To: Oregon Energy Facility Siting Council
From: Katie Clifford, Senior Siting Analyst
Date: February 9, 2018
Re: Agenda Item B (Action Item):
Staff Presentation of the Boardman Solar Energy Facility Application for Site Certificate for the February 23, 2018 EFSC Meeting

Procedural History

On January 13, 2017, Boardman Solar Energy LLC submitted to the Oregon Department of Energy (Department) a preliminary Application for Site Certificate (pASC) for the Boardman Solar Energy Facility. The proposed facility is an approximately 75-MW solar photovoltaic energy generation facility that would be located in Gilliam and Morrow counties, Oregon. Following receipt of the additional information requested from the Applicant, the Department determined the Application for Site Certificate (ASC) to be complete on August 29, 2017 and the Applicant filed a complete ASC on September 1, 2017.

On November 13, 2017, after review of the ASC and reviewing agency comments on the complete ASC, the Department issued the draft proposed order on the ASC, which included staff’s recommendation to grant with conditions a site certificate for the proposed facility, pursuant to Oregon Administrative Rule (OAR) 345-015-0210. On December 14, 2017, hearing officer Alison Webster conducted a public hearing on the draft proposed order in Boardman, Oregon. The record of the public hearing opened on November 13, 2017 (the issuance date of the notice of the draft proposed order public hearing and request for comments) and closed at the conclusion of the public hearing on December 14, 2017. The Council reviewed the draft proposed order at its regularly scheduled Council meeting on December 15, 2017. At the meeting, staff presented a summary of the Department’s evaluation of compliance with the applicable standards, recommended site certificate conditions, and comments received on the record of the draft proposed order.

Following the Council’s review, the Department issued the proposed order on December 29, 2017, taking into consideration the comments received on the record of the public hearing and agency consultation. Concurrent with the issuance of the proposed order, the Department issued a Notice of Contested Case and a Public Notice of the Proposed Order. The Notice of Contested Case was sent via certified mail to all persons who commented on the record of the public hearing as only those persons who commented in person or in writing on the record of the public hearing could request to participate as a party or limited party in the contested case proceeding. Pursuant to the Notice of Contested Case, the deadline for requesting party status in the contested case was 5:00 pm on February 2, 2018.
No requests for party status were received by the February 2nd deadline. On January 30, 2018 the Applicant’s counsel submitted a letter to the hearing officer stating that the Applicant “does not intend to raise any issues in the contested case but intends to participate in the contested case to address any and all issues raised by other contestants.” On February 7, 2018 the hearing officer issued the Order Concluding Contested Case in the matter of the Application for a Site Certificate for the Boardman Solar Energy Facility, concluding the contested case proceeding and stating that the proposed order may be forwarded to the Energy Facility Siting Council for its consideration.

**Revisions from the Draft Proposed Order to the Proposed Order**

The proposed order issued by the Department includes minor administrative changes, as well as revised discussion or analysis (particularly within Section IV.E., Land Use) to respond to comments on the draft proposed order.

Minor administrative revisions were made to the following conditions to update references to Oregon Administrative Rules to reflect the relocation of some Division 27 rules to Division 25 as a result of the rulemaking approved by the Council at its October 19, 2017 meeting: General Standard Condition 1; Mandatory Conditions 1 through 9; Site Specific Conditions 1 and 2; and Retirement and Financial Assurance Conditions 1 through 4. Retirement and Financial Assurance Condition 4 was modified to correct a rounding error from the draft proposed order. The language of Mandatory Condition 3 is based upon the language of OAR 345-025-0006(5), but was modified in the proposed order to exclude specific reference to pipelines and wind energy facilities because the proposed energy facility does not include pipelines or wind energy components.

In response to comments received from the Morrow County Special Advisory Group, the proposed order includes modifications to Mandatory Condition 1 to require the certificate holder to provide Morrow County Planning Department with a legal description of the site; to Mandatory Condition 5 to require that the certificate holder dispose of all timber, brush, refuse and flammable or combustible material resulting from clearing of land and construction of the facility in accordance with the applicable site certificate provisions and the Morrow County’s Solid Waste Management Plan; to General Standard Condition 2 to require the certificate holder to provide Morrow County Planning Department with the compliance plan; and to Fish and Wildlife Habitat Condition 10 to require that the certificate holder provide a copy of the final Revegetation and Noxious Weed Plan to the Morrow and Gilliam County Planning Departments and Weed Supervisors and that the Department consult with Oregon Department of Fish and Wildlife and the Morrow and Gilliam County Planning Departments and Weed Supervisors prior to approving the plan.

The Department revised the findings in the Land Use standard assessment of the proposed order in response to a comment letter on the draft proposed order from 1000 Friends of Oregon. The organization’s comment letter raised multiple issues, and stated that the site boundary could be very productive cropland if water rights were transferred to the site boundary and that the ASC was missing information on the agricultural potential of other locations on the same tract. In addition, the organization’s comment letter provided a number of comments on the Applicant’s goal exception request and concluded that “[a]lthough [the organization] believes this site may qualify for a goal exception, applicant has not sufficiently demonstrated that such exception is justified.”

The Department’s recommended findings in the proposed order address each issue raised by 1000 Friends of Oregon, and consider additional information related to the Applicant’s goal exception request provided
by the Applicant, the Morrow County Special Advisory Group, and Greg Harris (a representative of Threemile Canyon Farms, LLC) in comments on the record of the public hearing. In addition, the Department has provided additional assessment and clarification regarding the applicable statutes and rules to the review. In summary, as further explained in the proposed order and draft of the final order, for EFSC-jurisdictional facilities such as the Boardman Solar Energy Facility, it is the Council’s Land Use standard and goal exception process that apply [OAR 345-022-0030(4)], and not the Land Conservation and Development Commission’s rules at OAR 660-004-0022.

For ease of reference by Councilmembers, the Department has included as an attachment to this staff report the red-line track changes version of the pertinent Land Use standard sections of the proposed order. The same analysis is found in the draft of the final order provided to Council in its council packets, though the red-line track changes between the draft proposed order and the proposed order have been removed in the draft of the final order.

Revisions from the Proposed Order to the draft Final Order

The Department has prepared a draft final order and a draft site certificate for Council consideration and review. Revisions from the proposed order to the draft final order, made by the Department, were administrative in scope such as updating the procedural history, and converting “Department recommends” to “Council finds,” references to “recommended” conditions to “adopted” or “imposed” conditions, and reference to the “proposed order” to “final order.”

