 2 of the JCCP doesn't apply.

Policy 3: Minimize potential danger to life and property from unstable soils and landforms.

- 3.1 New buildings should comply with building code setbacks from both the rim and toe of slopes.

Response: As described above in response to JCZO 301, the design of the Facility complies with the applicable setback standards of the EFU A-1 zone. In addition, as detailed in response to JCZO 412, the Facility complies with the setbacks of the Scenic and Natural Hazard Rim overlay. Therefore, the Facility is consistent with Goal 6, Policies 3 and 3.1 of the JCCP.

Policy 4: Reduce the hazard to life, property and infrastructure from wildfires.

Response: As described above, in response to JCZO 426, fire prevention measures will be put in place during construction and operation of the Facility. The JCFD has reviewed the access and circulation plan for the Facility, and has not requested changes or expressed concerns. Furthermore, in a letter included as Attachment U-1 to Exhibit U, Mr. Brian Huff (the JCFD Fire Chief/Marshall) states the Facility "will have a positive impact on the area, helping to reduce the hazard from frequent wildfires in the area." Therefore, the Facility is consistent with Goal 6, Policy 4 of the JCCP.

Goal 9: Economic Development

Goal: To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Policy 2: Adequate land in appropriate areas should be provided for industrial development.

- 2.6 The permitting and approval process for new industrial development should be streamlined if possible.

Response: The renewable energy Facility will use solar resources in Jefferson County to generate clean electric power for public use. In addition, as discussed in Exhibit U, the Facility will employ an average of approximately 100 local workers over 9 months, with up to 200 workers employed during peak construction in the summer months. During operation the Facility will be remotely monitored by 2 to 4 part-time employees who are expected to be hired locally.

The Applicant has elected to seek a Council determination of compliance under ORS 469.504(1)(b) to streamline the land use review process. Under this election, Exhibit K demonstrates compliance with the Council's land use standard by showing that the Facility complies with the County's applicable substantive criteria. Therefore, the Facility is consistent with this economic development goal and policy.

Goal 12: Transportation

Goal: To provide and encourage a safe, convenient, and economic transportation system.

Policy 1: Adequate access should be required for all new development and proposed new lots or parcels.

1.1 Road access to new development should be adequate to safely handle the anticipated traffic load.

Response: The Facility will result in negligible impacts on the surrounding transportation system. Traffic volumes will increase on roadways surrounding the Facility during construction. However, taking into account the mitigation measures described in Exhibit U, significant adverse impacts on traffic safety and transportation are not anticipated. Traffic impacts during Facility operation are not anticipated. Operational trips will occur on an as-needed basis, and will include O&M staff traveling to work in their personal vehicles along with specialized personnel who may travel in light-duty trucks. Delivery trucks may also access the site on occasion, but are not anticipated to occur daily. Once completed, the Facility will require far fewer trips and personnel than during construction. Assuming a maximum of four workers during operations, each with two round-trips into and out of the Facility per day, a worst-case increase in daily traffic from the Facility would include an additional 16 trips (8 inbound and 8 outbound) to traffic volumes. Therefore, adverse impacts on the transportation network are not anticipated during Facility operation. The Facility is consistent with this goal and policy.

Goal 13: Energy Conservation

Goal: To conserve energy.

Policy 2: Applications for new energy generation facilities, whether public or private, should consider impacts on neighboring properties.

Response: The renewable energy Facility will use solar resources in Jefferson County to generate clean electric power for public use. In addition, as described in response to JCZO 602(B), the Facility will not have impacts on neighboring properties. Therefore, the Facility is consistent with Goal 13, Policy 2 of the JCCP.

K.5.2 Directly Applicable Statutes, Goals, and Administrative Rules

Response: The statutes, goals, and administrative rules applicable to the Facility are discussed below.

K.5.2.1 Statewide Planning Goals

For the reasons discussed above, the Facility complies with the applicable substantive criteria identified by the Applicant and the SAG, except JCZO 301.4(H), which limits the area that a “commercial utility facility” may occupy in an EFU zone designation.

Because the Facility does not comply with all applicable local land use criteria, this section provides analysis, under ORS 469.504(1)(b)(B), on whether the proposed Facility “otherwise [complies] with the applicable statewide planning goals.” For a use located within an EFU zone, the “applicable statewide planning goal” is Goal 3, which is the State’s Agricultural Lands goal. As expressed in Oregon’s Statewide Planning Goals and Guidelines, Goal 3 is:

To preserve and maintain agricultural lands.

Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state’s agricultural land use policy expressed in ORS 215.243 and 215.700.

Consistent with Goal 3, Jefferson County designated EFU zones to preserve agricultural lands. Under Goal 3, nonfarm uses are permitted within a farm use zone as provided under ORS 215.283. As described in response to the applicable substantive rules and statutes references below, the Applicant demonstrates compliance with ORS 215.283, showing that the proposed energy facility and its related or supporting facilities are uses that fit within the scope of the uses permitted on EFU land described in ORS 215.283(1), (2) or (3).

K.5.2.2 Oregon Revised Statutes**ORS 215.283** *Uses permitted in exclusive farm use zones in nonmarginal lands counties; rules.*

Pursuant to ORS 215.283(2)(g), “commercial utility facilities for the purpose of generating power for public use by sale” may be established in the EFU zone of nonmarginal lands counties (including Jefferson County) “subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296.” JCZO 301.4(H) lists the same use as a conditional use in the Jefferson County EFU A-1 zone designation. The approval criteria for a conditional use in the EFU A-1 zone designation are set forth in JCZO 602, and are similar to ORS 215.296(1) and to OAR 660-033-0130(5), which are addressed below.

Pursuant to ORS 215.283(1)(C), “utility facilities necessary for public service” may be established in the EFU zone of nonmarginal lands counties (including Jefferson County) pursuant to ORS 215.274 if the utility is an associated transmission line. A demonstration of compliance with ORS 215.274 is provided further below in this section.²

The Facility’s three gravel access road segments shown on Figures C-2A and C-2B in Exhibit are allowable on EFU land under ORS 215.283(3). ORS 215.283(3) allows “roads, highways and other transportation facilities and improvements” that are not otherwise allowed under paragraphs (1) and (2) of ORS 215.283 to be established in an EFU zone, subject to:

- (a) *Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or*
- (b) *ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.*

The subparagraphs are conjoined by “or” and so either (a) or (b) applies. In this case, subparagraph (b) applies because the Facility’s gravel access road segments are a use identified by the LCDL. OAR 660-033-0120 (Table 1) lists “transportation improvements on rural lands allowed by OAR 660-012-0065” as a type “R” use (“use may be approved, after required review”) authorized on agricultural lands. OAR 660-012-0065(2)(d) defines “accessory transportation improvements” as “transportation improvements that are incidental to a land use to provide safe and efficient access to the use.” The proposed Facility gravel access road segments are “incidental” to the principal use (the Facility) and would provide safe and efficient access to the Facility.

Under OAR 660-012-0065(3)(a), transportation improvements for a use that is conditionally allowed by ORS 215.283 are consistent with Goal 3, subject to the requirements of OAR 660-012-0065. The principal use (a commercial utility facility for the purpose of generating power for public use by sale) is conditionally allowed by ORS 215.283(2)(g).

Accordingly, the three gravel access road segments serving that use are consistent with Goal 3 subject to the requirements of OAR 660-012-0065. The requirements of OAR 660-012-0065(4) are applicable and the Applicant’s demonstration of compliance is provided further below.

ORS 215.274 *Associated transmission lines necessary for public service; criteria; mitigating impact of facility.*

- (1) *As used in this section, “associated transmission line” has the meaning given that term in ORS 469.300.*

² The Applicant is aware that the ORS 215.274 discussion appears to be out of numerical order with the ORS 215.283 discussion. This is because the discussion of EFU zones under 215.283 provides useful advance context to the discussion of transmission lines under 215.274.

Response: The Facility's overhead cables that connect the substation to the POI meet the definition of "associated transmission lines" in ORS 469.300, because they connect to the Northwest power grid via the PGE transmission line.

(2) *An associated transmission line is necessary for public service if an applicant for approval under ORS 215.213 (1)(c)(B) or 215.283 (1)(c)(B) demonstrates to the governing body of a county or its designee that the associated transmission line meets:*

(a) *At least one of the requirements listed in subsection (3) of this section; or*

(b) *The requirements described in subsection (4) of this section.*

Response: The Applicant demonstrates compliance with at least one of the requirements listed in subsection (3) and the requirements in subsection (4).

(3) *The governing body of a county or its designee shall approve an application under this section if an applicant demonstrates that the entire route of the associated transmission line meets at least one of the following requirements:*

(a) *The associated transmission line is not located on high-value farmland, as defined in ORS 195.300, or on arable land;*

Response: The Facility is located within the NUID, which is an irrigation district as defined by ORS 540.505(1). Therefore, by law, the land within the Facility site boundary is considered high-value farmland under ORS 195.300(10)(c)(B). The Facility does not comply with this requirement.

(b) *The associated transmission line is co-located with an existing transmission line;*

Response: The Facility will interconnect with the existing PGE Pelton Dam to Round Butte 230-kV transmission line, which crosses through the Facility site. The Facility layout was specifically designed to allow the interconnection with the existing 230-kV transmission line to occur in the middle of the Facility site. The Facility substation was positioned directly adjacent to the POI switching station. The POI will be located within or adjacent to the existing right-of-way for the Pelton Dam to Round Butte 230-kV transmission line. The Facility substation will be connected to the POI via pole-mounted, overhead cables. The overhead cables will extend no more than approximately 200 feet (likely less than this distance) between the substation and POI. Approximately half the length of the overhead cables will likely be co-located within the existing right-of-way for the PGE transmission line.

(c) *The associated transmission line parallels an existing transmission line corridor with the minimum separation necessary for safety; or*

Response: Approximately half the length of the overhead cables will likely be co-located within the existing right-of-way for the existing transmission line.

(d) *The associated transmission line is located within an existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground.*

Response: The Facility will interconnect with the existing PGE Pelton Dam to Round Butte 230-kV transmission line, which crosses through the Facility site. The Facility substation was positioned directly adjacent to the POI switching station. The POI will be located within or adjacent to the existing right-of-way for the Pelton Dam to Round Butte 230-kV transmission line. The Facility substation will be connected to the POI via pole-mounted, overhead cables. The overhead cables will extend no more than approximately 200 feet (likely less than this distance) between the substation and POI. Approximately half the length of the overhead cables will likely be within the existing right-of-way for the existing transmission line.

(4)(a) *Except as provided in subsection (3) of this section, the governing body of a county or its designee shall approve an application under this section if, after an evaluation of reasonable alternatives, the applicant demonstrates that the entire route of the associated transmission line meets, subject to paragraphs (b) and (c) of this subsection, two or more of the following factors:*

(A) *Technical and engineering feasibility;*

Response: A main reason the Applicant selected the proposed site for the Facility is the presence of the existing PGE Pelton Dam to Round Butte 230-kV transmission line, which crosses through the Facility site. The proposed site allows the Facility to interconnect with the existing transmission line within the perimeter security fence, without a new generation-tie transmission line extending beyond the Facility site boundary. This allowed the Applicant to develop the proposed Facility layouts (see Figures C-2A and C-2B in Exhibit C for Conceptual Site Plans), which feature interconnection with the existing 230-kV transmission line occurring in the middle of the Facility site, rather than at or beyond the edge of the Facility site boundary. The proposed location for the Facility substation, POI, and overhead cables allows for a crossing of high-value farmland of no more than approximately 200 feet (likely less than this distance) between the substation and POI. No feasible alternative route exists that can connect the Facility to the existing PGE transmission line without crossing high-value farmland.

The proposed location of the Facility substation, POI, and overhead cables represent the straightest route, shortest length, and least impacts to high-value farmland. Therefore, the Facility meets the technical and engineering feasibility criterion.

(B) *The associated transmission line is locationally dependent because the associated transmission line must cross high-value farmland, as defined in ORS 195.300, or arable land to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;*

Response: There are no urban or nonresource lands available within the Facility site boundary to locate the substation, POI, and overhead cables where these components could serve their purpose of conveying energy from the Facility to the high-voltage transmission system. As shown on Figure K-2, all land within and adjacent to the site boundary is zoned EFU by Jefferson County. As shown on Attachment K-4, all land within and adjacent to the site boundary is within the NUID, which is an irrigation district as defined by ORS 540.505(1). While analysis in this Exhibit demonstrates that the area within the Facility site boundary has no water rights, has never been irrigated, is not cultivated, and is not predominantly composed of Class I through IV soils, the approximately 284 acres within the Facility site boundary is located within both an EFU zone and the NUID. Therefore, it is considered high-value farmland by default under ORS 195.300(10)(c)(B).

The Facility substation, POI, and overhead cables connecting the two components were sited to allow for a direct interconnection with the existing PGE 230-kV transmission line, without the need to extend a generation-tie transmission line beyond the Facility site boundary. Thus, the associated transmission line is locationally dependent because it must cross high-value farmland, as defined in ORS 195.300, to achieve a reasonably direct route. Therefore, the Facility meets the locationally dependent criterion.

(C) *Lack of an available existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground;*

Response: The Applicant has positioned the substation, POI, and overhead cables as close as possible to the existing PGE transmission line. As described above, the POI and a portion of the overhead cables will likely be co-located with the existing PGE transmission line right-of-way. Therefore, the Facility is utilizing existing linear rights-of-way to the extent they are available within the Facility site boundary.

(D) *Public health and safety; or*

Response: The Applicant is minimizing health and safety risks from exposure to magnetic fields or shock by limiting the length of the associated transmission line and making it inaccessible to the public. The entire Facility, including the substation, POI, and overhead cables connecting the two Facility components, will be inaccessible to the public per National Electric Code. The entire Facility will be within the outer perimeter security fence. In addition, the Facility substation and POI will both be individually fenced with another security fence. The public will be kept out of and away from the substation, POI, and overhead cables connecting the two components by not just one security fence, but by two separate security fences. Therefore, the Facility meets the public health and safety criterion.

(E) *Other requirements of state or federal agencies.*

Response: As documented throughout the ASC, the Facility will comply with other requirements of state and federal agencies. Therefore, the Facility meets the other requirements of state or federal agencies criteria.

(4)(b) *The applicant shall present findings to the governing body of the county or its designee on how the applicant will mitigate and minimize the impacts, if any, of the associated transmission line on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmland.*

Response: The Applicant has designed the substation, POI, and overhead cables connecting the two components to minimize, to the greatest degree practicable, impacts to EFU land and high-value farmland. The Facility will interconnect with the existing PGE 230-kV transmission line on site and without having to build a new generation-tie transmission line beyond the Facility site boundary. The overhead cables will extend no more than approximately 200 feet (likely less than this distance) between the substation and POI. Approximately half the length of the overhead cables will likely be co-located within the existing right-of-way for the PGE transmission line.

The underlying landowner for the Facility will be the only landowner impacted by the substation, POI, and overhead cables. This landowner has written a letter of support (see Attachment K-1) for the Facility and explains that the land within the site boundary is not currently irrigated, has no history of irrigation, and is not subject to plans for irrigation of the area. The landowner also confirms that no water right permits, certificates, points of diversion, or places of use are attached to this land. In addition, the land has not been cultivated since 1985 and has been used for pasture only once in the last 25 years.

Construction, operation, and maintenance of solar panels and associated equipment at the Facility will not change existing land use practices on lands surrounding the Facility site boundary. The Facility will not necessitate relocating any access routes or farm infrastructure on neighboring properties within the land use analysis area, and will not result in changes to practices for planting, irrigating, fertilizing, or harvesting. Because the Facility will not change farm practices on surrounding lands, the Facility will not increase the cost of farm practices on surrounding lands. In the letter provided as Attachment K-1, the underlying landowner verifies the Facility site has limited productivity because it is not irrigated and has not been used for commercial farm or ranching operations in over 30 years. The landowner states:

...We have worked with Madras PV1, LLC to identify a Facility site that will not preclude or impair access to farm operations associated with adjacent landowners. Specifically, we do not anticipate any changes to farm operations occurring on surrounding lands as a result of construction or operation of the proposed Facility. Based on the lack of irrigation and water rights, we support the Facility site as a higher and better use of the land and as a means to concentrate renewable energy development off of more productive farmland...

- (4)(c) *The governing body of a county or its designee may consider costs associated with any of the factors listed in paragraph (a) of this subsection, but consideration of cost may not be the only consideration in determining whether the associated transmission line is necessary for public service. [2013 c.242 §2]*

Response: Land costs were not a significant consideration in determining the location of the substation, POI, and overhead cables. No alternative location exists, regardless of cost, to locate these Facility components exclusively on non-EFU land. The location was dependent on providing a connection for the energy generated by the solar energy facility to the electrical energy grid interconnection point.

K.5.2.3 Oregon Administrative Rules

In OAR 660-033-0120, development and use of photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale on agricultural lands is authorized, subject to the standards of OAR 660-033-0130(5) and OAR 660-033-0130(38). The Applicant's compliance with the applicable standards is demonstrated below.

The Facility's gravel access road segments are "incidental" to the principal use (the Facility) and will provide safe and efficient access to the Facility. Accordingly, the gravel access road segments serving that use are consistent with Goal 3 subject to the requirements of OAR 660-012-0065. The requirements of OAR 660-012-0065(4) are applicable and the Applicant's compliance with these requirements is demonstrated below.

OAR 660-033-130(5) *Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:*

- (a) *Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and*
- (b) *Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.*

Response: The Facility is not proposed adjacent to or within 0.5 mile of any lands in forest use. The nearest lands in Jefferson County zoned for Forest Management (FM) occur approximately 20 miles to the southwest of the Facility site boundary in the Deschutes National Forest. The Facility will not force a significant change in, or significantly increase the cost of, accepted forest practices within the County's FM zone designation.