Council Options

At the conclusion of the contested case, in accordance with Oregon Revised Statute (ORS) 469.370(7), the Council shall issue a final order either approving or rejecting the ASC based upon the standards adopted under ORS 469.501 and any additional statutes, rules or local ordinances determined to be applicable to the facility by the project order, as amended. The Council shall make its decision by the affirmative vote of at least four members approving or rejecting the application. The Council’s order is considered a final order for purposes of appeal under ORS 469.403. If the Council grants issuance of a site certificate, the Council shall issue a site certificate. The site certificate becomes effective upon execution by the Council and by the Applicant. The Council’s three options are included below.

1. **Approve as presented by staff.** The Council can approve the draft of the final order and site certificate as presented by staff, with no changes. The site certificate would become effective when signed by both the EFSC Chair and the Applicant (site certificate holder).

2. **Amend, and approve.** The Council can amend the staff’s proposed order, including either the findings of the order or specific conditions of approval. If the amendments are not considered material, the Council can approve and issue the final order and site certificate at the same Council meeting. However, if the amendments are considered material, including material changes to conditions, the Council must provide public notice and a comment opportunity on the revised findings or conditions, and hold a hearing at a later Council meeting to consider any comments received, and ultimately issue its final order.
3. **Reject the application.** The Council can decide that the proposed facility does not meet one or more Council standards or other applicable rules and statutes, and reject the application and deny issuing a site certificate. However, because the proposed order finds that the facility meets all Council standards and applicable rules and statutes (with conditions), if Council disagrees with staff’s findings in the proposed order, Council would have to specify which standard or rule is not met and why, and direct staff to prepare findings accordingly. As per ORS 469.370(7), Council would be required to provide public notice and a comment opportunity on the revised findings, and hold a hearing at a later Council meeting to consider any comments received, and ultimately issue its final order.

**Staff Recommendation**
Staff recommends that Council selection “Option 1” and approve the draft of the final order as presented by staff to Council, and issue a site certificate for the Boardman Solar Energy Facility.
Attachment 1
Selected Sections of Proposed Order Land Use Standard Analysis
(Track-changes red-line version)
(F) 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 or acquire water rights, or will reduce the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

OAR 660-033-0130(38)(f) establishes that for projects that would be sited on 12 acres or more of high-value farmland, an exception is taken pursuant to ORS 197.732 and OAR Chapter 660, division 4. The Department’s assessment of the Applicant’s Goal 3 exception request is evaluated in Section IV.E.4 below and recommends that the Council find that an exception to Goal 3 is justified under ORS 469.504(2)(c) and OAR 345-022-0030(4).

OAR 660-033-0130(38)(f)(A) requires the Applicant to demonstrate that the proposed energy facility would not “create unnecessary negative impacts on agricultural operations conducted on any portion of the subject property not occupied by project components.” The Applicant asserts that the proposed energy facility would not impact or create unnecessary negative impacts on agricultural operations for the following reasons.

The design and layout of the proposed energy facility would not require relocation of any existing farm access routes or farm infrastructure, and would not result in changes to existing farm practices for planting, irrigating, fertilizing, or harvesting on adjacent property. The proposed energy facility site would be located on land leased from Threemile Canyon Farms that is not currently irrigated (and has never been irrigated), nor are there water rights for the site, and the site has limited agricultural productivity. As presented in ASC Exhibit K, 118

[118] In a comment letter on the record of the public hearing, 1000 Friends of Oregon stated that there “does not appear to be anything in the record indicated [sic] that water rights could not be transferred to this property...if
Attachment K-1, a letter from the General Manager of Threemile Canyon Farms describes that the site has historically only been used for winter/spring cattle grazing and that the proposed facility would not adversely impact or increase the cost of farm practices within the vicinity. Based on the existing use of the proposed facility site, letter from the General Manager, and design of the proposed facility, the Department agrees with the Applicant’s analysis and recommends that the Council conclude that the proposed energy facility would not create unnecessary negative impacts on agricultural operations conducted on any portion of the subject property not occupied by facility components and therefore satisfies the requirements under OAR 660-033-0130(38)(f)(A).

OAR 660-033-0130(38)(f)(B) requires the Applicant to demonstrate that the proposed energy facility would not “result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property” and states that the “provision may be satisfied by 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 and how topsoil will be stripped, stockpiled and clearly marked.” As necessary, to satisfy this provision, the Applicant must demonstrate compliance with the Council’s Soil Protection standard, and based on Applicant representations in the ASC, the Department recommends the Council impose conditions that require implementation of a DEQ-approved Erosion and Sediment Control Plan during construction (see recommended Soil Protection Condition 1) and implementation of a Revegetation and Noxious Control Plan during operation (see recommended Condition Fish and Wildlife Condition 10). These plans include best management practices to be implemented during construction and operation designed to reduce and minimize unnecessary soil erosion or loss that could limit agricultural productivity within the proposed facility site and on adjacent EFU zoned land. Consistent with the recommendations included for satisfying OAR 660-033-0130(38)(f)(B), recommended Soil Protection Condition 1

119 Greg Harris, a representative from Threemile Canyon Farms, LLC, provided oral testimony on the record of the public hearing stating that the site is only grazed approximately 30 to 45 days per year, and that the proposed facility would not adversely affect any other farming operations. BSEAPPDoc85 DPO Hearing Public Comment Harris 2017-12-14.

118 This were [sic] land were irrigated it would likely be very productive cropland.” BSEAPPDoc DPO Public Comment 1000 Friends of Oregon Darzen 2017-11-24. The area within the site boundary is predominantly Class III-IV soils if irrigated; however, the land within the site boundary is not irrigated and, as stated in the application, has never been irrigated (ASC Exhibit K, Section K.2). As discussed in ASC Exhibit K, transferring water rights from another portion of the subject tract to the site boundary would require the landowner to dry up an equivalent number of acres of the existing place of use. An irrigation system already exists to irrigate the existing place of use, and it does not extend to the area within the facility site boundary. In a comment on the preliminary ASC, DLCD stated: “The applicant has provided a good overview of water rights on the subject tract. We agree that transferring water rights from an existing pivot to the project area is not supported by our rules.” BSEAPPDoc37-1 DLCD comments on June version of pASC Exhibit K 2017-06-28. Additionally, Greg Harris, representing Threemile Canyon Farms, LLC, commented on the record of the public hearing and confirmed that transferring water rights from another portion of the subject tract to the proposed facility site would necessitate drying up the area from where the water was transferred. BSEAPPDoc85 DPO Hearing Public Comment Harris 2017-12-14.
also requires the Applicant to, prior to construction, submit to the Department and Morrow County Planning Director a construction-related topsoil management plan describing how topsoil would be stripped, stockpiled and clearly marked to maximize preservation of impacted topsoil. Based upon compliance with the recommended conditions, the Department recommends that the Council conclude that the proposed energy facility would satisfy the requirements under OAR 660-033-0130(38)(f)(B).