No lands cultivated for farm use occur within the Facility site boundary or surrounding 0.5-mile land use analysis area (Figure K-8). The closest cultivated agricultural land occurs approximately 0.6 mile north of the Facility site boundary on the opposite side of Willow Creek Canyon. A description of farm practices on surrounding lands within the 0.5-mile land use analysis area is provided below and shown on Figure K-8:

- **North.** Property north of the Facility site boundary owned by Grant, Gladys P (Grant property) has historically only been used for periodic livestock grazing. Livestock graze and access water from Willow Creek within the canyon. Use of the property is limited by the canyon walls associated with Willow Creek. The Grant property is not used for crop cultivation or other active farm practices. The property within the land use analysis area is not irrigated and has no history of cultivation or irrigation. BLM property north of the Facility site boundary is not fenced and is used by Grant for periodic livestock grazing within the canyon. The Facility will not preclude access to BLM land.
- **East.** Grant and BLM property is also located directly east of the Facility site boundary. Similar to the description above, the Grant property has historically only been used for livestock. Livestock graze and access water from Willow Creek within the canyon. Use of the property is limited by the canyon walls associated with Willow Creek. The Grant property is not used for crop cultivation or other active farm practices. The property within the land use

analysis area is not irrigated and has no history of cultivation or irrigation. BLM property east of the Facility site boundary is not fenced and is used by Grant for periodic livestock grazing within the canyon. The Facility will not preclude access to BLM land. As described in Section K.2.1, property within the Binder tract east of the Facility site boundary has not been cultivated since 1985 and has been used for pasture only once in the last 25 years (Attachment K-1). Thus, no farm practices occur on the Binder tract.

- **South.** No farm practices occur on property owned by Bombay Trading Company LLC (Bombay property) located south of the Facility site boundary. The Bombay property is not irrigated, is not actively cultivated, farmed, or grazed. Thus, no farm practices occur on the Bombay property.
- **West.** No farm practices occur on property owned by McCall Ernest EH Trust (McCall property) located west of the Facility site boundary. The property is not irrigated, is not actively cultivated, farmed, or grazed. Grazing is not known to occur on the BLM property west of the Facility site boundary. Thus, no farm practices occur on the McCall and BLM properties and the Facility will not preclude access to BLM land.

Attachment K-1 is a letter from the landowner of the Binder tract, Mrs. Darlene Binder. In the letter, Mrs. Binder verifies that the land within the Facility site boundary and Binder tract was cultivated for dryland wheat prior to 1985. Property within the Binder tract was under the USDA's Conservation Reserve Program (CRP) between approximately 1985 to 1995 and was seeded with crested wheat grass. Since 1995, properties within the Binder tract have been used for pasture grazing only once and no cultivation or other farm practices have occurred on the tract within approximately 25 years. The Facility site does not have any water rights and there is no realistic potential for water rights in the future. The site, therefore, has no history of irrigation.

Construction, operation, and maintenance of solar panels and associated equipment at the Facility will not change existing land use practices on lands surrounding the Facility site boundary. The Facility will not necessitate relocating any access routes or farm infrastructure on neighboring properties within the land use analysis area, and will not result in changes to practices for planting, irrigating, fertilizing, or harvesting. Because the Facility will not change farm practices on surrounding lands, the Facility will not increase the cost of farm practices on surrounding lands. In the letter provided as Attachment K-1, Mrs. Binder verifies the Facility site has limited productivity because it is not irrigated and has not been used for commercial farm or ranching operations in over 30 years. Mrs. Binder states:

...We have worked with Madras PV1, LLC to identify a Facility site that will not preclude or impair access to farm operations associated with adjacent landowners. Specifically, we do not anticipate any changes to farm operations occurring on surrounding lands as a result of construction or operation of the proposed Facility. Based on the lack of irrigation and water rights, we support the Facility site as a higher and better use of the land and as a means to concentrate renewable energy development off of more productive farmland...

Thus, the proposed Facility complies with OAR 660-033-0130(5) and the identical provisions of JCZO 301.5(A) and (B), and ORS 215.296(1).

OAR 660-033-0130(38) *A proposal to site a photovoltaic solar power generation facility shall be subject to the following definitions and provisions:*

OAR 660-033-0130(38) establishes standards specific to siting of a "photovoltaic solar power generation facility" as defined in OAR 660-033-0130(38)(f). The applicable standards under OAR 660-033-0130(38) depend on whether the tract containing the photovoltaic solar power generation facility is "high-value farmland" as described in ORS 195.300(10), "arable land" as defined in OAR 660-033-0130(38)(a), or "nonarable land" as defined in OAR 660-033-0130(38)(d). The relevant definitions for "arable" and "nonarable" lands in OAR 660-033-0130(38) provide:

- (a) *“Arable land” means land in a tract that is predominantly cultivated or, if not currently cultivated, predominantly comprised of arable soils.*
- (b) *“Arable soils” means soils that are suitable for cultivation as determined by the governing body or its designate based on substantial evidence in the record of a local land use application, but “arable soils” does not include high-value farmland soils described at ORS 195.300(10) unless otherwise stated.*
- (c) *“Dual-use development” means developing the same area of land for both a photovoltaic solar power generation facility and for farm use.*
- (d) *“Nonarable land” means land in a tract that is predominantly not cultivated and predominantly comprised of nonarable soils.*
- (e) *“Nonarable soils” means soils that are not suitable for cultivation. Soils with an NRCS agricultural capability class V–VIII and no history of irrigation shall be considered nonarable in all cases. The governing body or its designate may determine other soils, including soils with a past history of irrigation, to be nonarable based on substantial evidence in the record of a local land use application.*
- (f) *“Photovoltaic solar power generation facility” includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores, transfers, or both, that electricity. This includes photovoltaic modules, mounting and solar tracking equipment, foundations, inverters, wiring, storage devices and other components. Photovoltaic solar power generation facilities also include electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, all necessary grid integration equipment, new or expanded private roads constructed to serve the photovoltaic solar power generation facility, office, operation and maintenance buildings, staging areas and all other necessary appurtenances. For purposes of applying the acreage standards of this section, a photovoltaic solar power generation facility includes all existing and proposed facilities on a single tract, as well as any existing and proposed facilities determined to be under common ownership on lands with fewer than 1320 feet of separation from the tract on which the new facility is proposed to be sited. Projects connected to the same parent company or individuals shall be considered to be in common ownership, regardless of the operating business structure. A photovoltaic solar power generation facility does not include a net metering project established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.*

As discussed above in Section K.2.1, the Facility site is not cultivated and has no water rights for irrigation. Table K-1 shows that the majority (approximately 55 percent) of the area within the Facility site boundary is nonirrigated Class VI soils and the remaining area (approximately 45 percent) is nonirrigated Class IV soils (Figure K-7). However, the Facility site boundary is located within the NUID, which is an irrigation district as defined by ORS 540.505(1), and is located within an exclusive farm use zone. The NUID is shown on the map of Deschutes Basin Irrigation Districts (Central Oregon Irrigation District, 2019) provided in Attachment K-4 and generally extends from the Deschutes River east of the City of Madras and approximately 20 miles north and south of the proposed Facility site. Therefore, by law, the land within the Facility site boundary is considered high-value farmland under ORS 195.300(10)(c)(B), even though the site conditions (no irrigation or history of cultivation and nonirrigated soil capability Class IV and Class VI) meet the technical definitions for arable and nonarable soils. Thus, pursuant to ORS 195.300(10), the Facility site is “high-value farmland” subject to the standards of OAR 660-033-0130(38)(g) and the Applicant demonstrates compliance below. In addition, the Applicant shows compliance with OAR 660-033-0130(38)(i) since the Facility will use, occupy, or cover more than 20 acres of arable land in accordance with soil information provided in the CES report provided as Attachment I-3 and listed in Table K-1.

- (g) *For high-value farmland described at ORS 195.300(10), a photovoltaic solar power generation facility shall not use, occupy, or cover more than 12 acres unless:*

(A) *The provisions of paragraph (h)(H) are satisfied; or*

(B) *A county adopts, and an applicant satisfies, land use provisions authorizing projects subject to a dual-use development plan. Land use provisions adopted by a county pursuant to this paragraph may not allow a project in excess of 20 acres. Land use provisions adopted by the county must require sufficient assurances that the farm use element of the dual-use development plan is established and maintained so long as the photovoltaic solar power generation facility is operational or components of the facility remain on site. The provisions of this subsection are repealed on January 1, 2022.*

Response: The Facility is not proposed for dual-use development and the provisions of paragraph (h)(H) are not applicable because the Facility is not located in the Columbia Valley viticulture area identified in ORS 195.300(10)(f)(C). As described above, the Facility site boundary is located within the NUID, which is an irrigation district defined by ORS 540.505(1), and is located within an exclusive farm use zone. The NUID is shown on the map of Deschutes Basin Irrigation Districts (Central Oregon Irrigation District, 2019) provided in Attachment K-4. Therefore, by law, the land within the Facility site boundary is considered high-value farmland under ORS 195.300(10)(c)(B). The Applicant demonstrates below in Section K.5.4 that an exception to Statewide Planning Goal 3 is justified.

(h) *The following criteria must be satisfied in order to approve a photovoltaic solar power generation facility on high-value farmland described at ORS 195.300(10).*

Response: Per OAR 660-033-0130(38)(g), no high-value farmland as identified by soil capability class is located within the Facility site boundary. However, the entire Facility site boundary is located within the NUID, which is an irrigation district defined by ORS 540.505(1), and is located within an exclusive farm use zone. The NUID is shown on the map of Deschutes Basin Irrigation Districts (Central Oregon Irrigation District, 2019) provided in Attachment K-4. Therefore, by law, the land within the Facility site boundary is considered high-value farmland under ORS 195.300(10)(c)(B). Thus, the Facility site boundary covers approximately 284 acres of high-value farmland. Therefore, the Facility requires an exception to Statewide Planning Goal 3. For projects under Council jurisdiction, the standards for approving an exception are set forth in ORS 469.504(2)(c) and the Council's rule (which mirrors the statute), OAR 345-022-0030(4). The justification for an exception to Statewide Planning Goal 3 is set forth in Section K.5.4. The Applicant's demonstration of compliance with the remainder of OAR 660-033-0130(38)(h) is included directly below.

(A) *The proposed photovoltaic solar power generation facility will not create unnecessary negative impacts on agricultural operations conducted on any portion of the subject property not occupied by project components. Negative impacts could include, but are not limited to, the unnecessary construction of roads dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing photovoltaic solar power generation facility project components on lands in a manner that could disrupt common and accepted farming practices;*

Response: No lands cultivated for farm use occur within the Facility site boundary or surrounding 0.5-mile land use analysis area (Figure K-8). The closest cultivated agricultural land occurs approximately 0.6 mile north of the Facility site boundary on the opposite side of Willow Creek Canyon. A description of farm practices on surrounding lands within the 0.5-mile land use analysis area is provided in Section K.5.2 in response to OAR 660-033-0130(5) and shown on Figure K-8.

Attachment K-1 is a letter from the landowner of the Binder tract, Mrs. Darlene Binder. In the letter, Mrs. Binder verifies that the land within the Facility site boundary and Binder tract was cultivated for dryland wheat prior to 1985. Property within the Binder tract was under the USDA's Conservation Reserve Program (CRP) between approximately 1985 to 1995 and was seeded with crested wheat grass. Since 1995, properties within the Binder tract have been used for

pasture grazing only once and no cultivation or other farm practices have occurred on the tract within approximately 25 years. The Facility site does not have any water rights and there is no realistic potential for water rights in the future. The site, therefore, has no history of irrigation.

Construction, operation, and maintenance of solar panels and associated equipment at the Facility will not change existing land use practices on lands surrounding the Facility site boundary. The Facility will not necessitate relocating any access routes or farm infrastructure on neighboring properties within the land use analysis area, and will not result in changes to practices for planting, irrigating, fertilizing, or harvesting. Because the Facility will not change farm practices on surrounding lands, the Facility will not increase the cost of farm practices on surrounding lands. In the letter provided as Attachment K-1, Mrs. Binder verifies the Facility site has limited productivity because it is not irrigated and has not been used for commercial farm or ranching operations in over 30 years. Mrs. Binder states:

...We have worked with Madras PV1, LLC to identify a Facility site that will not preclude or impair access to farm operations associated with adjacent landowners. Specifically, we do not anticipate any changes to farm operations occurring on surrounding lands as a result of construction or operation of the proposed Facility. Based on the lack of irrigation and water rights, we support the Facility site as a higher and better use of the land and as a means to concentrate renewable energy development off of more productive farmland...

Thus, the Facility will not create unnecessary negative impacts on agricultural operations conducted on any portion of the subject property not occupied by Facility components.

- (B) *The presence of a photovoltaic solar power generation facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied. The approved plan shall be attached to the decision as a condition of approval;*

Response: The potential for soil erosion is addressed in Exhibit I. Construction of the Facility will be performed under an NPDES 1200-C permit, including a DEQ-approved Erosion and Sediment Control Plan. After completing construction in an area, the Applicant or its contractor will monitor the area until soils are stabilized in order to evaluate whether construction-related impacts to soils are being adequately addressed by the mitigation procedures described in the erosion and sediment control plan and the Facility's Revegetation Plan and Noxious Weed Control Plan (see Attachments P-6 and P-7, respectively, to Exhibit P). As necessary, the Applicant or its contractor will implement follow-up restoration measures such as scarification and reseedling to address those remaining impacts.

- (C) *Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval;*

Response: Construction and maintenance activities will be limited to areas inside the Facility site boundary. The underlying landowner of the entire Facility site and surrounding lands supports the Facility and, in Attachment K-1, states that the Facility will facilitate a higher and better use of the land and concentrate solar development off more productive farmland. After construction, scarification of compacted soils will occur as necessary for revegetation of those areas outside the permanent footprint and temporarily impacted by construction.

- (D) *Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weed species. This provision may be satisfied by the submittal and county approval of a weed control plan*

prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval;

Response: The Applicant understands that the Council will impose a condition to the site certificate requiring that the certificate holder implement a Revegetation Plan and Noxious Weed Control Plan (see Attachments P-6 and P-7, respectively, to Exhibit P) and comply with the applicable provisions of the weed control ordinances in Jefferson County, as determined by the appropriate weed control authority in Jefferson County. The certificate holder must consult with the appropriate weed control authority in Jefferson County and obtain approval of the Revegetation and Noxious Weed Control Plan. The final Revegetation and Noxious Weed Control Plan must be submitted to the Oregon Department of Energy for approval prior to the start of construction. This condition will adequately ensure that construction and maintenance activities at the Facility will not result in the unabated introduction or spread of noxious weeds and other undesirable weed species.

- (E) *Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);*

Response: Pursuant to OAR 660-033-0020(8)(a), the Binder tract underlying the Facility site boundary is not predominantly composed of soils that are classified as prime or unique. Figure K-5 shows that approximately 31 percent of the Binder tract is composed of soils that are prime if irrigated and Section K.2.1 verifies that the Binder tract has no history of irrigation and no realistic potential for water rights in the future. Section K.2.1, Table K-1, and Figures K-6 and K-7 also confirm that the Binder tract and Facility site boundary do not contain soils classified as Class I or II if irrigated or not irrigated. Therefore, the Facility is not located on high-value farmland soils listed in OAR 660-033-0020(8)(a) complies with this criterion.

- (F) *The project is not located on high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:*
- (i) *Non-high-value farmland soils are not available on the subject tract;*
 - (ii) *Siting the project on non-high-value farmland soils present on the subject tract would significantly reduce the project's ability to operate successfully; or*
 - (iii) *The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised of non-high-value farmland soils; and*

Response: The Facility site is located outside the Willamette Valley and thus, subject to review under OAR 660-033-0020(8)(b). However, no portion of the Facility is located on high-value farmland pursuant to OAR 660-033-0020(8)(b). No lands cultivated for farm use occur within the Facility site boundary or surrounding 0.5-mile land use analysis area. The closest cultivated agricultural land occurs approximately 0.6 mile north of the Facility site boundary on the opposite side of Willow Creek Canyon. A description of farm practices on surrounding lands within the 0.5-mile land use analysis area is provided in Section K.5.2 in response to OAR 660-033-0130(5) and shown on Figure K-8.

Attachment K-1 is a letter from the landowner of the Binder tract, Mrs. Darlene Binder. In the letter, Mrs. Binder verifies that the land within the Facility site boundary and Binder tract was cultivated for dryland wheat prior to 1985. Property within the Binder tract was under the USDA's Conservation Reserve Program (CRP) between approximately 1985 to 1995 and was seeded with crested wheat grass. Since 1995, properties within the Binder tract have been used for pasture grazing only once and no cultivation or other farm practices have occurred on the tract

within approximately 25 years. The Facility site does not have any water rights and there is no realistic potential for water rights in the future. The site, therefore, has no history of irrigation.

Furthermore, the tracts have no history of growing specified perennials defined in OAR 660-033-0020(8)(b) as “perennials grown for market or research purposes including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees, or vineyards, but not including seed crops, hay, pasture or alfalfa.”

OAR 660-033-0020(8)(c)-(e) are only applicable to areas within the Willamette Valley, west of the summit of the Coast Range, or west of US Highway 101, respectively. Therefore, OAR 660-033-0020(8)(c)-(e) do not apply to the Facility.

Technically, the Facility is located on predominantly nonarable soils (approximately 55 percent) and arable soils (approximately 45 percent), and no portion of the Binder and County tracts underlying the Facility site boundary contain high-value farmland soils (see Table K-1 and Figures K-5 through K-7). However, because the Facility site is located within the NUID (see NUID map in Attachment K-4) and an exclusive farm use zone, by law, the land within the Facility site boundary is automatically considered high-value farmland under ORS 195.300(10)(c)(B). Since the Facility site and surrounding Binder and Jefferson County tracts are both within the greater NUID, which extends generally from the Deschutes River east of the City of Madras and approximately 20 miles north and south of the proposed Facility, siting the Facility on non-high-value farmland on the subject tract is not possible. In other words, non-high-value farmland soils are not available on the subject tract.

No existing commercial farm or ranching operations occur on the subject Binder and County tracts underlying the proposed Facility site boundary. The tracts have not been used for commercial farm or ranching operations in approximately 25 years (Attachment K-1). Therefore, regardless of location on the subject tracts, the Facility will have no impact on existing commercial farm or ranching operations. Construction, operation, and maintenance of solar panels and associated equipment at the Facility will not alter or reduce areas under cultivation on surrounding properties, will not necessitate relocating any access routes or farm infrastructure, and will not result in changes to the practices for planting, irrigating, fertilizing, or harvesting on adjacent land within the land use analysis area. In the letter provided as Attachment K-1, Mrs. Binder verifies the Facility site has limited productivity because it is not irrigated and has not been used for commercial farm or ranching operations in over 30 years. Mrs. Binder states:

...We have worked with Madras PV1, LLC to identify a Facility site that will not preclude or impair access to farm operations associated with adjacent landowners. Specifically, we do not anticipate any changes to farm operations occurring on surrounding lands as a result of construction or operation of the proposed Facility. Based on the lack of irrigation and water rights, we support the Facility site as a higher and better use of the land and as a means to concentrate renewable energy development off of more productive farmland...

The NUID and EFU zone encompass both the Facility site boundary and the underlying Binder and Jefferson County tracts in their entirety. Thus, siting the Facility on lands owned by Binder and the County, but outside the NUID, is not possible. Because non-high-value farmland soils are not available on the subject tract, this criterion is met.

- (G) *A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:*
 - (i) *If fewer than 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area no further action is necessary.*
 - (ii) *When at least 48 acres of photovoltaic solar power generation have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities within the study area, the local government or its designate must find that the*

photovoltaic solar energy generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar energy generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

Response: No other solar photovoltaic power generation facilities have been constructed or are approved for construction within the required 1-mile study area from the center of the proposed Facility. Therefore, no further action is necessary.

- (H) *A photovoltaic solar power generation facility may be sited on more than 12 acres of high-value farmland described in ORS 195.300(10)(f)(C) without taking an exception pursuant to ORS 197.732 and OAR chapter 660, division 4, provided the land:*
- (i) *Is not located within the boundaries of an irrigation district;*
 - (ii) *Is not at the time of the facility's establishment, and was not at any time during the 20 years immediately preceding the facility's establishment, the place of use of a water right permit, certificate, decree, transfer order or ground water registration authorizing the use of water for the purpose of irrigation;*
 - (iii) *Is located within the service area of an electric utility described in ORS 469A.052(2);*
 - (iv) *Does not exceed the acreage the electric utility reasonably anticipates to be necessary to achieve the applicable renewable portfolio standard described in ORS 469A.052(3); and*
 - (v) *Does not qualify as high-value farmland under any other provision of law; or*

Response: The proposed Facility is not located in the Columbia Valley viticulture area described under ORS 195.300(10)(f)(C). Therefore, the criteria under OAR 660-033-0130(38)(h)(H) do not apply to the Facility.

- (i) *For arable lands, a photovoltaic solar power generation facility shall not use, occupy, or cover more than 20 acres. The governing body or its designate must find that the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on arable land:*

Response: As discussed above, the Facility will permanently occupy more than 12 acres of high-value farmland or 20 acres of arable land. Thus, the Facility requires an exception to Statewide Planning Goal 3. For projects under Council jurisdiction, the standards for approving an exception are set forth in ORS 469.504(2)(c) and the Council's rule (which mirrors the statute), OAR 345-022-0030(4). The justification for an exception to Statewide Planning Goal 3 is set forth in Section K.5.4. The Applicant's demonstration of compliance with the remainder of OAR 660-033-0130(38)(i) is included directly below.

- (A) *Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a)*

Response: Pursuant to OAR 660-033-0020(8)(a), no portion of the Facility is located on high-value farmland. As described in Section K.2.1 and Table K-1 and shown on Figures K-5 through K-7, the Binder and County tracts underlying the Facility site boundary do not contain soils classified as prime, unique, or Class I or II if irrigated or not irrigated. Therefore, the Facility complies with this criterion.

- (B) *The project is not located on high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:*
- (i) *Nonarable soils are not available on the subject tract;*
 - (ii) *Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or*
 - (iii) *The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised of nonarable soils;*

Response: The Facility site is located outside the Willamette Valley and thus, subject to review under OAR 660-033-0020(8)(b). The Applicant's response to OAR 660-033-0130(38)(h)(F) demonstrates that the Binder and County tracts underlying the Facility site have no history of growing specified perennials defined in OAR 660-033-0020(8)(b).

OAR 660-033-0020(8)(c)-(e) are only applicable to areas within the Willamette Valley, west of the summit of the Coast Range, or west of US Highway 101, respectively. Therefore, OAR 660-033-0020(8)(c)-(e) do not apply to the Facility.

Figures K-5 and K-6 show that the majority, approximately 55 percent or 158 acres, of the subject Binder tract underlying the Facility site is comprised of soils in capability class VI, which are nonarable soils. These nonarable soils are interspersed throughout the remaining approximately 45 percent or 126 acres of soils in capability class IV, which are arable soils. Therefore, nonarable soils are not available on the subject Binder tract in a quantity or configuration that would allow for construction and operation of the Facility in a manner that would avoid arable soils. Siting the Facility further east on the subject Binder tract is not an option as these areas occur on rocky cliffs, steep slopes, and smaller canyons along a tributary to Willow Creek and within Willow Creek Canyon.

As previously described above, no existing commercial farm or ranching operations occur on the subject Binder and County tracts underlying the proposed Facility site boundary. The tracts have not been used for commercial farm or ranching operations in approximately 25 years (Attachment K-1). Therefore, regardless of location on the subject tracts, the Facility will have no impact on existing commercial farm or ranching operations. Construction, operation, and maintenance of solar panels and associated equipment at the Facility will not alter or reduce areas under cultivation on surrounding properties, will not necessitate relocating any access routes or farm infrastructure, and will not result in changes to the practices for planting, irrigating, fertilizing, or harvesting on adjacent lands within the land use analysis area. This position is supported by the letter from Mrs. Binder provided as Attachment K-1.

- (C) *No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);*

Response: The Facility is not located on a site that has been irrigated, or has water rights, and has not been cultivated in over 30 years (Attachment K-1). The soils within the Facility site are predominantly nonirrigated soil capability class VI (see Table K-1), which falls under the definition of nonarable soils. However, the entire Facility site boundary is located within the NUID, which is an irrigation district defined by ORS 540.505(1), and is located within an exclusive farm use zone. The NUID is shown on the map of Deschutes Basin Irrigation Districts (Central Oregon Irrigation District, 2019) provided in Attachment K-4. Therefore, by law, the land within the Facility site

boundary is considered high-value farmland under ORS 195.300(10)(c)(B), even though the conditions (no irrigation or history of cultivation and nonirrigated soil capability class IV and VI) meet the technical definition for arable and nonarable soils. Thus, pursuant to ORS 195.300(10), the Facility site is “high-value farmland” subject to the standards of OAR 660-033-0130(38)(g).

The Facility will permanently occupy the area shown in Table C-1 of Exhibit C. These acres are located in the NUID and are classified as high-value farmland under ORS 195.300(10)(c)(B). Therefore, the Facility requires an exception to Statewide Planning Goal 3. The Applicant’s request for a Goal 3 exception is included in Section K.5.4.

- (D) *A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:*
- (i) *If fewer than 80 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area no further action is necessary.*
 - (ii) *When at least 80 acres of photovoltaic solar power generation have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities, within the study area the local government or its designate must find that the photovoltaic solar energy generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar energy generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area; and*

Response: No other solar photovoltaic power generation facilities have been constructed or are approved for construction within the required 1-mile study area from the center of the proposed Facility. Therefore, no further action is necessary.

- (E) *The requirements of OAR 660-033-0130(38)(f)(A), (B), (C) and (D) are satisfied.*

Response: The requirements of OAR 660-033-0130(38)(f)(A), (B), (C) and (D) are discussed above.

(j) For nonarable lands, a photovoltaic solar power generation facility shall not use, occupy, or cover more than 320 acres. The governing body or its designate must find that the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on nonarable land:

Response: As discussed above, Figures K-5 and K-6 show that the majority, approximately 55 percent or 158 acres, of the subject Binder tract that underlies the Facility site is comprised of soils in capability class VI, which are nonarable soils. The Facility will not use, occupy, or cover more than 320 acres of nonarable lands. Thus, the Facility does not require an exception to Statewide Planning Goal 3 based on impacts to nonarable lands. The Applicant’s demonstration of compliance with the remainder of OAR 660-033-0130(38)(j) is included directly below.

- (A) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);*

Response: Pursuant to OAR 660-033-0020(8)(a), no portion of the Facility is located on high-value farmland soils. As described in Section K.2.1 and Table K-1 and shown on Figures K-5 through K-7, the Binder and County tracts underlying the Facility site boundary do not contain

soils classified as prime, unique, or Class I or II if irrigated or not irrigated. Therefore, the Facility complies with this criterion.

(B) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:

(i) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or

(ii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract as compared to other possible sites also located on the subject tract, including sites that are comprised of nonarable soils;

Response: The Applicant's responses to OAR 660-033-0130(38)(h)(F) and OAR 660-033-0130(38)(i)(B) demonstrate that the Facility is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e).

Figures K-5 and K-6 show that the majority, approximately 55 percent or 158 acres, of the subject Binder tract underlying the Facility site is comprised of soils in capability class VI, which are nonarable soils. These nonarable soils are interspersed throughout the remaining approximately 45 percent of soils in capability class IV, which are arable soils. Therefore, nonarable soils are not available on the subject Binder tract in a quantity or configuration that would allow for construction and operation of the Facility in a manner that would avoid arable soils. Siting the Facility further east on the subject Binder tract is not an option as these areas occur on rocky cliffs, steep slopes, and smaller canyons along a tributary to Willow Creek and within Willow Creek Canyon.

As previously described above, no existing commercial farm or ranching operations occur on the subject Binder and County tracts underlying the proposed Facility site boundary. The tracts have not been used for commercial farm or ranching operations in approximately 25 years (Attachment K-1). Therefore, regardless of location on the subject tracts, the Facility will have no impact on existing commercial farm or ranching operations. Construction, operation, and maintenance of solar panels and associated equipment at the Facility will not alter or reduce areas under cultivation on surrounding properties, will not necessitate relocating any access routes or farm infrastructure, and will not result in changes to the practices for planting, irrigating, fertilizing, or harvesting on adjacent lands within the land use analysis area. This position is supported by the letter from Mrs. Binder provided as Attachment K-1.

(C) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);

(D) No more than 20 acres of the project will be sited on arable soils;

Response: As discussed above, the Facility will permanently occupy more than 12 acres of high-value farmland or 20 acres of arable land. Thus, the Facility requires an exception to Statewide Planning Goal 3. For projects under Council jurisdiction, the standards for approving an exception are set forth in ORS 469.504(2)(c) and the Council's rule (which mirrors the statute), OAR 345-022-0030(4). The justification for an exception to Statewide Planning Goal 3 is set forth in Section K.5.4.

(E) The requirements of OAR 660-033-0130(38)(h)(D) are satisfied;

Response: The requirements of OAR 660-033-0130(38)(h)(D) are discussed above.

(F) If a photovoltaic solar power generation facility is proposed to be developed on lands that contain a Goal 5 resource protected under the county's comprehensive plan, and the plan does not address conflicts between energy facility development and the resource, the applicant and the county, together with any state or federal agency

responsible for protecting the resource or habitat supporting the resource, will cooperatively develop a specific resource management plan to mitigate potential development conflicts. If there is no program present to protect the listed Goal 5 resource(s) present in the local comprehensive plan or implementing ordinances and the applicant and the appropriate resource management agency(ies) cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures; and

Response: As described above in response to the applicable substantive criteria under JCZO 322 and Policy 5 under Goal 5 in the JCCP, the Facility is proposed to be developed on lands within a 0.25-mile buffer of a Goal 5 resource. In 1997, the County completed a statewide planning Goal 5 inventory process for sensitive bird habitat resulting in the development of the BH Overlay Zone. The portion of the County's BH Overlay Zone that occurs within the land use analysis area for the Facility is shown on Figure K-3. The figure shows a 0.25-mile radius from golden eagle nests identified in the amended map and policies of the Goal 5 Inventory to the JCCP, adopted by Ordinance 49-97 on April 9, 1997. The golden eagle nest sites identified on Figure K-3 are consistent with County Site No. 26 listed in the table of Sensitive Bird Habitat in the JCCP (Jefferson County, 2013). The four golden eagle nest sites and corresponding buffers are identified by their ODFW identification numbers (JE 0732-01 to JE 0732-04) provided in the County's economic, social environmental, and energy (ESEE) analysis for County Site No. 26 (Jefferson County, 1997). The Facility will be developed consistent with the Program to Meet Goal 5 in the ESEE findings and decision adopted for County Site No. 26 (Jefferson County, 1997).

The Applicant has been in communication with the USFWS and ODFW regarding the golden eagle nests since November 2018 including multiple site visits with relevant agency staff. In addition, the Applicant's avian biologists have studied the telemetry data and conducted two rounds of aerial eagle nest surveys and two rounds of ground-based nest surveys. The analysis of historical nest data and results of the nest surveys are included in the report provided as Attachment P-5 (*submitted separately under confidential cover*) to Exhibit P.

Golden eagles are protected by the federal Bald and Golden Eagle Protection Act as regulated by the USFWS. As part of coordination with the USFWS, the Applicant has submitted an application for an Incidental Eagle Take Permit to address potential noise disturbance to golden eagles during construction. Attachment P-8 (*submitted separately under confidential cover*) contains the Applicant's application to the USFWS. The Applicant has applied for this voluntary permit to document and formalize avoidance, minimization, mitigation, and monitoring measures to be implemented for potential construction disturbance to the golden eagle nests.

As described in Section P.8.2 and Attachment P-8 (*submitted separately under confidential cover*) in Exhibit P, the Applicant has implemented or will implement minimization measures developed in consultation with the USFWS to minimize any potential impacts to nesting eagles. For example, heavy construction (pile driving and trenching) and vegetation clearing will occur outside the nesting season to the greatest extent feasible. The minimization measures also incorporate construction monitoring by a qualified biologist to identify and monitor any active eagle nests within 0.25 mile of construction activities to document possible disturbance during the ODFW recommended time period for golden eagles, which is February 1 through August 15.

No direct impacts to golden eagles are anticipated from the Facility and potential loss of golden eagle foraging habitat is not considered significant. Discussions with USFWS and ODFW about potential adverse impacts to golden eagle nests are ongoing. Collectively, the design of the Facility and the minimization and mitigation measures developed in coordination with USFWS and ODFW and outlined in Exhibit P demonstrate that development of the Facility is consistent with the Program to Meet Goal 5 and will protect the identified nest locations, as required by the JCZO. Therefore, the Facility demonstrates compliance with OAR 660-033-0130(38)(h)(F).

(G) If a proposed photovoltaic solar power generation facility is located on lands where, after site specific consultation with an Oregon Department of Fish and Wildlife biologist, it is determined that the potential exists for adverse effects to state or

federal special status species (threatened, endangered, candidate, or sensitive) or habitat or to big game winter range or migration corridors, golden eagle or prairie falcon nest sites or pigeon springs, the applicant shall conduct a site-specific assessment of the subject property in consultation with all appropriate state, federal, and tribal wildlife management agencies. A professional biologist shall conduct the site-specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or wildlife habitats are anticipated. Based on the results of the biologist's report, the site shall be designed to avoid adverse effects to state or federal special status species or to wildlife habitats as described above. If the applicant's site-specific assessment shows that adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project-specific mitigation to offset the potential adverse effects of the facility. Where the applicant and the resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation, if any, required for the facility.

Response: The Applicant's consultation with ODFW and USFWS personnel regarding fish and wildlife habitat and species that could be affected by the Facility began in November 2018 and is ongoing. Meetings and correspondence are described in additional detail in Exhibit P, Attachment P-1. The Applicant conducted site-specific assessments of the subject property as listed in Table P-2 in Exhibit P. Further details of the completed biological investigations are provided in Section P.3.2.2 and in Attachment P-5 (*submitted separately under confidential cover*).

An agency site visit was conducted on July 23, 2019, by Jacobs and West biologists, USFWS and ODFW biologists, and ODOE staff. The visit focused on the potential presence of special-status species and potentially suitable habitats for fish, wildlife, and plants. The site boundary and vicinity was viewed from vehicle and on foot in areas with the highest potential to support special-status species. No federally or state-listed threatened or endangered species or their sign (e.g., prints, scat, burrows, nests, hair, and feathers) were identified during the site visit. No special-status species were identified during the site visit.

Other potential environmental consequences of Facility construction and operation are discussed in Exhibits P (Fish and Wildlife Habitats and Species) and Q (Threatened and Endangered Plant and Animal Species). As described in Exhibit P, the Applicant designed the Facility to avoid impacts on special status species, riparian areas, and high quality habitat. As demonstrated in Exhibit Q, the Facility is not likely to cause a significant reduction in the likelihood of survival or recovery of any listed plant or animal species. No federally or state-listed threatened or endangered species are likely to occur within the 5 miles of the Facility site boundary. Collectively, Exhibits P and Q demonstrate that the Facility, including proposed mitigation measures developed in consultation with USFWS and ODFW biologists, will not cause any significant adverse environmental consequences. Therefore, this criterion is satisfied.

(k) *An exception to the acreage and soil thresholds in subsections (g), (h), (i), and (j) of this section may be taken pursuant to ORS 197.732 and OAR chapter 660, division 4.*

Response: As discussed above, the Facility will permanently occupy more than 12 acres of high-value farmland or 20 acres of arable land. Thus, the Facility requires an exception to Statewide Planning Goal 3. For projects under Council jurisdiction, the standards for approving an exception are set forth in ORS 469.504(2)(c) and the Council's rule (which mirrors the statute), OAR 345-022-0030(4). The justification for an exception to Statewide Planning Goal 3 is set forth in Section K.5.4. The Applicant's demonstration of compliance with the remainder of OAR 660-033-0130(38)(g), (h), (i), and (j) are included above.

(l) *The county governing body or its designate shall require as a condition of approval for a photovoltaic solar power generation facility, that the project owner sign and record in the deed records for the county a document binding the project owner and the project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause*

of action alleging injury from farming or forest practices as defined in ORS 30.930(2) and (4).

Response: The Applicant understands that the Council will impose a condition to the site certificate requiring that before beginning construction of the Facility, the certificate holder must record such a document in the deed records of Jefferson County.

(m) Nothing in this section shall prevent a county from requiring a bond or other security from a developer or otherwise imposing on a developer the responsibility for retiring the photovoltaic solar power generation facility.

Response: Exhibit W has information on retiring the Facility and restoring the site. The Applicant understands the implications of the bonding requirements addressed in this criterion.

(n) If ORS 469.300(11)(a)(D) is amended, the commission may re-evaluate the acreage thresholds identified in subsections (g), (i) and (j) of this section.

Response: The Applicant understands that the commission may re-evaluate the acreage thresholds identified in subsections (g), (i) and (j) of this section.