OAR 660-033-0130(38)(f)(C) requires the Applicant to demonstrate that the proposed energy facility would not “result in unnecessary soil compaction that reduces the productivity of soil for crop production.” As explained in ASC Exhibit K, construction and operational related impacts would be limited within the proposed site boundary. Unnecessary soil compaction related impacts would be limited by the Applicant’s use of existing or constructed access roads, limiting potential impacts from driving across or through productive soils used for crop production. The Applicant represents that revegetation activities implemented during operation would include scarification of compacted soils, which the Department recommends be imposed in Fish and Wildlife Habitat Condition 10. Based upon the design of the proposed facility and compliance with the recommended condition, the Department recommends that the Council conclude that the proposed energy facility would not result in unnecessary soil compaction and would satisfy the requirements under OAR 660-033-0130(38)(f)(C).

OAR 660-033-0130(38)(f)(D) requires the Applicant to demonstrate that the proposed energy facility would not result in the “unabated introduction or spread of noxious weeds and other undesirable weed species.” Based on Applicant representations, and to satisfy the requirements of this criteria and the Council’s Fish and Wildlife Habitat standard, the Department recommends Council impose Fish and Wildlife Habitat Condition 10, requiring the Applicant to implement a Revegetation and Noxious Weed Control Plan, following receipt of approval from the Department in consultation with ODFW and county weed control authorities. Based upon compliance with the recommended condition, the Department recommends that the Council conclude that the proposed energy facility would not result in unabated introduction or spread of noxious weeds and other undesirable weed species and would satisfy the requirements under OAR 660-033-0130(38)(f)(D).

OAR 660-033-0130(38)(f)(E) requires the Applicant to demonstrate that: 1) non high-value farmland soils are not available on the subject tract; 2) siting the project on non high-value farmland soils, if present, would significantly impact the project’s ability to operate; or 3) the site is better suited than other possible sites because it would allow continued operation of existing farmland.

The Applicant has not provided sufficient information for the Department to recommend that the Council find that non high-value farmland soils are not available on the subject tract. The Applicant has provided sufficient information for the Department to recommend that the Council conclude, that siting the project on non high-value farmland soils on any other part of the subject tract would significantly impact the project’s ability to operate, and that the site is...
better suited than other possible sites on the tract because it would allow continued operation of an existing commercial farm.

“Tract” is defined in LCDC rule as “one or more contiguous lots or parcels under the same ownership.” OAR 660-033-0020(14). The Applicant’s Figure K-1 depicts the ownership of the land within the site boundary and the surrounding area. The area within the site boundary is part of a much larger tract: a group of contiguous lots and parcels all owned by Threemile Canyon Farms, LLC. Although the Applicant does not provide the size of the tract, Figure K-1 indicates that it is, at a minimum, in excess of 50 square miles in size. The land within the site boundary is comprised of primarily non high-value farmland and a much smaller amount (but more than 12 acres) of high-value farmland.

Although the Department considers the OAR 660-033-0130(38)(f)(E)(i) and (ii) analyses in ASC Exhibit K insufficient, the Applicant’s letter submitted on the record of the public hearing provides information on the limitations on siting the proposed facility on areas outside the site boundary but within the tract that are not considered high-value farmland.120 These limitations include land that is managed for irrigated agriculture, within Boardman Farm Conservation Area, adjacent to the Boardman Bombing Range, or presents topographic and environmental challenges for siting a solar facility (including creeks and hills). The Applicant refers to the discussion in ASC Exhibit K at K-47 that explains how these features limit siting a solar facility on land within or in close proximity to these features.121 The Applicant’s assertions are supported by a figure attached to the comment letter showing the locations of non high-value farmland soils on the subject tract in relation to these features. Therefore, the Department recommends that the Council conclude that there is non high-value farmland outside the site boundary but within the subject tract [and therefore that the Applicant does not meet the requirements of OAR 660-033-0130(38)(f)(E)(i)], but Applicant has not provided information to demonstrate that there are no non high-value farmland soils outside of the proposed site boundary on the subject tract.

The Applicant has not provided sufficient information for the Department to recommend that the Council find that siting the project on non high-value farmland soils, if present, present on the subject tract outside of the site boundary would significantly impact the project’s ability to operate successfully, and that therefore the requirements under OAR 660-033-0130(38)(f)(E)(ii) have been satisfied. As explained above, the Applicant has not provided sufficient information...

120 BSEAPPDoc82 DPO Comment Applicant 2017-12-14.
121 The analysis in ASC Exhibit K at K-47 contains the Applicant’s evidence of compliance with OAR 660-033-0130(38)(g)(A) regarding nonarable soils; however, because the Applicant’s comment letter on the record of the public hearing briefly explains that these same limitations apply to non high-value farmland within the subject tract, the more detailed analysis in ASC Exhibit K at K-47, taken together with the evidence provided in the Applicant’s comment letter, supports the Department’s recommendation that Council find that the facility would comply with OAR 660-033-0130(38)(f)(E)(ii).
evidence about the extent or location of non high-value farmland soils on the entirety of the subject tract. Nor has the Applicant provided evidence that siting the project on any other part of the subject tract would significantly impact the project’s ability to operate.

The Applicant has provided sufficient information for the Department to recommend that the Council find that 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. The Applicant has provided a letter from Marty Myers, General Manager of Threemile Canyon Farms, stating that the proposed site has never been irrigated. In comparison, much of the land within the subject tract is depicted in Figure K-1 as being under center-pivot irrigation. Moving the proposed site to any currently irrigated land within the subject tract would not allow for continuation of existing farm operations on these lands. The proposed site, in contrast, has limited productivity and has historically been used only for winter and spring cattle grazing (Attachment K-1), and grazing only occurs approximately 30 to 45 days per year. Therefore, the Department recommends that the Council conclude that the proposed site is better suited than other lands within the subject tract to allow continuation of existing farm operations, and the requirements under OAR 660-033-0130(38)(f)(E)(iii) have been satisfied.