OAR 660-012-0065(4) *Accessory transportation improvements required as a condition of development listed in subsection (3)(a) of this rule shall be subject to the same procedures, standards and requirements applicable to the use to which they are accessory.*

The criteria specific to OAR 660-012-0065(3)(a), as referenced in the rule, requires that accessory transportation improvements are allowed under ORS 215.283. As described in Section K.5.1.4, the Facility's three gravel access road segments shown on Figures C-2A and C-2B in Exhibit C are allowable on EFU land under ORS 215.283(3). The rule language applies specifically to accessory transportation improvements "required as a condition of development." Because the gravel access road segments are necessary for the operation and maintenance of the Facility, they are a necessary condition of the development of the commercial utility facility. Accordingly, the gravel access road segments are subject to the standards and requirements applicable to the principal use (the Facility). The standards and requirements applicable to the principal use are contained in OAR 660-033-0130(5) and (38). The Applicant demonstrates above, compliance of the three gravel access road segments with the applicable criteria in OAR 660-033-0130(5) and (38).

K.5.3 Noncompliance with Applicable Substantive Criteria

The Facility does not meet JCZO 301.4(H), as it will preclude more than 12 acres of high-value farmland or 20 acres of other land from commercial farm use. The Applicant demonstrates below in Section K.5.4 that an exception to Statewide Planning Goal 3 is justified.

K.5.4 Goal 3 Exception

OAR 660-033-0130(38) places 12-acre (high-value farmland) and 20-acre (arable lands) limits on the use of farmland for a nonfarm-related use without an exception to Goal 3. Table K-1 shows that the area within the Facility site boundary is predominantly comprised of nonarable lands (approximately 55 percent or 158 acres). Although no high-value farmland as identified by soil capability class is located within the Facility site boundary, the entire Facility site boundary is located within the NUID, which is an irrigation district defined by ORS 540.505(1) ORS 540.505(1), and is located within an exclusive farm use zone. The NUID is shown on the map of Deschutes Basin Irrigation Districts (Central Oregon Irrigation District, 2019) provided in Attachment K-4 and generally extends from the Deschutes River east of the City of Madras and approximately 20 miles north and south of the proposed Facility site. Therefore, by law, the approximately 284 acres of land within the Facility site boundary is considered high-value farmland under ORS 195.300(10)(c)(B) and a Goal 3 exception is required.

The Applicant demonstrates that a reasons exception is warranted. ORS 469.504(2) provides the controlling criteria for exceptions proposed for energy facilities under the jurisdiction of the Council.

An “exception” is a “decision to exclude certain land from the requirements of [an] applicable statewide goal.” See OAR 660-004-0000(2). The need for an exception arises when a goal does not permit a particular use or, as in this case, does not permit a use over a certain size. For local jurisdictions, the exceptions process is authorized by Goal 2 (Land Use Planning) and ORS 197.732, and governed by the criteria in OAR 660-004-0000, et seq. The Council may find goal compliance for a facility that does not otherwise comply with a statewide planning goal by taking an exception. Notwithstanding the requirements in ORS 197.732, the Council may take an exception if it makes specific findings under ORS 469.504(2)(a), (b), or (c). In the following sections, the Applicant demonstrates that a Goal 3 exception is warranted under ORS 469.504(2)(c) and OAR 345-022-0030(4)(c). An exception is warranted because the Facility site is expressly permitted as a conditional use in the County’s EFU A-1 zoning district, will have a significant comparative advantage due to its location and access to the regional electric transmission grid-system, will avoid impacts to riparian areas and high quality habitat, and the Facility will fulfill important state and county goals by providing renewable energy while minimizing impacts on non-irrigated and non-productive agricultural lands and on adjacent farming practices.

K.5.4.1 Demonstration that a “Reasons” Exception is Appropriate

ORS 469.504(2)(c)(A); OAR 345-022-0030(4)(c)(A) *Reasons justify why the state policy embodied in the applicable goal should not apply;*

Response: The general state policy embodied in Goal 3 is “[t]o preserve and maintain agricultural lands,” as set forth in OAR 660-015-0000(3). As discussed above, the Facility will not have significant adverse effects on accepted farm or forest practices. However, the Applicant must nonetheless demonstrate why the policy in Goal 3 should not apply to the Facility. The Applicant’s justification for not applying the Goal 3 acreage limitation to the Facility is included directly below.

First, the proposed Facility is locationally dependent, as it requires not only sufficient solar access, but also access to the regional transmission system for interconnection and delivery into the Bulk Electrical System (BES) and enough land to develop a facility of sufficient scale to be able to cost-effectively interconnect at a transmission-level voltage. The Facility site has a significant comparative advantage due to its location where the PGE’s 230-kV Pelton to Round Butte transmission line intersects the Facility site boundary from the northeast; this provides the Facility with immediate access to the existing regional transmission system and allows for delivery into the BES. The Facility site features enough land to develop a solar facility of sufficient size in order to be economically feasible at the 230-kV voltage, and provides immediate physical access to the 230-kV line, which avoids the need for a new transmission line to be built in order to connect the Facility to the POI. Given the fact that the site allows for both a technically and economically feasible interconnection to PGE 230-kV Pelton to Round Butte line, the site is, thus, uniquely positioned relative to other locations in Jefferson County to maximize generation of solar-powered energy (Attachment K-7) while minimizing cost and the need for new transmission infrastructure. In addition, unimpeded solar access is a unique resource located on the EFU-zoned land consistent with OAR 660-004-0022(3)(a), and solar data collected by the U.S. Department of Energy and provided as Attachment K-7 show that the site provides an excellent solar resource.

Second, the Facility is expressly permitted as a conditional use in the County’s EFU A-1 zoning district and is proposed on land that has not been used for commercial farm practices in over 30 years, has been grazed once in approximately 25 years (Attachment K-1), and is not considered productive farmland. In Jefferson County, Binder owns approximately 1,600 acres of agricultural land used primarily for dryland wheat farming and grazing. The permanently disturbed area within the Facility site boundary represents a small portion, approximately 15 percent, of Binder’s total agricultural land in Jefferson County, and will occur on land not suitable for farming operations

(see Attachment K-1). Constructing a solar facility on this site facilitates a higher and better use of the land and concentrates solar development off more productive farmland. As described by the landowner in Attachment K-1, development of the Facility at this site will not remove any land from productive economic use because the site is not currently cultivated and is not known to have been cultivated since 1985. The Facility site does not have irrigation water rights. The site could be utilized for commercial agriculture only if new irrigation rights were obtained or existing irrigation rights were transferred from other agricultural land, and if the necessary irrigation infrastructure were constructed. In addition, the Applicant demonstrates in response to OAR 660-033-130(5) that the Facility will not force a significant change in, or significantly increase the cost of, accepted farm and forest practices within the County's EFU A-1 zoning district. Specifically, construction, operation, and maintenance of solar panels and associated equipment at the Facility will not change existing land use practices on lands surrounding the Facility site boundary. The Facility will not necessitate relocating any access routes or farm infrastructure on neighboring properties within the land use analysis. Because the Facility will not change farm practices on surrounding lands, the Facility will not increase the cost of farm practices on surrounding lands.

Third, the proposed Facility will further important County and State policies. As discussed above, Jefferson County's Zoning Ordinance allows solar power generation under the umbrella of a commercial utility facility for the purposes of generating power for public use by sale, as a conditional use under JCZO 301.4(H). In 2005, the State of Oregon published a Renewable Energy Action Plan (Oregon Department of Energy, 2005). The Plan calls for significant, additional development of renewable resources, including solar energy. In 2007, the Oregon legislature passed Senate Bill 838 establishing Oregon's Renewable Portfolio Standard (RPS) for electricity, requiring that 25 percent of Oregon's electric load come from new renewable energy by 2025. On March 11, 2016, Governor Kate Brown signed Senate Bill 1547, which doubles the RPS from 25 percent to a requirement that 50 percent of Oregon's electric load must come from new renewable energy by 2040. Further, Statewide Land Use Planning Goal 13 calls for the development of renewable energy resources. The Oregon Legislative Assembly has enacted numerous tax credits and economic development incentives favoring renewable energy development. Oregon's numerous statutory programs together reflect a thoroughgoing state policy of supporting renewable energy development. See, for example, ORS 757.612 (creating system benefit charge, a portion of the funds from which go to renewable energy); ORS 757.603(2) (requiring Oregon electric utilities to provide retail customers with at least one option including significant percentage of renewable energy).

On balance, the Facility will produce a significant advancement of important County and State policies while causing only a minor inconsistency with the policies behind Goal 3.

Fourth, the Facility will advance County and State policies of furthering efficient development and economic growth. In Section K.5.1.2, the Applicant demonstrates that the Facility is consistent with Goal 9 (Economic Development) in the JCCP. The Facility contributes to the development of a variety of adequate economic opportunities that support the "health, welfare, and prosperity of Oregon's citizens." Specifically, the Facility will use solar resources in Jefferson County to generate clean electric power for public use. In addition, as discussed in Exhibit U, the Facility will benefit the local economy through employment opportunities, and provide contributions to the local tax base. Facility construction is anticipated to take approximately 9 months from the time of final permit approval to commercial operation. During construction, an estimated average workforce of 100 people will be employed, with a maximum of 200 people during the peak months of construction. Operation and maintenance of the Facility will require two to four technicians at a time deployed on an as-needed basis for maintenance and repairs. These jobs will contribute to the local economy. In addition, development of the Facility will result in an increase in annual property tax revenue to Jefferson County. The additional tax revenue generated by the existence of the Facility will increase the County's ability to provide roadways, police and fire protection, and other services to its citizens.

The Applicant also demonstrates that the Facility is consistent with Policy 2 under Goal 13 (Energy Conservation) of the JCCP as development of the Facility considers "impacts on neighboring properties." As described in response to JCZO 602(B) in Section K.5.1.1 and to OAR

660-033-130(5)(A) and (B) in Section K.5.2.3, construction, operation, and maintenance of solar panels and associated equipment at the Facility will not change existing land use practices on lands surrounding the Facility site boundary. The Facility will encourage the efficient siting of land uses, and facilitate multiple uses of land. The Facility will allow continued access to adjacent farmland and continued agricultural operations where they are more productive, while simultaneously using the land for renewable energy generation.

K.5.4.2 ESEE Consequences Favor the Exception

ORS 469.504(2)(c)(B); OAR 345-022-0030(4)(c)(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*

Response:

Environmental. Operation of the Facility will not result in any air emissions of pollutants. Other potential environmental consequences of Facility construction and operation are discussed in Exhibits J (Wetlands), P (Fish and Wildlife Habitats and Species), and Q (Threatened and Endangered Plant and Animal Species). As described in Exhibit J, the site layout of solar modules has been designed to avoid temporary or permanent impacts to existing wetlands and other nonwetland waters of the state. Furthermore, as described in Exhibit P, the Applicant designed the Facility to avoid impacts on special status species, riparian areas, and high quality habitat. As demonstrated in Exhibit Q, the Facility is not likely to cause a significant reduction in the likelihood of survival or recovery of any listed plant or animal species. Collectively, Exhibits J, P, and Q demonstrate that the Facility, including proposed mitigation measures, will not cause any significant adverse environmental consequences.

Socioeconomic. The Facility will provide a reliable source of electricity without any associated emissions. The Facility's socioeconomic consequences will not be adverse. As demonstrated in Exhibits R (Scenic Resources), S (Historic, Cultural, and Archaeological Resources), and T (Recreational Opportunities), the Facility will have no significant adverse impacts on scenic, cultural, historical, archaeological, or recreational resources.

Exhibit R identifies "significant or important" scenic resources within a 10-mile analysis area from the Facility site boundary. The Facility may be potentially visible from isolated locations along the Lower Deschutes River (from Pelton Dam downstream to the north County line) and the Madras Mountain Views Scenic Bikeway, and form an isolated area within the Cove Palisades State Park that is not designated as a significant or important viewpoint. However, these resources are located 2.5 miles or more from the Facility site boundary. Given distance, the nature of the topography of the existing landscape, the screening role of vegetation, and the Facility's limited visibility from these resources, the proposed Facility will not result in significant adverse impacts on scenic resources. The Facility will not be visible from other scenic resources listed in Exhibit R.

No cultural or archaeological resources identified as eligible or potentially eligible for NRHP listing will be affected by construction, operation, or retirement of the proposed Facility. All work will be performed in accordance with the protective measures listed in Exhibit S should discovery of previously unrecorded cultural resources or of human remains occur during construction.

Exhibit T identifies "important" recreational opportunities within a 5-mile analysis area from the Facility site boundary. Exhibit T demonstrates that the Facility will not occur within the boundaries of any important recreational resources opportunities, and no recreational opportunity will be directly altered as a result of Facility construction or operation. Furthermore, construction and operation of the Facility is not anticipated to result in significant adverse impacts related to noise, traffic, and visibility of structures at important recreational opportunities identified within the recreational resources analysis area.

Exhibit U (Public Services/Socioeconomic Impacts) also demonstrates that the Facility will not have significant adverse impacts on community services such as housing, sewer, water supply,

waste disposal, health care, education, and transportation. As discussed above, the Facility will create jobs and contribute significant income to the County. These benefits should be measured against the relatively small area of unproductive EFU A-1 zoned land to be displaced by the Facility. The Facility will also supplement the landowner's income with lease payments without reducing the farmers' productive land base for farming operations.

Energy. Consistent with Policy 2 in Goal 13 (Energy Conservation) of the JCCP, the Facility has been designed to minimize impacts on neighboring properties. The energy consequences of the Facility will be positive, as the Facility will produce approximately 63 megawatts of renewable, emissions-free energy for public use.

K.5.4.3 Compatibility with Adjacent Land Uses

ORS 469.504(2)(c)(C); OAR 345-022-0030(4)(c)(C) *The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.*

Response: The Facility is compatible with other adjacent uses. The Facility's construction and operation will not cause significant changes to accepted farming practices in the surrounding area nor will it significantly increase the costs of such practices. As described by Mrs. Binder in Attachment K-1, development of the Facility at this site will not remove any land from productive economic use. Mrs. Binder also states that developing the Facility at the proposed site will facilitate a higher and better use of the land and concentrate solar development off more productive farmland.

As shown on Figure K-8, adjacent land uses within approximately 0.5 mile of the Facility site boundary include:

- **North** – Rocky cliffs along the south side of Willow Creek Canyon, a private RV park owned and operated by Lake Simtustus Resort and Marina, and federal public lands within Willow Creek Canyon managed by the U.S. Department of the Interior Bureau of Land Management (BLM). PGE's 230-kV Pelton to Round Butte transmission line intersects the Facility site boundary from the northeast before continuing southwest. A second existing transmission line, PacifiCorp 69-kV Cove to Pelton to Warm Springs transmission line, approaches the Facility site boundary from the northwest. At its nearest point, the PacifiCorp 69-kV Cove to Pelton to Warm Springs transmission line is located approximately 750 feet west of the Facility site boundary and continues south to parallel the west side of PGE's existing 230-kV Pelton to Round Butte transmission line.
- **East** – Rocky cliffs, steep slopes, and smaller canyons along a tributary to Willow Creek and within Willow Creek Canyon on federal public land managed by BLM, and other undeveloped grassland/rangeland.
- **South** – Undeveloped grassland/rangeland under private ownership, PGE's existing 230-kV Pelton to Round Butte transmission line, PacifiCorp's 69-kV Cove to Pelton to Warm Springs transmission line, and a private airstrip owned and operated by Bombay Farms approximately 0.5 mile south of the Facility site boundary.
- **West** – Undeveloped grassland/rangeland within the boundary of the Crooked River National Grassland, canyon walls east of Lake Simtustus, and grassland/rangeland associated with the Warm Springs Reservation.

The construction and operation of the Facility will be compatible with these uses as supported in Attachment K-1 by the private landowner who owns the vast majority of the Facility site (see Figure K-9). Access to and from the Facility will occur from three gravel access road segments on SW Elk Drive, which intersects the Facility site from the north to south. Thus, impacts to farming practices on surrounding lands will be avoided and the Facility will not preclude access to nearby BLM property.

K.6 FEDERAL LAND MANAGEMENT PLANS

OAR 345-021-0010(1)(k)(D) *If the proposed facility will be located on federal land:*

- (i) *Identify the applicable land management plan adopted by the federal agency with jurisdiction over the federal land.*
- (ii) *Explain any differences between state or local land use requirements and federal land management requirements.*
- (iii) *Describe how the proposed facility complies with the applicable federal land management plan.*
- (iv) *Describe any federal land use approvals required for the proposed facility and the status of application for each required federal land use approval.*
- (v) *Provide an estimate of time for issuance of federal land use approvals.*
- (vi) *If federal law or the land management plan conflicts with any applicable state or local land use requirements, explain the differences in the conflicting requirements, state whether the applicant requests Council waiver of the land use standard described under paragraph (B) or (C) of this subsection and explain the basis for a waiver.*

Response: The proposed Facility and supporting facilities are not located on federal lands and this criterion does not apply.

K.7 SUMMARY

Based on the foregoing analysis, the Facility complies with the applicable substantive criteria from Jefferson County except JCZO 301.4(H). However, the Applicant demonstrates that a Goal 3 exception is warranted under ORS 469.504(2)(c) and OAR 345-022-0030(4)(c). The Goal 3 exception is warranted to allow a locationally dependent facility that will fulfill important state and county goals by providing renewable energy while minimizing impacts on local farming practices. Accordingly, the information contained in this Exhibit provides the Council with sufficient information to make a determination that the Facility complies with the land use standard set forth in OAR 345-022-0030.

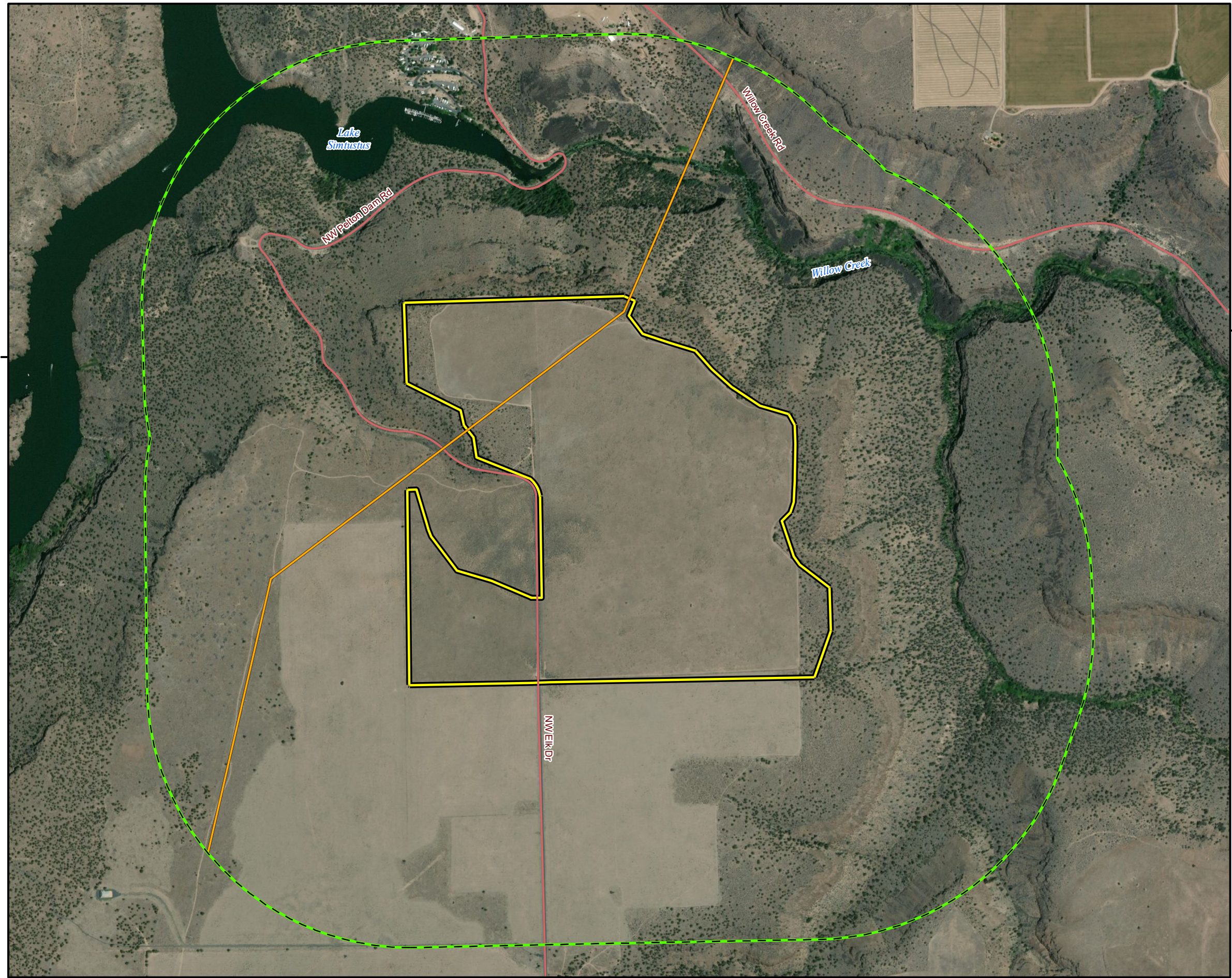
K.8 REFERENCES

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- Jefferson County. 2013. *Jefferson County Comprehensive Plan*. Adopted December 27, 2006. Amended May 22, 2013.
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<https://www.codepublishing.com/OR/JeffersonCounty/#!/JeffersonCounty01/JeffersonCounty01.html>.

Oregon Department of Energy. 2005. *Renewable Energy Action Plan*.

Figures



- LEGEND**
- Madras Solar Energy Facility Site Boundary
 - Land Use Analysis Area (0.5 mile)
 - Existing Pelton Dam to Round Butte 230-kV Transmission Line
 - Existing Road

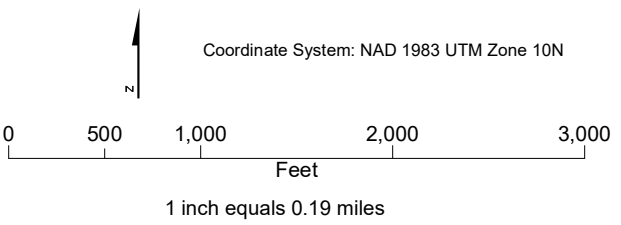


Figure K-1
Aerial Photograph
Application for Site Certificate
Madras Solar Energy Facility
Jefferson County, OR

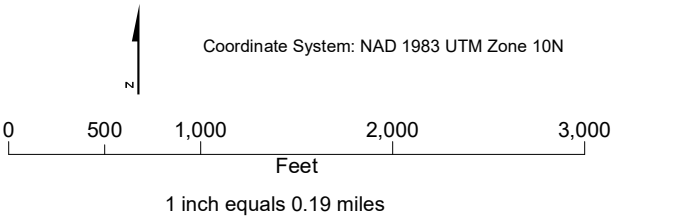
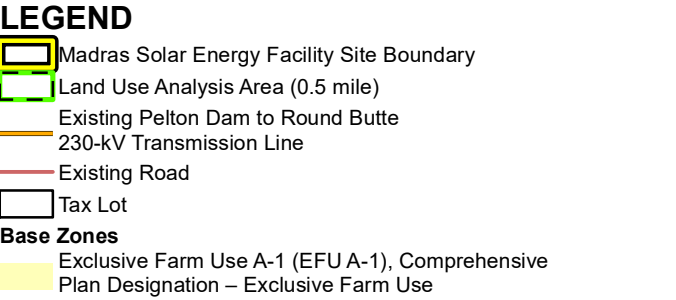
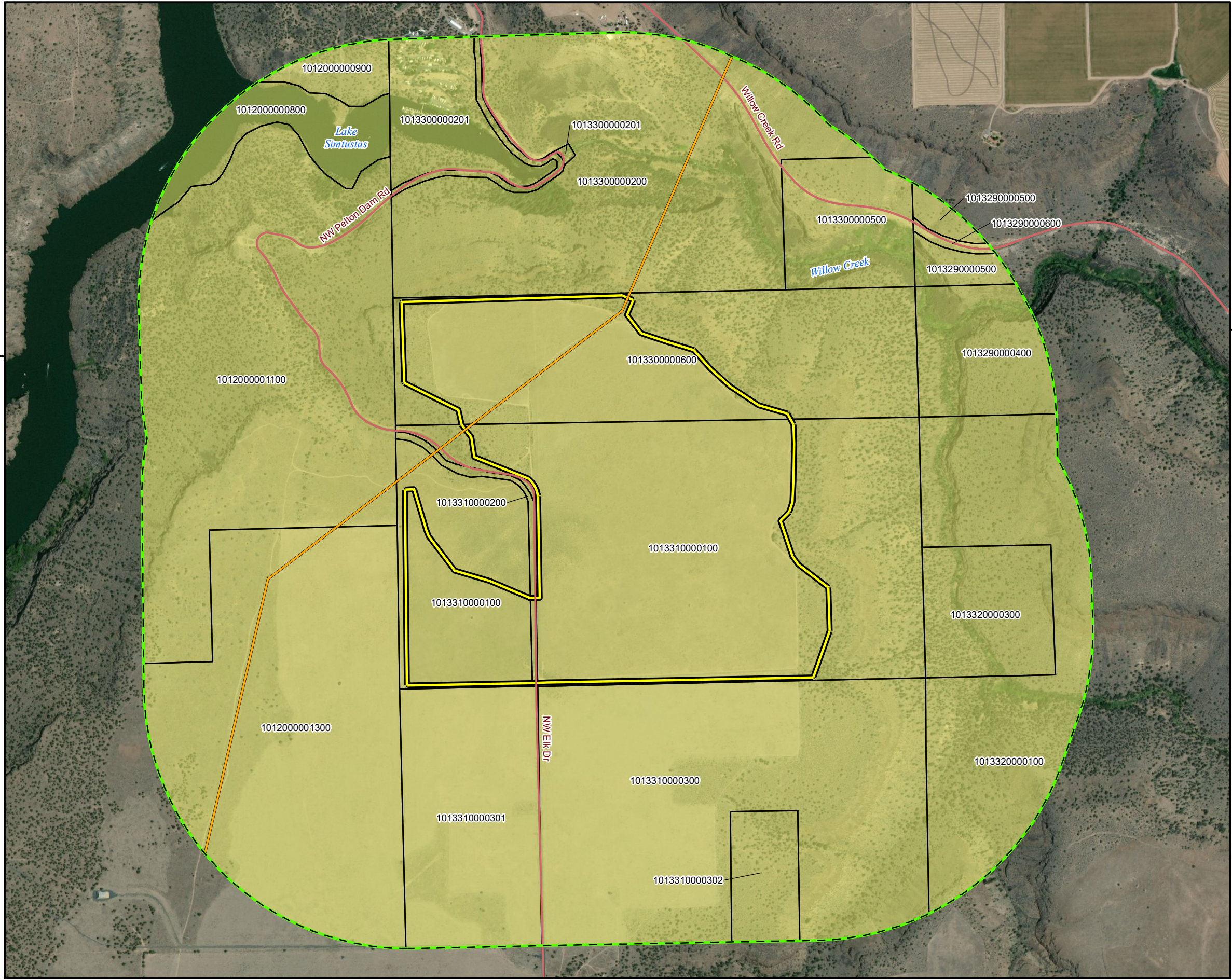
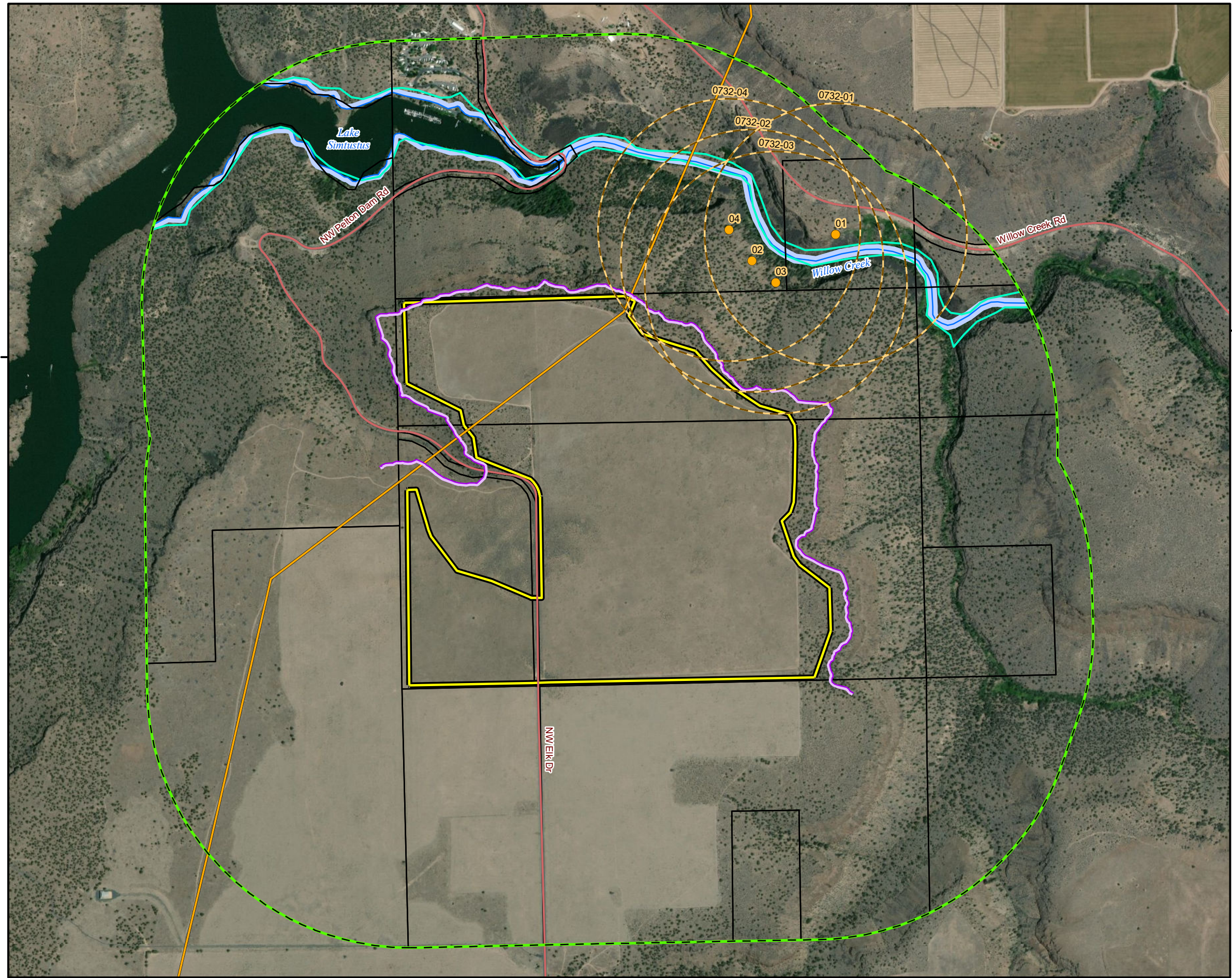


Figure K-2
 Land Use
 Application for Site Certificate
 Madras Solar Energy Facility
 Jefferson County, OR



- LEGEND**
- Madras Solar Energy Facility Site Boundary
 - Land Use Analysis Area (0.5 mile)
 - Existing Pelton Dam to Round Butte 230-kV Transmission Line
 - Existing Road
 - Tax Lot
- Overlay Zones**
- Golden Eagle Nests shown in the Jefferson County Comprehensive Plan as County Site No. 26
 - Sensitive Bird Habitat Overlay associated with County Site No. 26
 - Canyon Rim
 - Scenic and Natural Hazard Rim Set Back
 - Top of Bank*
 - Riparian Protection Area*
 - Flood Plain Overlay Zone

*Estimated using NHD Data

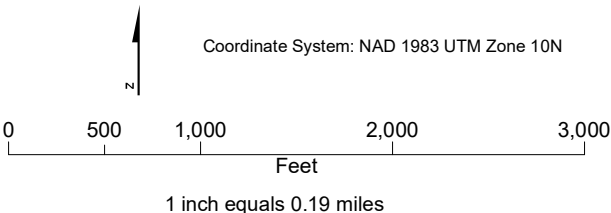


Figure K-3
Overlay Zones
 Application for Site Certificate
 Madras Solar Energy Facility
 Jefferson County, OR