OAR 660-033-0130(38)(f)(F) requires the Applicant to establish a 1-mile study area and evaluate the presence of other approved and developed solar facilities, and identifies specific evaluation criteria in circumstances where at least 48 acres of land within the study area have been developed for solar facilities. The Applicant asserts that there are no other solar facilities within the study area that have either been constructed or that have received land use approvals/building permits and therefore under OAR 660-033-0130(38)(f)(F)(i), no further action is necessary. The Department agrees with the Applicant’s assessment and recommends that Council conclude that the requirements under OAR 660-033-0130(38)(f)(F) would be satisfied.

As relevant to the proposed energy facility, OAR 660-033-0130(38) provides that:

122 Greg Harris, a representative from Threemile Canyon Farms, LLC, provided oral testimony on the record of the public hearing stating that the site is only grazed approximately 30 to 45 days per year. BSEAPPDoc85 DPO Hearing Public Comment Harris 2017-12-14.

123 In a comment letter on the record of the public hearing, 1000 Friends of Oregon stated that the ASC appears to be missing information about the agricultural potential of the rest of the tract, as required by OAR 660-033-0130(38)(f)(E). BSEAPPDoc DPO Public Comment 1000 Friends of Oregon Darzen 2017-11-24. However, while the Department’s draft proposed order agreed that the Applicant did not provide sufficient evidence that OAR 660-033-0130(38)(f)(E)(i) and (ii) had been met, OAR 660-033-0130(38)(f)(E) only requires that one of the three listed criteria be met [see the use of the word “or” between OAR 660-033-0130(38)(f)(E)(ii) and (iii). In addition, as described in this proposed order, the Applicant provided information on the record of the public hearing that the Department recommends Council find satisfies the requirements of OAR 660-033-0130(38)(f)(E)(ii). Boardman Solar Energy Facility Application for Site Certificate Draft Proposed Order November 13, December 29, 2017
For arable lands, a photovoltaic solar power generation facility shall not preclude more
than 20 acres from use as a commercial agricultural enterprise unless an exception is taken
pursuant to ORS 197.732 and OAR chapter 660, division 4. The governing body or its
designate must find that:

(A) The project is not located on high-value farmland soils 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;

(B) No more than 12 acres of the project will be sited on high-value farmland soils
    described at ORS 195.300(10) unless an exception is taken pursuant to 197.732 and
    OAR chapter 660, division 4;

(C) 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

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

OAR 660-033-0130(38)(g)(A) requires the Applicant to demonstrate that the proposed energy
facility could not be located on high-value farmland soils or arable soils unless: 1) nonarable
soils are not available on the subject tract; 2) siting the project on nonarable soils, if present,
would significantly impact the project’s ability to operate; or 3) the site is better suited than
other possible sites because it would allow continued operation of existing farmland. 124

The Applicant explains that, although extremely limited, nonarable soils are present on the
subject tract but are predominately located within the Boardman Farm Conservation Area that
is permanently dedicated to conservation purposes by Threemile Canyon Farm under a Multi-
Species Candidate Conservation Agreement with Assurances (CCAA) for Washington ground
squirrel, ferruginous hawk, loggerhead shrike, and sage sparrow. As described in ASC Exhibit K,
there is an area of nonarable land to the north of the Boardman Farm Conservation Area;
however, this land is immediately west of and within restricted airspace for the US Naval
Weapons System Training Facility commonly referred to as the Boardman Bombing Range, and
the Applicant asserts that it is unlikely that the Department of Defense and Federal Aviation
Administration would approve a solar project development in this location. Therefore, the
Applicant asserts and the Department agrees that these nonarable soils in and north of the
Boardman Conservation Area are not available for the proposed energy facility.

The Applicant further argues that siting the proposed energy facility on the limited nonarable
soils present within the subject tract would significantly reduce operability because the
nonarable soils are not located in proximity to the POI and some are along creeks or hills
where construction and operation of a solar project would be difficult. The Applicant also
expresses that the proposed site is significantly better suited to allow continuation of the
existing commercial agricultural operation on the subject tract than any other location. The
construction and maintenance of solar panels and associated equipment at the facility would
not alter or reduce the area under cultivation by Threemile Canyon Farms elsewhere on the
tract or surrounding areas also under their ownership, would not necessitate relocating any
access routes or farm infrastructure (including irrigation equipment), and would not result in
changes to the practices for planting, irrigating, fertilizing, or harvesting the circles. This
explanation, in addition to the letter from Marty Myers, General Manager of Threemile
Canyon Farms (Attachment K-1), demonstrates that proposed facility site is significantly 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.

Based on the above analysis, the Department recommends the Council conclude that because
there are limited nonarable soils on the subject tract, siting the proposed energy facility on
any alternate location within the tract would significantly reduce operability, and the

124 As defined in OAR 660-033-0020, “tract” means one or more contiguous lots or parcels under the same
ownership. The Department notes that because OAR 660-033-0130(38)(g)(A) requires an evaluation of soil
conditions on the “subject tract”, that it includes areas outside of the proposed site boundary area.
proposed site is better suited to allow continuation of an existing commercial farm than other locations, the provisions of OAR 660-033-0130(g)(A) would be satisfied.\textsuperscript{125}

OAR 660-033-0130(38)(g)(B) establishes that for projects that would be sited on 12 acres or more of high-value farmland, an exception is taken pursuant to ORS 197.732 and OAR Chapter 660, division 4.\textsuperscript{126} The Department’s assessment of the Applicant’s “reasons Goal 3 exception” request is evaluated in Section IV.E.4 below and recommends that the Council find that an exception to Goal 3 is justified under ORS 469.504(2)(c).

OAR 660-033-0130(38)(g)(C) requires the Applicant to establish a 1-mile study area of EFU-zoned land and evaluate the presence of other approved and developed solar facilities, and identifies specific evaluation criteria in circumstances where at least 80 acres of land within the study area have been developed for solar facilities. The Applicant asserts that there are no other solar facilities within the study area that have either been constructed or that have received land use approvals/building permits and therefore under OAR 660-033-0130(38)(g)(C)(i), no further action is necessary. The Department agrees with the Applicant’s assessment and recommends that Council conclude that the requirements under OAR 660-033-0130(38)(g)(C) would be satisfied.