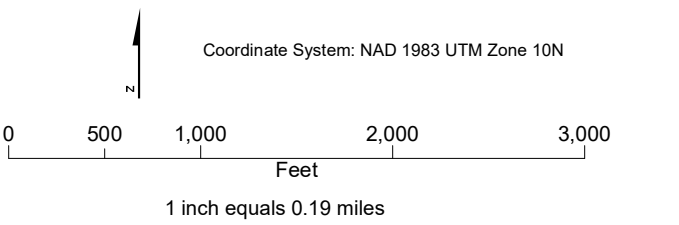
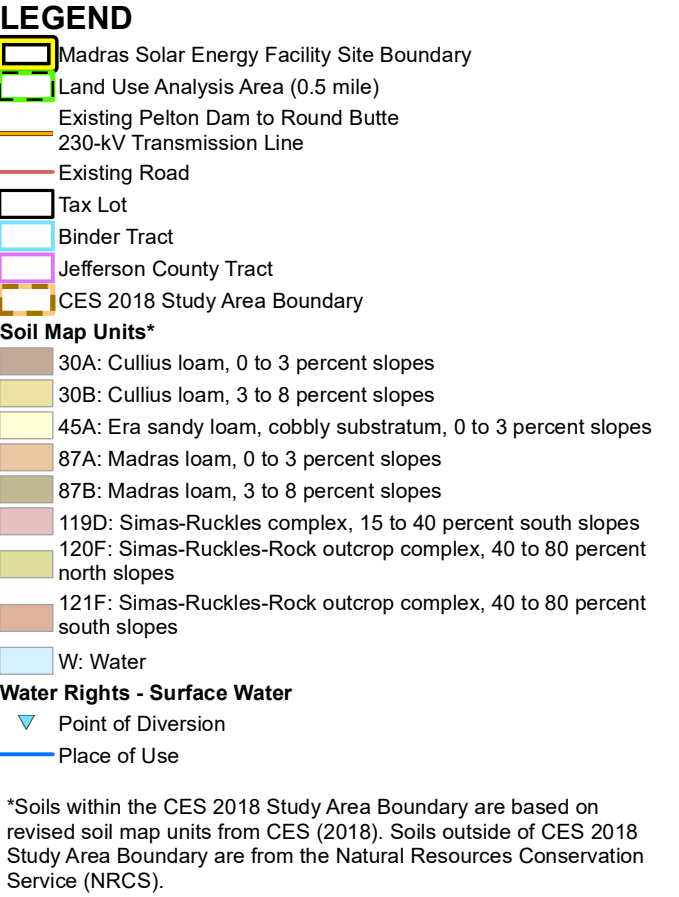
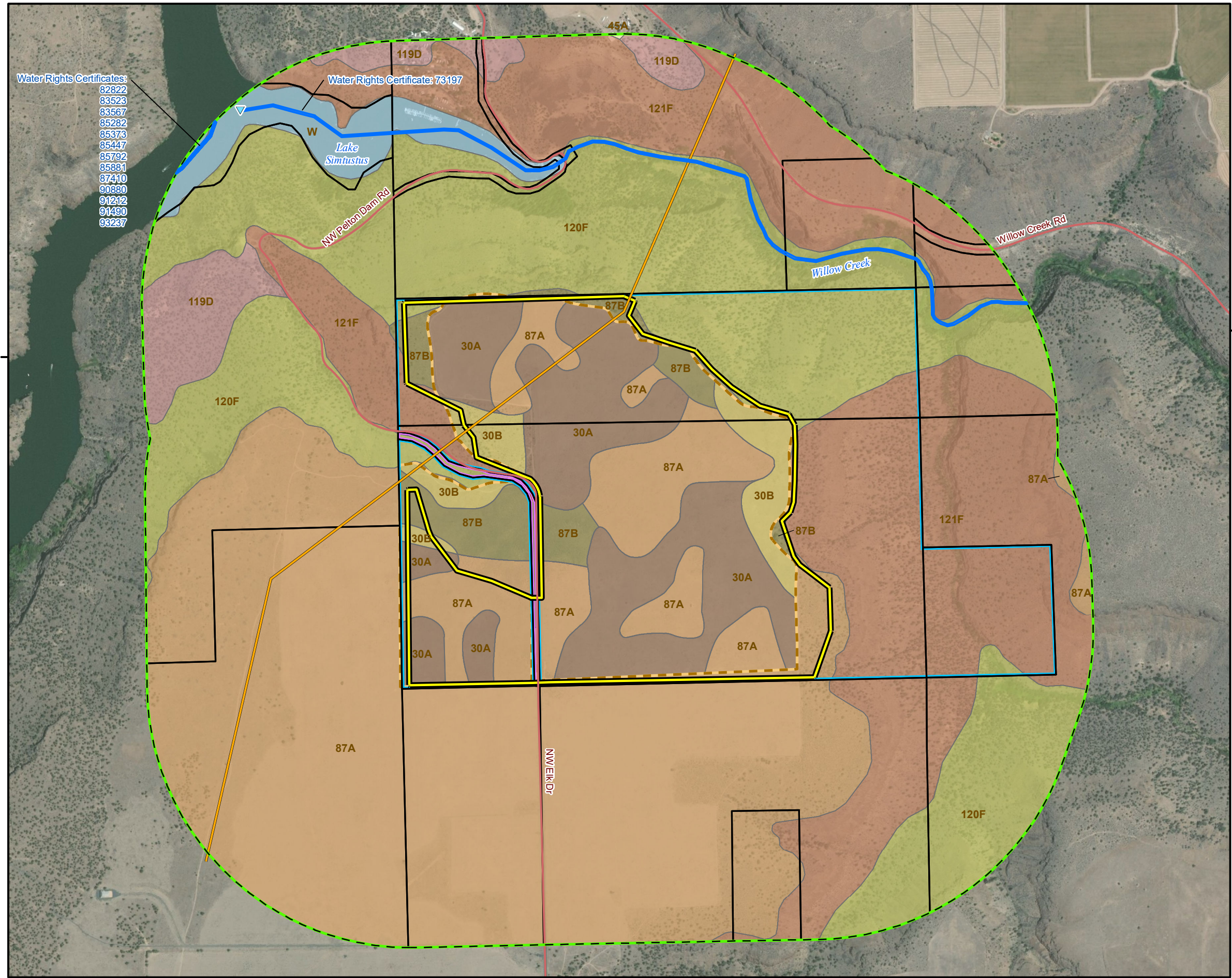
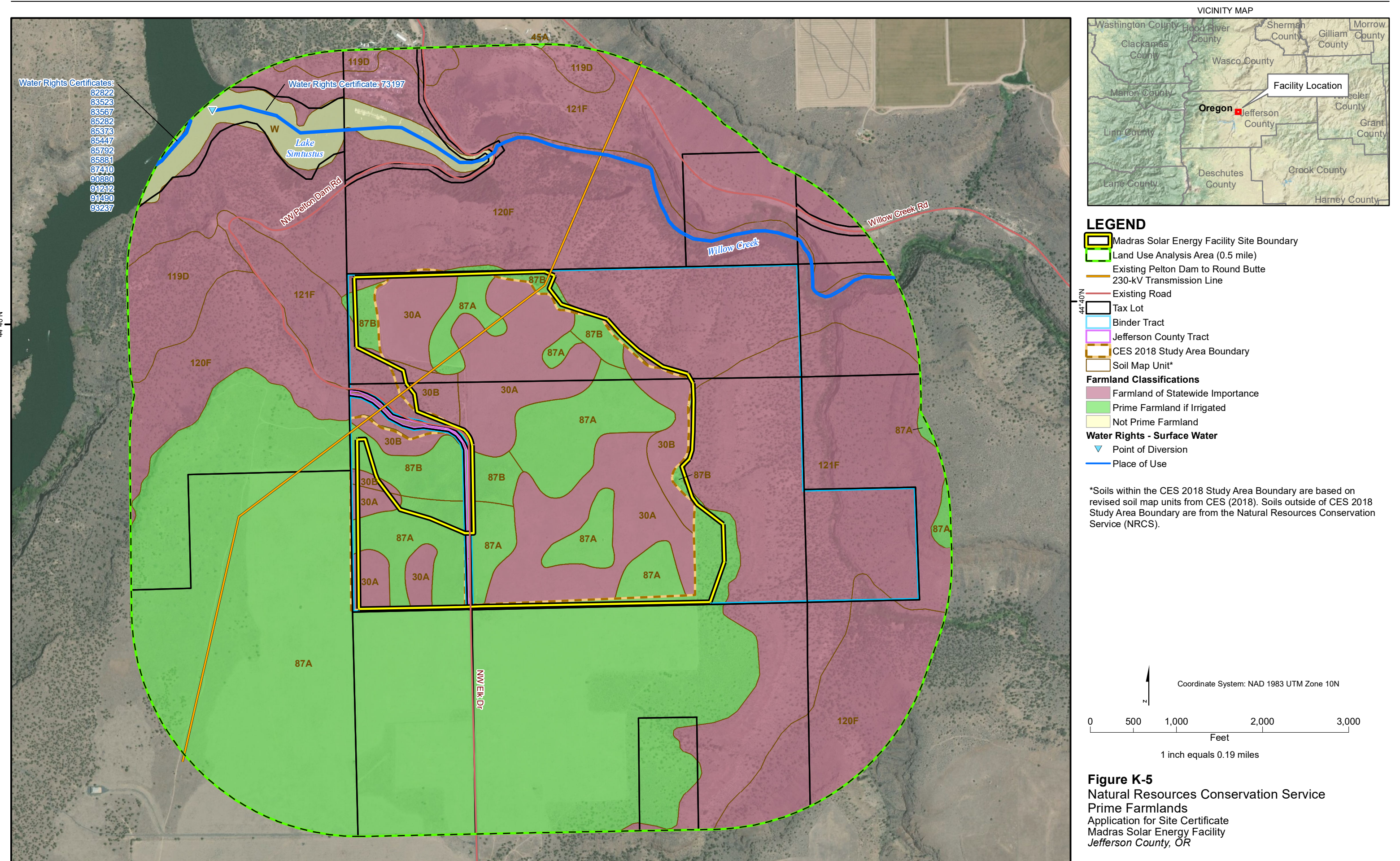
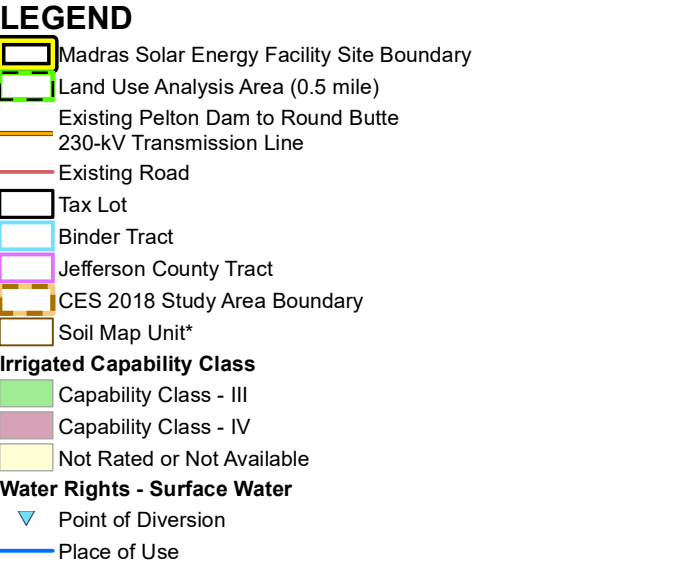
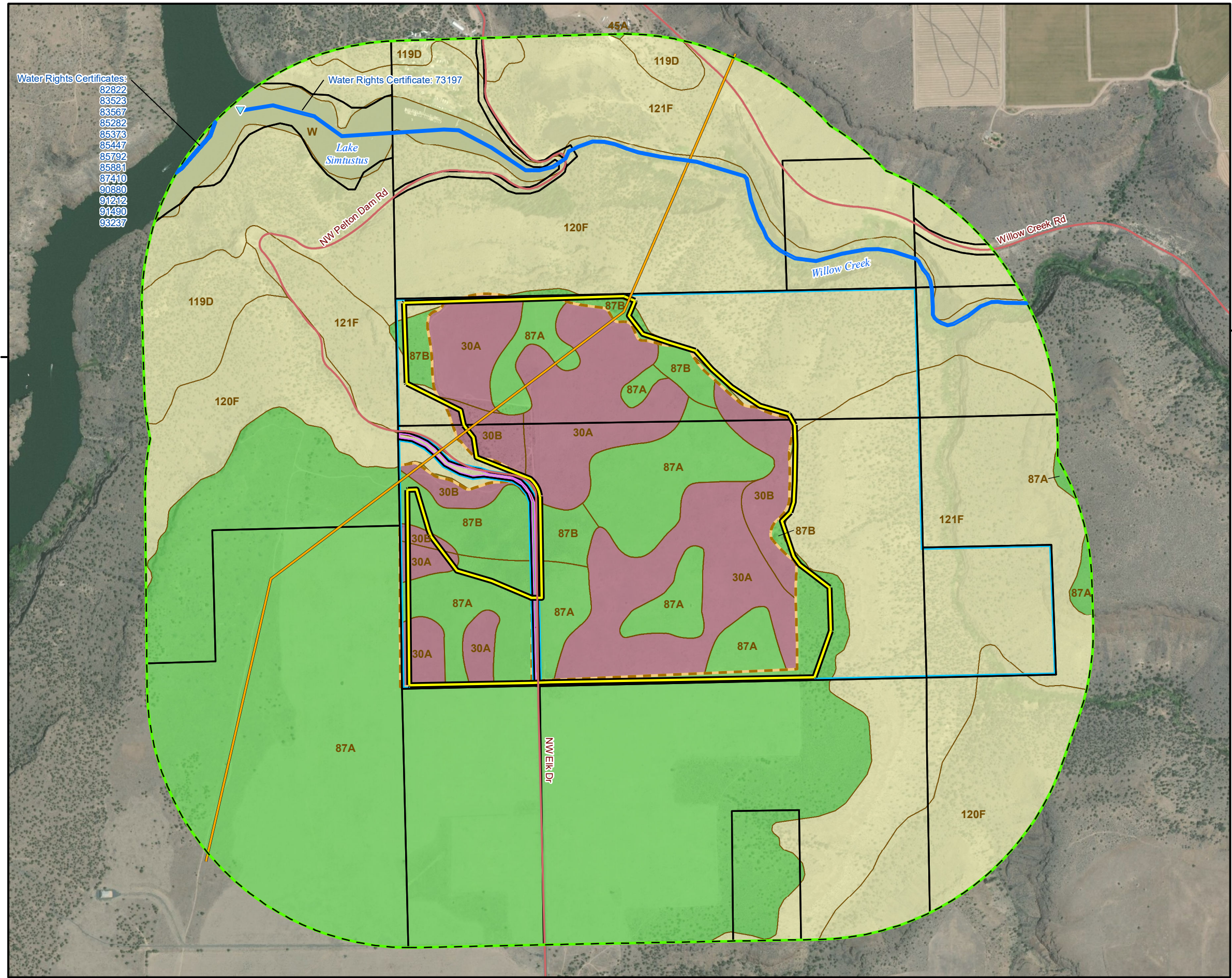


Figure K-4
 Soil Map Units
 Application for Site Certificate
 Madras Solar Energy Facility
 Jefferson County, OR





*Soils within the CES 2018 Study Area Boundary are based on revised soil map units from CES (2018). Soils outside of CES 2018 Study Area Boundary are from the Natural Resources Conservation Service (NRCS).

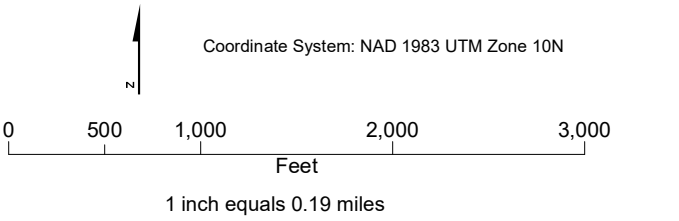
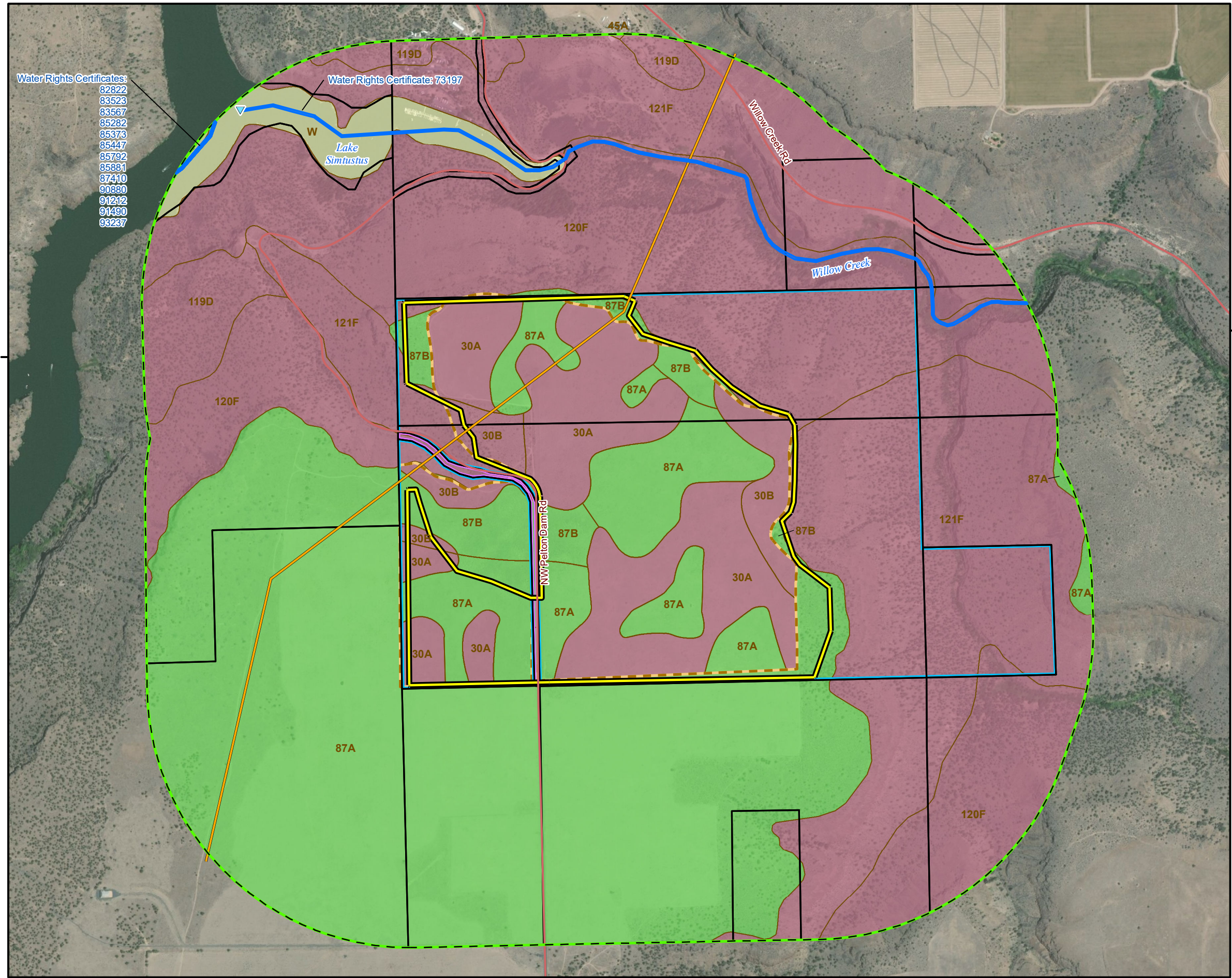


Figure K-6
 Natural Resources Conservation Service
 Irrigated Soil Capability Class
 Application for Site Certificate
 Madras Solar Energy Facility
 Jefferson County, OR



LEGEND

- Madras Solar Energy Facility Site Boundary
- Land Use Analysis Area (0.5 mile)
- Existing Pelton Dam to Round Butte 230-kV Transmission Line
- Existing Road
- Tax Lot
- Binder Tract
- Jefferson County Tract
- CES 2018 Study Area Boundary
- Soil Map Unit*

Nonirrigated Soil Capability Classes

- Capability Class - IV
- Capability Class - VI
- Not Rated or Not Available

Water Rights - Surface Water

- Point of Diversion
- Place of Use

*Soils within the CES 2018 Study Area Boundary are based on revised soil map units from CES (2018). Soils outside of CES 2018 Study Area Boundary are from the Natural Resources Conservation Service (NRCS).