OAR 660-033-0130(38)(g)(D) requires the Applicant to demonstrate that the provisions of OAR 660-033-0130(38)(f)(A)-(D) have been satisfied. Based on the analysis presented above, the Department recommends that Council conclude that OAR 660-033-0130(38)(f)(A)-(D) would be satisfied.

Provisions (i) and (j) under OAR 660-033-0130(38) are also relevant to the proposed energy facility and provide that:

(i) 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

\textsuperscript{125} In a comment letter on the record of the public hearing, 1000 Friends of Oregon stated that the ASC appears to be missing information about the agricultural potential of the rest of the tract, as required by OAR 660-033-0130(38)(g)(A). BSEAPPPDoc DPO Public Comment 1000 Friends of Oregon Darzen 2017-11-24. However, the commenting organization does not specify what information about the agricultural potential of the rest of the tract is absent from the ASC, and as described in this order, the Applicant provided information in the ASC that the Department considers adequate to demonstrate that the provisions of OAR 660-033-0130(g)(A) would be satisfied. DLCD commented on the preliminary ASC requesting more explanation as to why nonarable soils in the subject tract cannot be utilized for the proposed facility, and following Applicant revisions to Exhibit K, DLCD stated that the agency was satisfied that the Applicant had addressed DLCD’s concerns. BSEAPPPDoc37-1 DLCD comments on June version of pASC Exhibit K 2017-06-28.

\textsuperscript{126} Note that for EFSC-jurisdictional facilities such as Boardman Solar Energy Facility, it is Council’s statutes and rules that govern the goal exception process, found at ORS 469.504(2) and OAR 345-022-0030(4).

Draft: Proposed Order

November 13, December 29, 2017
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).

(j) 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.

OAR 660-033-0130(38)(i) requires the governing body to impose a condition that the Applicant 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. To satisfy this provision, the Department recommends the Council impose Land Use Condition 4 as follows:

**Land Use Condition 4:** Prior to construction, the certificate holder shall record in the real property records of Morrow County a Covenant Not to Sue with regard to generally accepted farming practices on adjacent farmland consistent with OAR 660-033-0130(38)(i).

OAR 660-033-0130(38)(j) allows for the governing body to require a bond or letter of credit for the amount necessary to retire the facility during decommissioning. The Department recommends several conditions of compliance requiring the Applicant to maintain a bond or letter of credit in amount and form satisfactory to the Council to restore the facility site following cessation of operation, as evaluated in Section IV.G., *Retirement and Financial Assurance*, of this order. Therefore, based upon conditions recommended in Section IV.G., *Retirement and Financial Assurance* of this order, the Department recommends that Council conclude that the requirements under OAR 660-033-0130(38)(j) would be satisfied.

**IV.E.4. Goal 3 Exception**

The proposed facility would be sited on more than 12 acres of high-value farmland soils as defined in ORS 195.300(10), and would preclude more than 12 acres of high value farmland and more than 20 acres of arable land from use as a commercial agricultural enterprise. Therefore, the proposed energy facility would not comply with OAR 660-033-0130(38)(f) and (38)(g)(A)-(B) unless a goal exception is taken. Pursuant to ORS 469.504(1)(b)(B), non-compliance with a statewide planning goal requires a determination by the Council that an exception to Goal 3 is warranted under ORS 469.504(2) and the implementing rule at OAR 345-022-0030(4).

Goal 2, under OAR 660-015-0020(2)(Part II), permits an “exception” to the requirement of a goal for “specific properties or situations.” The text of Goal 2, part II, pertaining to exceptions is codified in ORS 197.732; however, for EFSC-jurisdictional facilities, ORS 469.504(2) establishes the requirements that must be met for the Council to take an exception to a land use planning goal, not the LCDC rule or statute. The requirements of ORS 469.504(2) are implemented through the Council’s Land Use standard at OAR 345-022-0030(4), which states:
(4) The Council may find goal compliance for a proposed facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732 (emphasis added), the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development Commission pertaining to the exception process goal, the Council may take an exception to a goal if the Council finds:

(a) The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by the rules of the Land Conservation and Development Commission to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goal should not apply;

(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

(C) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.

The provisions of OAR 345-022-0030(4)(a) and (b) are not applicable to the proposed facility. The Applicant submitted an assessment as to why a “reasons” goal exception under OAR 345-022-0030(4)(c) is appropriate for the proposed facility; the Department agrees that a “reasons” goal exception under OAR 345-022-0030(4)(c) is appropriate, and the Department’s evaluation of the OAR 345-022-0030(4)(c) is provided below.

Reasons Supporting an Exception

Under OAR 345-022-0030(4)(c)(A) (and ORS 469.504(2)(c)(A)), in order for the Council to determine whether to grant an “reasons” exception to a statewide planning goal, the Applicant must provide reasons justifying why the state policy embodied in the applicable goal should not apply. The state policy embodied in Goal 3 is the preservation and maintenance of agricultural land for farm use. The Applicant’s reasons justification is based on the standards pursuant to OAR 660-004-0022(3), as presented below, which establish the types of reasons that may be used to justify certain types of uses not allowed on resource lands. However, to be clear, OAR 660-004-0022(3) does not specifically apply under the Council’s Land Use standard and

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associated statutory authority. The Council has not established in rule, and the legislature has not established in statute, specific criteria used by the Council in deciding upon a goal exception under OAR 345-022-0030(4)(c). The Applicant’s assessment, utilizing the criteria included at OAR 660-004-0022(3), is discussed below and is a useful and informative evaluation for considering a Goal 3 exception; however, as noted, the Department does not make its recommendations to Council based on a strict evaluation of compliance with OAR 660-004-0022(3), but rather the Department’s recommendation is based on an assessment of a number of factors and reasons that justify the Goal 3 exception under the Council’s Land Use standard and OAR 345-022-0030(4)(c), as discussed further below.

**OAR 660-004-0022**(3) Rural Industrial Development: For the siting of industrial development on resource land outside an urban growth boundary, appropriate reasons and facts may include, but are not limited to, the following:

- **a)** The use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports;
- **b)** The use cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas; or
- **c)** The use would have a significant comparative advantage due to its location (e.g., near existing industrial activity, an energy facility, or products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the county’s gain from the industrial use, and the specific transportation and resource advantages that support the decision.

The Department notes that Division 4 of OAR 660 provides an interpretation of the Goal 2 exception process. As noted above, because OAR 345-022-0030(4) (and ORS 469.504(2)(c)) applies notwithstanding ORS 197.732 (which codifies the text of the Goal 2 exception process) or any rules of the Land Conservation and Development Commission (LCDC) pertaining to an exception process goal, OAR 660-004-0022(3) is not directly applicable to the evaluation of the Applicant’s reasons justification. However, as discussed above, the Department considers the criteria to be reasonable in a useful framework within which to evaluate information supporting the sufficiency evaluation of the Applicant’s reasoning, but does not base its recommendations to Council on whether OAR 660-004-0022(3) has been satisfied. The Department takes no position on whether the proposed facility qualifies as a “rural industrial development” for purposes of a Goal 3 exception under LCDC’s exceptions process.

Under OAR 660-004-0022(3)(a), the Applicant’s reasons justification explains that the proposed industrial use from construction and operation of the energy facility is significantly dependent upon unique resources located on agricultural land, including excellent solar resources and access to the regional grid-interconnection system. ASC Exhibit K, Attachment K-5 presents
graphical representations of regional solar resources, obtained from the U.S. Department of Energy. Attachment K-5 represents that annual solar radiation at latitude tilt within the proposed facility area is 5 to 5.5 kilowatt-hours per square meter per day, which appears to be the peak range within Morrow and Gilliam counties for the time period represented (1998-2005).

The Applicant asserts that the proximity of the proposed facility site to the existing regional grid system, approximately 2-miles, also represents a unique resource because it allows for interconnection via the proposed 115 kV transmission line following a reasonably direct route, which is both technically and economically feasible, from the energy facility to the regional grid system.

The Applicant also describes that the proposed facility site provides unique resources ideal for siting of a solar photovoltaic energy facility, based on its specific location with respect to Interstate 84 (I-84) topography, vegetation, and historic and current use of the site. The proximity of I-84 to the proposed facility site would allow for convenient vehicular access during construction and operation. Further, the flat terrain and vegetation including non-native grasses, and the fact that the proposed site is non-irrigated, not cultivated, and undeveloped offers unique, ideal conditions for solar module installation.

The Department questions the use of site conditions (topography, vegetation, and current/historic use) and proximity to the existing regional grid as representative of a "unique resource" on agricultural lands under OAR 660-004-0022(3)(a). Further, the Department questions whether the identified solar resources, specifically solar radiation level and solar latitude tilt, of the proposed facility site, represent a unique resource, as it was intended to be qualified under OAR 660-004-0022(3)(a). As presented in ASC Exhibit K, Attachment K-5, solar radiation levels within the proposed site boundary are similar to solar radiation levels covering most of eastern Oregon and do not represent a clear, unique resource limited to a specific location. Therefore, the Department recommends that Council does not consider the identified solar resources of the proposed facility site to be unique, nor the site-specific solar resources in conjunction with the above-described site conditions, to represent a unique resource for which the proposed facility is significantly dependent. While the Department considers this relevant information for the Council to consider when evaluating facility compliance with OAR 345-022-0030(4)(a) as to which “reasons justify why the state policy embodied in the applicable goal should not apply,” the Department recommends that the Council find that the information and analysis provided under the Applicant’s evaluation of OAR 660-004-0022(3)(a) is not by itself sufficient to justify a Goal 3 exception for the proposed facility under OAR 345-022-0030(4)(c). In addition, OAR 660-004-0022(3)(a) is not directly applicable to the proposed facility.

Under OAR 660-004-0022(3)(b), the Applicant’s reasons justification explains that locating the proposed facility site within urban growth boundaries that are more densely populated would be incompatible, but provides minimal supporting analysis. The Department, therefore, does not consider the information provided sufficient for the Council to determine that this reasons
justification is sufficient. The Department recognizes that the proposed facility site would require 759 contiguous acres which may not be available within an urban growth boundary or an appropriate use of the land established in an urban growth boundary generally established for future urban growth and development. However, the Department recommends that Council concludes that, in general, solar power generation facilities would not be hazardous or incompatible with densely populated areas and recommends that the Council find that the information and analysis provided under the Applicant’s evaluation of OAR 660-004-0022(3)(b) is insufficient to support or justify a Goal 3 exception for the proposed facility. In addition, OAR 660-004-0022(3)(b) is not directly applicable to the proposed facility.

Under OAR 660-004-0022(3)(c), the Applicant’s reasons justification explains that the proposed facility site would have a significant comparative advantage due to its location, specifically its proximity to the existing regional transmission grid and I-84, the availability of solar resources, topographic and geographic resources, and its location on non-irrigated, non-productive, agricultural lands. The Applicant asserts that the proposed energy facility would benefit the local economy through employment opportunities, and would provide contributions to the local tax base. Based upon the information in the record, the Department agrees that the facility site would have a significant comparative advantage, and recommends that the Council concludes that use of the land for the proposed facility site would have a significant comparative advantage due to its location, would benefit the local economy, and would cause only minimal loss of productive resource lands. While OAR 660-004-0022(3)(c) is not directly applicable to the proposed facility, the Department considers this relevant information for the Council to consider when evaluating facility compliance with OAR 345-022-0030(4)(a) as to which “reasons justify why the state policy embodied in the applicable goal should not apply,,” and therefore find that a Goal 3 exception is justified, as further discussed below.

The Applicant’s reasons justification also includes that the proposed facility would further advance important County and State policies supporting renewable energy development. ASC Exhibit K represents MCCP Energy Conservation Policies 3 and 9, which support renewable energy development. ASC Exhibit K suggests that State policy supporting renewable energy development is represented by the implementation of ODOE’s 2005 Renewable Action Plan, Senate Bill (SB) 838, and SB 1547. Because County policy supports renewable energy development and State plans and senate bills establish goals for increasing the percentage of renewable energy sources in the source mix, the Department agrees that the proposed facility would be consistent with the identified policy goals. However, because the identified State and county policies do not address the specific location of facilities, nor direct facility development on agricultural lands, the Department does not consider consistency with State and county level policies to represent a qualified justification for a Goal 3 exception, as the goal exception requested is specific to the proposed facility, its location, and its overall impact to site-specific
agricultural lands. The Department therefore recommends that Council conclude that while
development of the proposed facility as a renewable energy source would further and advance
County and State renewable energy resources policy goals, this is not considered a sufficient
reason supporting or justifying a Goal 3 exception for the proposed facility.