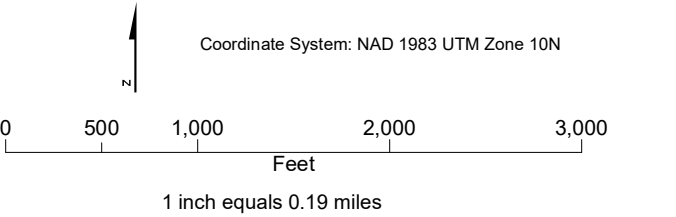
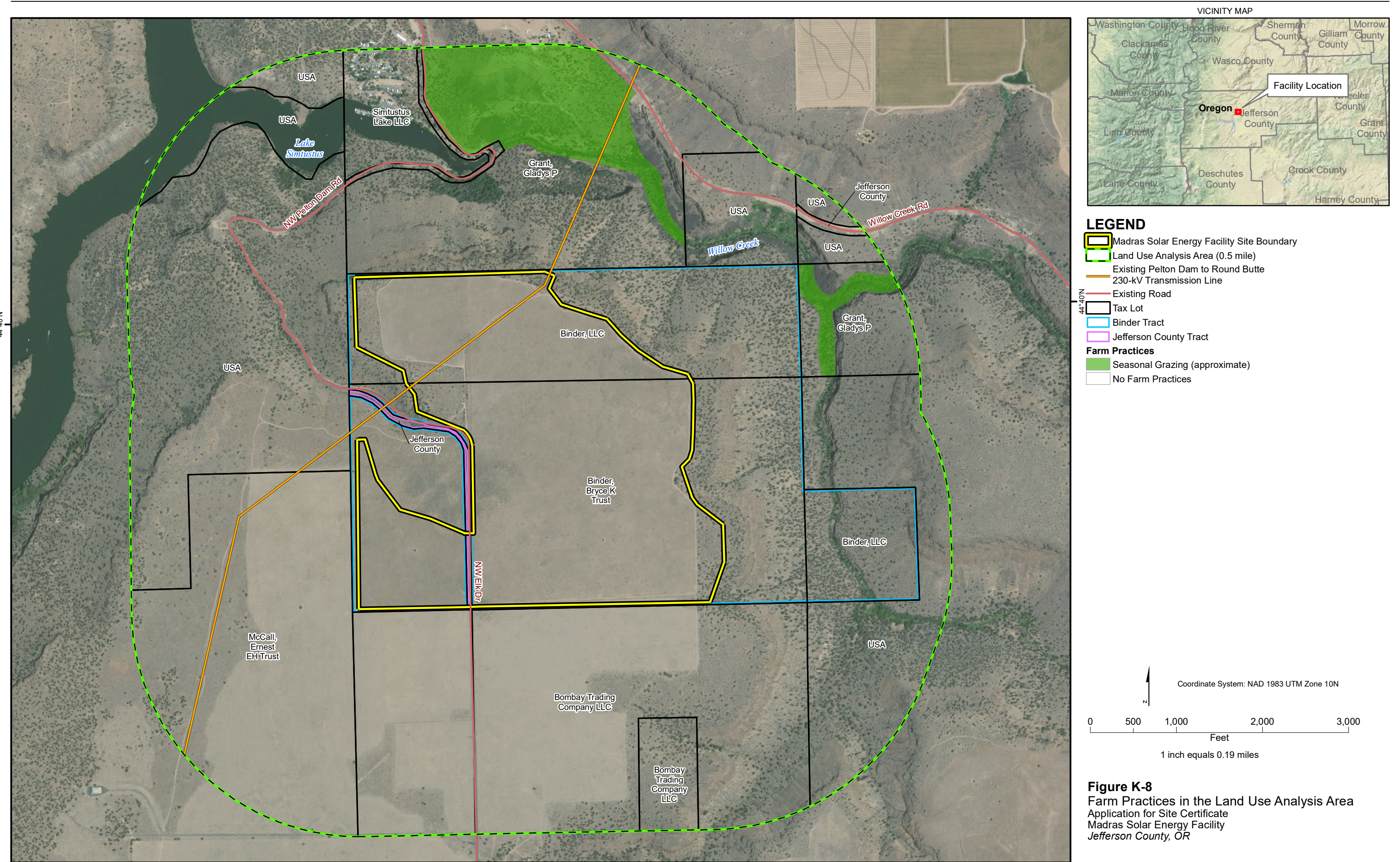
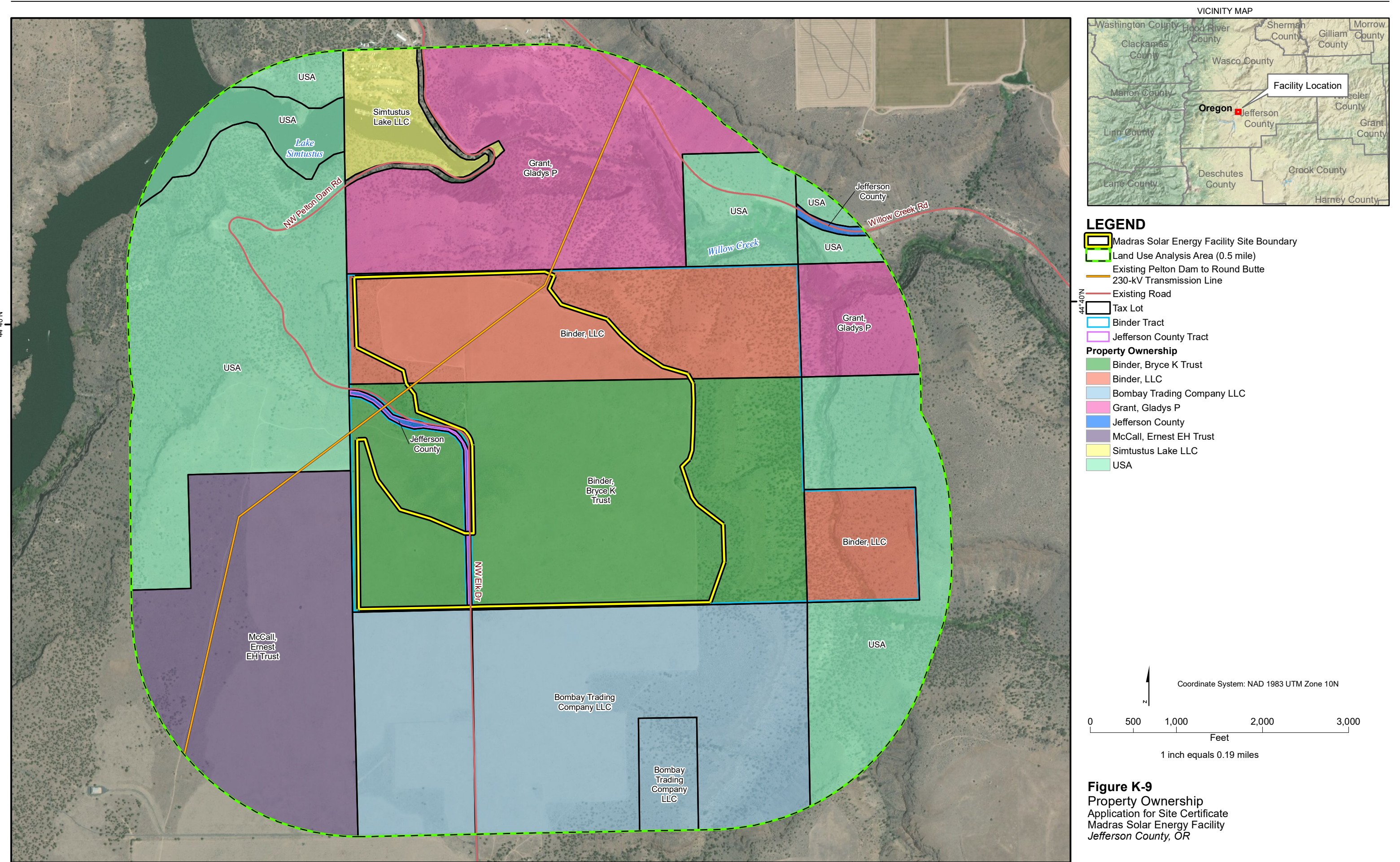


Figure K-7
 Natural Resources Conservation Service
 Nonirrigated Soil Capability Class
 Application for Site Certificate
 Madras Solar Energy Facility
 Jefferson County, OR





Attachment K-1
Letter from Binder, LLC

Mr. Chase McVeigh-Walker
Senior Siting Analyst
Oregon Department of Energy
550 Capitol Street NE
Salem, OR 97301

November XX, 2019

Subject: Madras Solar Energy Facility

Dear Mr. McVeigh-Walker,

Madras PV1, LLC, proposes to construct and operate the Madras Solar Energy Facility (Facility) on privately owned land in Jefferson County, Oregon. The proposed Facility will generate approximately 63 megawatts (MW) of renewable energy and will be located entirely on our property. The Facility will be located on tax lots 1013300000600 and 1013310000100 for which we have already agreed to an exclusive, long-term option to lease.

In Jefferson County, we own approximately 1,600 acres of agricultural land used primarily for grazing. What Madras PV1, LLC, refers to as the permanently disturbed area within the Facility site boundary represents a small portion, approximately 18 percent, of our total agricultural operations in Jefferson County.

We do not use the proposed Facility site for any type of agricultural enterprise or farming operation, including cattle grazing. The proposed Facility site is not currently, and has never been irrigated. No water right permits, certificates, points of diversion, or places of use are associated with the Facility site. Furthermore, no irrigation systems exist or are available to irrigate the land within the Facility site boundary so water would need to be hauled to the site. In addition, the site has poor rocky soils, which are not fit for effective agricultural use on nonirrigated land. Historically, the Facility site was used for dryland wheat prior to 1985. The site was under the U.S. Department of Agriculture's Conservation Reserve Program from approximately 1985 to 1995 and was seeded with crested wheat grass. Since 1995, the property has been used for pasture grazing only once and no cultivation or other farm practices have occurred on the tract within the past approximately 25 years. Because the proposed Facility site is not irrigated, has no easy connection to water, and has poor rocky soils, it has limited productivity and is not desirable to use even for cattle grazing.

We have worked with Madras PV1, LLC, to identify a Facility site that will not preclude or impair access to farm operations associated with adjacent landowners. Specifically, we do not anticipate any changes to farm operations occurring on surrounding lands as a result of construction or operation of the proposed Facility. Based on the lack of irrigation and water rights, we support the Facility site as a higher and better use of the land and as a means to concentrate renewable energy development away from more productive farmland.

Sincerely,

[Landowner Name]

[Landowner Title]

Copies to: [Insert as needed]

Attachment K-2
Water Rights Certificate

STATE OF OREGON
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

Oregon Water Resources Department
158 12th Street NE
Salem, Oregon 97310

The specific limits for the use are listed below along with conditions of use.

Source: WILLOW CR tributary to DESCHUTES R

County: Jefferson

Purpose: Migration, spawning, egg incubation, fry emergence, and juvenile rearing.

To be maintained in:

WILLOW CREEK FROM COON CREEK (SENW, SECTION 27, T12S, R15E);
TO THE MOUTH RIVER MILE 0.0 (SWNW, SECTION 30, T10S, R13E)

The right is established under Oregon Revised Statutes 537.341.

The date of priority is 8/30/90.

The following conditions apply to the use of water under this certificate:

1. The right is limited to not more than the amounts, in cubic feet per second, during the time periods listed below:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	4.01	5.0	13.0	13.0	13.0	8.0	2.54	1.16	1.19	1.01	0.92	2.38
2nd½	4.01	8.0	13.0	13.0	13.0	8.0	2.54	1.16	1.19	1.01	0.92	2.38

2. The water right holder shall measure and report the in-stream flow along the reach of the stream or river described in the certificate as may be required by the standards for in-stream water right reporting of the Water Resources Commission.
3. For purposes of water distribution, this instream right shall not have priority over human or livestock consumption.
4. The instream flow allocated pursuant to this water right is not in addition to other instream flows created by a prior water right or designated minimum perennial stream flow.
5. The flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.

Witness the signature of the Water Resources Director,
affixed OCTOBER 21, 1996.


Martha O. Pagel

Recorded in State Record of Water Right Certificate number 73197.

IS 70591

No

Final Proof

Map

Available

Attachment K-3
Oregon Department of Land Conservation
and Development Soil Survey Approval



Oregon Department
of Land Conservation
and Development

Soils Assessment Report Requirements

Updated March 10, 2014

In accordance with OAR 660-033-0045(6)(a), the Department of Land Conservation and Development (DLCD) finds that this soils assessment is complete and consistent with reporting requirements for agricultural soils capability. The county may make its own determination as to the accuracy and acceptability of the soils assessment. DLCD has reviewed the soils assessment for completeness only and has not assessed whether the parcel qualifies as nonarable land as defined in OAR 660-033-0130(38).

Tim Murphy, Farm and Forest Lands Specialist
October 4, 2018

The department will consider soil assessments under OAR 660-033-0030 to be complete if they meet the following standards:

(1) General information, to include:

- (a) Title of the report; Site-Specific Soil Survey of Property Located along Elk Drive, also known as T10S, R13E, Section 30, Tax Lot 600 (161.47 acres) and Section 31, Tax Lot 100 (317.98 acres), West of Madras in Jefferson County, Oregon
- (b) Person making request for soils assessment; Terrance Unrein, Ecoplexus
- (c) Names of soil scientist/classifier conducting the field work and preparer of the report, along with their certification numbers; Brian T. Rabe, CPSS # 15239
- (d) Land use case file number (if available); N/A
- (e) County in which the assessment was conducted; Jefferson County
- (f) Location of the project site, including the township, range, section and tax lot numbers; T10S, R13E, Section 30, Tax Lot 600 and Section 31, Tax Lot 100
- (g) Present zoning designation; Exclusive Farm Use
- (h) Current land use; Uncultivated agricultural land
- (i) Parcel acreage; 479.45; evaluated 289; and
- (j) A description of the purpose of the assessment. Photovoltaic solar power generation facility

(2) Previous Mapping or Background: The soil scientist/classifier shall provide a copy of the applicable and most current National Cooperative Soil Survey map(s) provided by the Natural Resources Conservation Service (NRCS) on the Web Soil Survey, with the area of investigation outlined on the map(s). The scale of the map(s) shall be identified and a list of the map units under investigation shall be listed. The applicable interpretations and minor components (inclusions) for the map units for which the investigation is being made shall also be provided. See Figure 2. NRCS soils are Madras loam (Units 87A and 87B; Class 3 irrigated, Class 4 nonirrigated) and Simas-Ruckles-Rock outcrop complex (Units 120F and 121F; Classes 6, 7, and 8)

(3) Methods Used by Soil Scientist/Classifier: The soil scientist/classifier shall describe the methodologies used for the preparation of the report and shall include the following:

- (a) The level of order of survey used in the field survey, scale and type of maps used for field investigations, number of sample locations and observation points all confirming or disagreeing with the NRCS mapping units. The survey shall be one or more level of order higher than the NRCS survey as

described in the NRCS Soil Survey Manual, 1993. Note that an Order 1 survey is more detailed than an Order 2 or greater survey. Order 1. See “Methods” on page 4.

- (b) The date(s) of the field investigation; June 8, 11, 12 and July 13, 2018. See “Methods” on page 4.
- (c) The methods used for observations (backhoe, auger, shovel, etc.) and methods used for documentation (for slope, color, pH, etc.); See “Methods” on page 4. Augur, clinometer, Munsell Color Chart, etc.
- (d) The number and location of borings either shown on an aerial photograph base map of the parcel or provided in a table with latitude and longitude coordinates. In conducting Order 1 soil surveys, the scale of the base maps used for the survey needs to be large enough to enable the identification of polygons of soil map units as consociation map units. Soil map units identified as a complex, association, or undifferentiated group should be avoided as this defeats the purpose of an Order 1 survey. If, however, the soils are so intermingled that they cannot be mapped at a reasonable scale so as to identify consociation map unit polygons, then there should be sufficient sampling and documentation of the complex to demonstrate this soil component distribution. A percentage of each member of the complex will be used in determining area of extent and the reported percentages will be based on this sampling and its documentation, including soil profile descriptions, boring locations and, where useful, photographs. See Figure 4 for locations of 106 site investigations. No complexes identified. Photographs are provided in Appendix B.
- (e) Geomorphic and vegetation correlations supporting the interpretation of land capability classes of soils that differ from those in the official soil survey information; and See “Discussion of Observations and Results” on pages 4 and 5.
- (f) A notation of any limitations encountered during the field investigation, such as soil depth, drainage, slope or inaccessibility. See “Discussion of Observations and Results” on pages 4 and 5.

(4) Results, Findings, and Decisions: The soils report shall describe how the level of order of survey used in this investigation differs from that used by NRCS in the original soil survey. The soils report shall also include:

- (a) An overview of the geology or geologic setting, describing sources of parent material, bedrock and related factors; See “Geology” on page 2.
- (b) A description of the landforms and topography, confirming the relationship of landforms to soil mapping units; See “Discussion of Observations and Results” on pages 4 and 5 and Table 1.
- (c) A description of on-site and adjacent hydrology, including surface and subsurface features, intermittent versus perennial, floodplain and floodways and other related information; See “Hydrology” on page 2.
- (d) A description of the revised soil mapping units with their range of characteristics, explaining how and why they differ from NRCS soil mapping. The soils report shall include a summary of soil variability incorporating significance of preceding weather (above or below average), where known and crops and natural vegetation present; and See “Discussion of Observations and Results” on pages 4 and 5.
- (e) A tabulation of all previous and revised soil mapping units complete with their acreages and land capability classification. See Table 2 for NRCS mapping. See “Acreage Determinations...” on page 5 and Figure 4 for revised mapping.

(5) Summary or Conclusion: The soils report shall contain a section reiterating the purpose of the investigation, explaining the significance of the revised soil mapping and describing any other significant issues related to the report’s purpose. See page 5.

(6) References: This section may list any manuals or publications utilized or referenced by the report. See review of previous mapping and published information on pages 1 - 3.

(7) Attachments: Other informational materials provided as attachments, such as maps, figures or appendices shall include the following and shall be printed on 8 ½ x 11” wherever possible:

- (a) Vicinity map at a scale of 1:48,000 or smaller showing the project location; See Figure 1.

- (b) The NRCS soils map generated from Web Soil Survey at a scale of 1:20,000 or larger outlining the project site; See Figure 2 and Appendix A.
- (c) Site condition map (aerial photo) at a scale of 1:5,000 or larger outlining the project site and showing the location of site investigations (borings) and other relevant features; See Figure 4.
- (d) Topography map at a scale of 1:24,000 or larger outlining the project site; See Figure 1.
- (e) Assessor's map at a scale of 1:5,000 or larger outlining the project site; See Figure 3.
- (f) Revised soils map of the project site at a scale of 1:5,000 or larger; See Figure 4.
- (g) Soil profile descriptions and site observation notes; and See Table 3.
- (h) Representative soil profile descriptions of any soil type identified in the project area that is not described or identified in the published soil survey for the area mapped. All soils identified are described in the NRCS soil survey.