As stated previously, OAR 660-004-0022(3) is not directly applicable to the evaluation of the
Applicant’s reasons justification, and therefore the Department does not base its
recommendations to Council on whether OAR 660-004-0022(3) has been satisfied. ORS
197.732(2)(c)(A) and ORS 469.504(2)(c)(A) are nearly identical (“reasons justify why the state
policy embodied in the applicable goals should not apply” and “reasons justify why the state
policy embodied in the applicable goal should not apply,” respectively). However, while OAR
660-004-0022 contains rules to implement the LCDC “reasons” standard (under ORS
197.732(2)(c)(A)), the Council’s “reasons” standard codified in statute (under ORS
469.504(2)(c)(A)) does not have correspondingly specific implementing rules. Therefore, the
Council has broad discretion to interpret compliance with its Land Use standard, including
interpreting OAR 345-022-0030(4)(a) as to which “reasons justify why the state policy
embodied in the applicable goal should not apply.” It is the Department’s position that the
information contained in Exhibit K and in Based on the above analysis under OAR 660-004-
0022(3)(c) — regardless of whether or not the facility would meet the burden of OAR 660-004-
0022(3)(c) were that rule directly applicable to the evaluation of the Applicant’s reasons
justification – provide important information that support a recommendation to Council that a
Goal 3 exception should be taken and justification as to why the state policy embodied in Goal
3 should not apply.

As described in Exhibit K and throughout this order, the Department relies upon a number of
reasons to justify its recommendation to Council with the Land Use standard.
These reasons include the Department recommends that the Council find that the reasons,
including the significant substantial comparative advantages of the proposed site location as
discussed above – including access to solar resources; ideal topographic and geographic
conditions; limited impacts to non-irrigated, non-productive agriculture lands; limited impacts
to adjacent farmland operations; avoidance of impacts to riparian areas and high quality
habitat; access to I-84; access to regional electric transmission grid-system; and benefits to the

127 In ASC Exhibit K, the Applicant expresses that the proposed facility would further Statewide Planning Goal 13. In a comment on the complete ASC, DLCD stated, “Although Goal 13 requires consideration of renewable energy in planning efforts, it does not call for development of new renewable energy facilities or address where such facilities should be located. Goal 13 is thus consistent with Goal 3 and the longstanding Agricultural Land Use Policy statement in ORS 215.243 as it does not direct renewable energy to be sited in exclusive farm use zones.” The Department agrees with this comment and recommends that Council not consider the Applicant’s evaluation of Goal 13 consistency as supportive to the request for a Goal 3 exception. BSEAPPDoc65 Complete ASC Reviewing Agency Comment DLCD Murphy 2017-09-29.

128 The implementing rule [OAR 345-022-0030(4)(c)(A)] simply restates the statute [ORS 469.504(2)(c)(A)]: “Reasons justify why the state policy embodied in the applicable goal should not apply”.
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In the opinion of the Department, these reasons offset the negative consequences to agricultural land uses of siting the facility at the proposed location (i.e., removing the land within the site boundary from seasonal grazing use during the life of the facility). The Department therefore recommends that the Council find that the proposed facility meets the “reasons” standard under the Land Use standard [OAR 345-022-0030(4)(c)(A)] for a sufficiently justify why the state policy embodied in Goal 3 should not apply and why a Goal 3 exception should be granted for the proposed facility.

Comments Received on the Applicant’s Goal Exception Request

1000 Friends of Oregon submitted a comment letter on the record of the public hearing. The organization’s comment letter concluded that “the threshold for a goal exception is high and is intended to discourage conversion of agricultural land, and especially usable agricultural land, from being converted for nonfarm uses. Although [the organization] believes this site may qualify for a goal exception, applicant has not sufficiently demonstrated that such exception is justified.” The organization’s specific comments related to the Applicant’s goal exception request are discussed in this section of the proposed order. The Morrow County Special Advisory Group provided written and oral testimony on the record of the public hearing stating that Morrow County supports the granting of a Goal 3 exception in support of the Boardman Solar Energy Facility. The Applicant and Greg Harris, a representative of Threemile Canyon Farms, LLC, also provided comments on the record of the public hearing related to the Applicant’s goal exception request, as discussed herein.

1000 Friends of Oregon noted that the Applicant proposed to analyze the Goal 3 reasons exception under the “rural industrial” category in OAR 660-004-0022(3), but questioned whether the Applicant had demonstrated that the proposed facility is appropriately categorized as “rural industrial” based upon the number of jobs and amount of economic benefit to Morrow County which the facility would generate. In the case cited by 1000 Friends of Oregon throughout their comment letter – 1000 Friends of Oregon v. Jackson County, Or LUBA (October 27, 2017) – the Oregon Land Use Board of Appeals (LUBA) noted that “DLCD stated in relevant part that it was ‘uncertain whether or not a utility scale solar project is properly considered a rural industrial activity,’ and while DLCD was not convinced that a solar
facility is an industrial use, it was ‘open to the discussion[].’” LUBA further noted that DLCD’s state agency brief on the case did not take any position on whether or not a utility-scale solar facility can be characterized as an industrial use for the purposes of OAR 660-004-0022(3). The Department takes no position on whether the proposed facility qualifies as a “rural industrial development” for purposes of a Goal 3 exception under LCDC’s exceptions process. In addition, the Department notes that, whether or not the facility could be categorized as rural industrial for the purposes of OAR 660-004-0022(3), the LCDC rules pertaining to an exception process goal are not directly applicable to the evaluation of the Applicant’s reasons justification. However, the information provided by the Applicant in its OAR 660-004-0022(3) evaluation is considered for informational purposes in the Department’s evaluation of whether or not it recommends the Council find that the proposed facility meets the “reasons” standard under the Land Use standard (OAR 345-022-0030(4)(c)(A)) for a Goal 3 exception.

1000 Friends of Oregon agreed with the Department staff that the Applicant had not adequately demonstrated that the facility is dependent on a “unique resource” when evaluated under OAR 660-004-0022(3)(a). In addition, 1000 Friends of Oregon agreed with the Department staff that the Applicant had not demonstrated why the facility could not be located inside an urban growth boundary, when evaluated under OAR 660-004-0022(3)(b). The Applicant commented that “even a cursory review of inventories of available commercial or industrial lands in urbanized areas demonstrates that it would be difficult to find a site the size of the Facility site within an urban growth boundary.” In addition, Morrow County commented that, “Morrow County Planning staff have also reviewed the letter...submitted by 1000 Friends of Oregon. At one point in the letter 1000 Friends suggests that ‘solar development should be sited at or near the point of use or within the built environment, such as on existing industrial sites and otherwise unusable space.’ Morrow County would not want to see some 600 acres of industrial land consumed with a use that is allowed conditionally on farm land. Other industrial uses currently sited within industrial use zones in Morrow County have a stronger beneficial economic impact than a solar energy development would.”