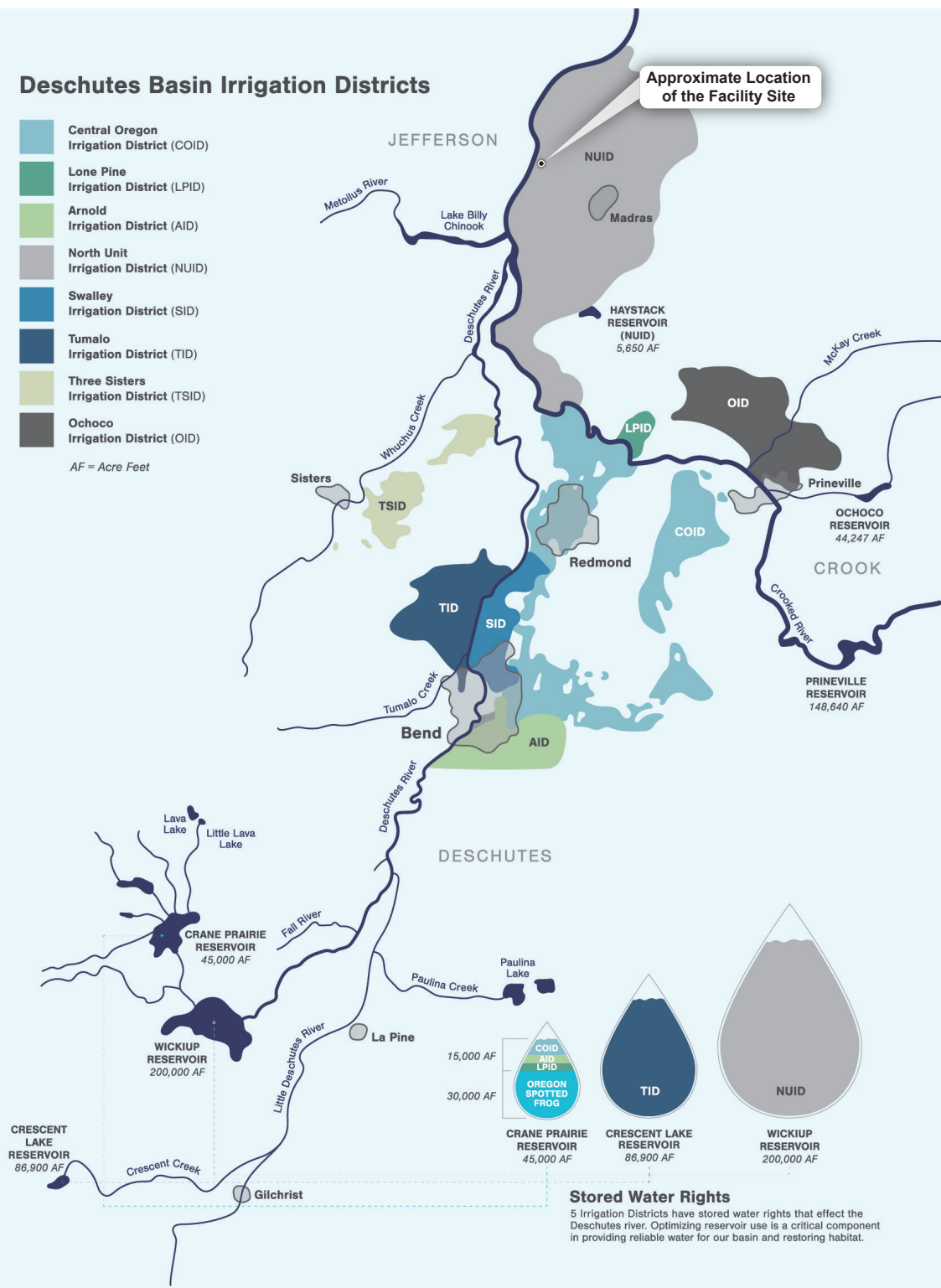
(8) Soils reports shall be submitted electronically to the department to timothy.murphy@state.or.us, accompanied by a Soils Assessment Submittal Form. Payment of a non-refundable administrative fee of \$625 should be sent by check. Check submitted

Attachment K-4
Deschutes Basin Irrigation Districts

Deschutes Basin Irrigation Districts

- Central Oregon Irrigation District (COID)
- Lone Pine Irrigation District (LPID)
- Arnold Irrigation District (AID)
- North Unit Irrigation District (NUID)
- Swalley Irrigation District (SID)
- Tumalo Irrigation District (TID)
- Three Sisters Irrigation District (TSID)
- Ochoco Irrigation District (OID)

AF = Acre Feet



Stored Water Rights

5 Irrigation Districts have stored water rights that effect the Deschutes river. Optimizing reservoir use is a critical component in providing reliable water for our basin and restoring habitat.

Attachment K-4

Deschutes Basin Irrigation Districts
Application for Site Certificate
Madras Solar Energy Facility
Jefferson County, OR

JACOBS®

Attachment K-5
Jefferson County Special Advisory Group
Letter

MCVEIGH-WALKER Chase * ODOE

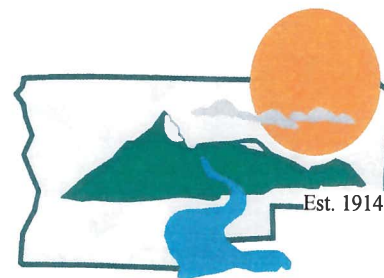
From: Jeff Rasmussen <jeff.rasmussen@co.jefferson.or.us>
Sent: Friday, August 23, 2019 4:24 PM
To: MCVEIGH-WALKER Chase * ODOE
Cc: Katrina Weitman; Tanya Cloutier; Alexa Gassner
Subject: Jeff Co Letter RE: Madras Solar
Attachments: Jeff Co CAO Ltr EFSC Madras Solar August 2019.pdf

Jeff Rasmussen
Jefferson County
County Administrative Officer
66 SE "D" Street
Madras, OR 97741
(o) 541.475.2449
(C) 541.460.0889

JEFFERSON COUNTY

COUNTY ADMINISTRATIVE OFFICER

66 S.E. "D" St., Suite A • Madras, Oregon 97741 • Ph: (541) 475-2449 • FAX: (541) 475-4454
jeff.rasmussen@co.jefferson.or.us



August 23, 2019

Chase McVeigh-Walker (SENT VIA EMAIL)
Oregon Department of Energy
550 Capitol St
Salem, OR 977301

RE: Madras Solar Energy Facility

Dear Chase:

The Jefferson County Board of Commissioners sitting as the Special Advisory Group for the Madras Solar Energy Facility submits this letter in response to the request for comment regarding the Notice of Intent submitted by Madras PV1, LLC. The Board has assigned the work of providing comment to Jeff Rasmussen, County Administrative Officer, 66 SE D Street, Madras, Oregon 97741; 541-475-2449. Aspects of the proposed facility that are within the responsibility or expertise of Jefferson County include zoning restrictions, building code requirements and the statewide goals under the Jefferson County Comprehensive Plan.

All of the area within the site boundary is an appropriate size and location for the analysis area for the proposed facility. Studies that should be conducted to identify potential impacts of the proposed facility and mitigation measures include those identified in the Jefferson County Comprehensive Plan and the Jefferson County Zoning Ordinance, both located at: <https://www.jeffco.net/cd/page/comprehensive-plan-and-zoning-ordinance>.

Statutes, administrative rules and local government ordinances administered by Jefferson County that might apply to construction or operation of the proposed facility include Sections 301.4, 301.5, 401, 405, and 602 of the Jefferson County Zoning Ordinance (JCZO) and the Jefferson County Comprehensive Plan. For application of permits, a site plan and full set of structural and electrical plans will be required. A value of the structural portions of work (footings, poles, racking system for the solar portion and separate values for any other structures that are not exempt from permitting) will need to be included in the application. A submittal fee is required with the application. The fee/s will be based on the value of structural portion of work.

Jefferson County looks forward to continued involvement in this project. Please feel free to contact me with questions or further requests for information.

Sincerely,


Jeff Rasmussen,
County Administrative Officer

Attachment K-6
Title Reports



First American

Commitment

Commitment for Title Insurance

ISSUED BY

First American Title Insurance Company

FIRST AMERICAN TITLE INSURANCE COMPANY, a Nebraska corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate 180 days after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

In Witness Whereof, First American Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

First American Title Insurance Company

Dennis J. Gilmore
President

Jeffrey S. Robinson
Secretary

(This Commitment is valid only when Schedules A and B are attached)

This jacket was created electronically and constitutes an original document

Copyright 2006-2009 American Land Title Association. All rights reserved. The use of this form is restricted to ALTA licensees and ALTA members in good standing as of the date of use.

All other uses are prohibited. Reprinted under license from the American Land Title Association.

CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. *The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <<http://www.alta.org/>>.*



First American

Schedule A

Commitment for Title Insurance

ISSUED BY

First American Title Insurance Company

File No.: NCS-870560-NRG

1. Effective Date: September 07, 2017 at 7:30 A.M.

2. Policy (or Policies) to be issued:

AMOUNT

\$ TBD \$

Proposed Insured:
To Be Determined

\$ TBD \$

Proposed Insured:
To Be Determined

3. The estate or interest in the land described or referred to in this Commitment is
Fee Simple

4. [Title to the Fee Simple estate or interest in the land is at the Effective Date vested in:](#)
The Successor Trustee of the Bryce K. Binder Trust under Agreement dated November 13, 1996

5. The land referred to in this Commitment is described as follows:

PARCEL 1:

N1/2, SECTION 31, TOWNSHIP 10 SOUTH, RANGE 13, EAST OF THE WILLAMETTE MERIDIAN,
JEFFERSON COUNTY, OREGON.
EXCEPTING: COUNTY ROAD #630.

PARCEL 2:

S1/2 OF THE S1/2 SECTION 30, TOWNSHIP 10 SOUTH, RANGE 13, EAST OF THE WILLAMETTE
MERIDIAN, JEFFERSON COUNTY, OREGON.



First American

Schedule BI

Commitment for Title Insurance

ISSUED BY

First American Title Insurance Company

File No.: NCS-870560-NRG

REQUIREMENTS

The following requirements must be satisfied:

1. Payment of the necessary consideration for the estate or interest to be insured.
2. Pay all premiums, fees and charges for the policy.
3. Documents satisfactory to us, creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
4. Payment of all taxes and/or assessments levied against the subject premises which are due and payable.



First American

Schedule BII

Commitment for Title Insurance

ISSUED BY

First American Title Insurance Company

File No.: NCS-870560-NRG

EXCEPTIONS

The policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, or claims of easement, not shown by the public records; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
4. Any encroachment (of existing improvements located on the subject land onto adjoining land or of existing improvements located on adjoining land onto the subject land), encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the subject land.
5. Any lien, or right to a lien, for services, labor, material, equipment rental or workers compensation heretofore or hereafter furnished, imposed by law and not shown by the public records.

Taxes assessed under Code No. 0070 Account No. 193 Map No. 10133100 00100-Parcel 1

NOTE: The 2016-2017 Taxes: \$236.28, are Paid

Taxes assessed under Code No. 0070 Account No. 192 Map No. 10133100 00600-Parcel 2

NOTE: The 2016-2017 Taxes: \$93.50, are Paid

6. The 2017-2018 Taxes: A lien not yet due or payable.
7. Taxes deferred, as disclosed by the tax roll, the premises herein described have been zoned or classified for farm use. At any time that said land is disqualified for such use the property will be subject to additional taxes or penalties and interest.
8. The rights of the public in and to that portion of the herein described property lying within the limits of public roads, streets or highways.
9. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as reserved in instrument:
Recorded: August 26, 1915
Instrument No.: [790](#)
10. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as reserved in instrument:

11. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument:
Granted To: Portland General Electric Company, a corporation of Oregon
Recorded: January 3, 1957
Instrument No.: [058601](#)
12. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument:
Granted To: Portland General Electric Company, an Oregon Corporation
Recorded: May 28, 1986
Instrument No.: [861269](#)
13. The Company will require a copy of the Bryce K. Binder Trust under Agreement dated November 13, 1996 and all amendments thereto be furnished for our review prior to closing to determine the identity and powers of the Trustee(s) under said agreement.

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.
14. The Company will require a Certification of Trust be completed and returned by the Trustee(s) of the Bryce K. Binder Trust under Agreement dated November 13, 1996.

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.
15. Any right, title and interest of Binder LLC, a State of Oregon Limited Liability Company,
As disclosed by: Bargain and Sale Deed
Recorded: December 29, 2006
Instrument No.: [2006-07722](#)
(Affects Parcel 2)
16. The Company will require a copy the Operating Agreement (including any approvals of withdrawal of member(s) or acceptance of new member(s)) and the Articles of Organization of Binder LLC, for its examination prior to closing. Any conveyance or encumbrance of the Limited Liability Company's property must be executed by all of the members unless otherwise provided for in the Operating Agreement.

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.
17. Any facts, rights, interests or claims which would be disclosed by a correct ALTA/NSPS survey.
18. Rights of parties in possession.
19. Any lien, or right to a lien, imposed by law, as a result of services, labor, and/or materials used, or to be used, for improvement to the premises.
20. Water rights, claims or title to water, whether or not shown by the public records.
21. Any claim to (a) ownership of or rights to minerals and similar substances, including but not limited to ores, metals, coal, lignite, oil, gas, uranium, clay, rock, sand, and gravel located in, on, or under the Land or produced from the Land, whether such ownership or rights arise by lease, grant, exception, conveyance, reservation, or otherwise; and (b) any rights, privileges, immunities, rights of way, and easements associated therewith or appurtenant thereto, whether

or not the interests or rights excepted in (a) or (b) appear in the Public Records or are shown in Schedule B.

22. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records, or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Report/Commitment.

INFORMATIONAL NOTES

The exceptions to coverage 1-5 inclusive as set forth above will remain on any subsequently issued Standard Coverage Title Insurance Policy.

In order to remove these exceptions to coverage in the issuance of an Extended Coverage Policy the following items are required to be furnished to the Company; additional exceptions to coverage may be added upon review of such information:

- A. Survey or alternative acceptable to the company
- B. Affidavit regarding possession
- C. Proof that there is no new construction or remodeling of any improvement located on the premises. In the event of new construction or remodeling the following is required:
 - i. Satisfactory evidence that no construction liens will be filed; or
 - ii. Adequate security to protect against actual or potential construction liens;
 - iii. Payment of additional premiums as required by the Industry Rate Filing approved by the Insurance Division of the State of Oregon

Note: Any map or sketch enclosed as an attachment herewith is furnished for information purposes only to assist in property location with reference to streets and other parcels. No representation is made as to accuracy and the company assumes no liability for any loss occurring by reason of reliance thereon.

This is not a Title Report, a Commitment to issue Title Insurance or a Guarantee of any kind. No liability is assumed with this report. The fee charged for this service does not include supplemental reports or other services. Further dissemination of the information in this report in a form purporting to insure title to the herein described land is prohibited by law.



First American Title Insurance Company of Oregon

SCHEDULE OF EXCLUSIONS FROM COVERAGE

1. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 2006 EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

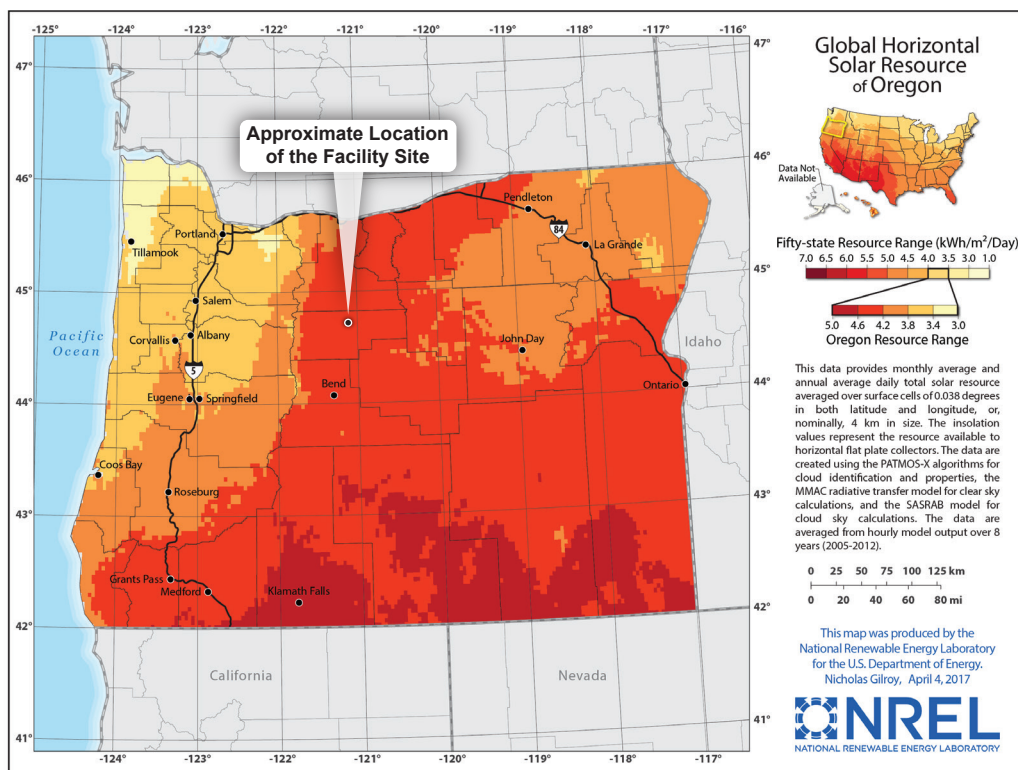
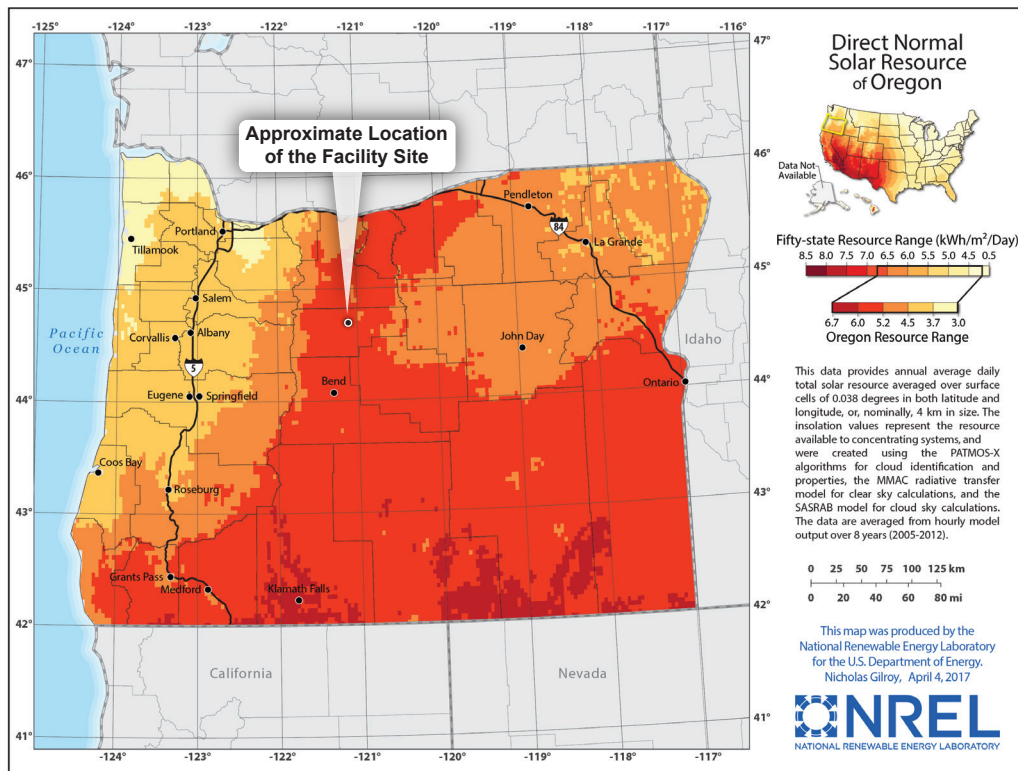
1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
 - (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

2. American Land Title Association OWNER POLICY - 2006 EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
 - (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risks 9 and 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

Attachment K-7
Solar Resources Maps



Attachment K-7
Solar Resource Maps
Application for Site Certificate
Madras Solar Energy Facility
Jefferson County, OR

JACOBS