1000 Friends of Oregon stated that the Applicant has not sufficiently demonstrated why the proposed facility site provides a comparative advantage under the Applicant’s OAR 660-004-0022(3)(c) analysis given that there is no “locational attractor” that is not also available on urban lands. However, the organization also stated that LUBA recently determined that for a site to have comparative advantage, the “locational attractor” must be on rural lands in order to serve as a basis for an exception under this provision. In ASC Exhibit K, the Applicant describes that one of the advantages of the proposed facility location is its proximity to an energy facility (the regional electric transmission grid for interconnection). The proposed point of interconnection to the Bonneville Power Administration transmission system is located on rural land (see ASC Exhibit K, Figure K-2 Zoning Map showing that the point of interconnection would be located on land zoned EFU). Again, while OAR 660-004-0022(3)(c) is not directly applicable to the evaluation of the Applicant’s reasons justification, the proximity of the proposed site boundary to the existing regional transmission grid is one of a combination of reasons why the Department recommends that the Council find that the proposed facility
meets the “reasons” standard under the Land Use standard [OAR 345-022-0030(4)(c)(A)] for a Goal 3 exception. However, the Department does not take a position on whether or not LCDC’s exceptions process rule in OAR 660-004-0022(3)(c) requires that an applicant demonstrate that there is no “locational attractor” available on urban lands, or whether or not that rule requires that the locational attractor be on rural lands in order to serve as a basis for an exception under LCDC’s exceptions process.

1000 Friends of Oregon comment letter stated that “The past and potential for grazing on the property should not be overlooked. The applicant should include an analysis of the lost productivity from the conversion of the land and quantify this loss to the local agricultural economy.” In the event that the organization’s comment is in relationship to the language in OAR 660-004-0022(3)(c) stating, “Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the county’s gain from the industrial use…”, the Department notes that the letter from the landowner provided by the Applicant (ASC Exhibit K, Attachment K-1) states that the site has limited productivity, developing the facility on the proposed site will facilitate a higher and better use of the land and concentrate solar development off more productive farmland, the facility will not adversely impact farm practices within the vicinity of the facility, and construction and operation of the facility are not anticipated to result in any changes to ongoing operations at Threemile Canyon Farms. In oral testimony provided at the public hearing, a representative (Greg Harris) from Threemile Canyon Farms, LLC stated that the site boundary has never been irrigated, has no water rights, and that moving water to the site boundary would require drying up land that is more suitable for farming than the land within the site boundary. Mr. Harris stated that Threemile Canyon Farms, LLC only grazes cattle on the site approximately 30 to 45 days per year, and that the company does not consider the land suitable for any other type of agricultural use. The Applicant’s analysis under OAR 660-004-0022(3)(c) references to ASC Exhibit K, Section K.5.1.2, which describes the economic benefits the facility would provide to Morrow and Gilliam counties. The Morrow County Special Advisory Group commented that construction of the facility would continue to grow and enhance energy production in Morrow County, and would bring jobs to eastern Oregon and reasonably priced electricity to the region. As discussed in this order, it is the Department’s position that the information contained in Exhibit K and in the analysis under OAR 660-004-0022(3)(c) – regardless of whether or not the facility would meet the burden of OAR 660-004-0022(3)(c) were that rule directly applicable to the evaluation of the Applicant’s reasons justification – provide important information that support a recommendation to Council that a Goal 3 exception should be taken and justification as to why the state policy embodied in Goal 3 should not apply.

Furthermore, in its comment letter, 1000 Friends of Oregon stated that the organization believes the Applicant has not sufficiently demonstrated why the proposed site provides a comparative advantage, given in part that the “applicant has not demonstrated how the site is different than other nearby rural lands, other than the fact that it does not have water rights. Because applicant has not provided an alternatives analysis of other potential sites nearby, there is no way to tell why this site, over other possible sites, actually provides an advantage
due to its location.” One of the requirements that would apply to an exception request under the ORS 197.732 LCDC exceptions process is the requirement to perform an alternatives analysis. However, for EFSC-jurisdictional facilities, ORS 469.504(2) establishes the requirements that must be met for the Council to take an exception to a land use planning goal, and therefore it is the requirements under ORS 469.504 (and not ORS 197.732) that apply. The Council’s goal exception process under ORS 469.504(2) and OAR 345-022-0030(4) does not include a requirement for an alternatives analysis. This was also noted by Councilmember Jenkins during the Council’s December 15, 2017 meeting during the Council’s review of the draft proposed order. Therefore, under the Council’s exceptions process, an applicant does not have the burden of performing an alternatives analysis, as noted by Councilmember Jenkins during the Council’s December 15, 2017 meeting.

After taking the comments from the various entities related to the goal exception request under careful consideration, the Department continues to recommend that the Council find an exception to Goal 3 is justified under OAR 345-022-0030(4)(c) and ORS 469.504(2)(c).

Significant Environmental, Economic, Social and Energy Consequences

Under OAR 345-022-0030(4)(c)(B) and ORS 469.504(2)(c)(B), in order for the Council to determine whether to grant an "reasons" exception to a statewide planning goal, the Applicant must show that “the significant environmental, economic, social and energy consequences” of the proposed energy facility have been identified and mitigated in accordance with Council standards.

Environmental Consequences

The proposed facility must satisfy the requirements of all applicable EFSC standards, rules and statutes. Applicable environmental EFSC standards include: General Standard of Review; Soil Protection standard; Protected Areas standard; Recreation Standard; Scenic Resources standard; Fish and Wildlife Habitat standard; and the Threatened and Endangered Species standard. The Applicant asserts that the proposed facility has been designed to avoid impacts to special status species, riparian areas, and high quality habitat (the proposed facility is only anticipated to impact Category 4 habitat). Based on the Department’s recommended findings of fact, conclusions of law, and conditions of approval presented in the draft proposed order related to environmental EFSC standards, the Department recommends that Council find that the proposed energy facility, including mitigation, would not cause significant adverse environmental consequences or impacts.

Economic Consequences

The Applicant represents that construction and operation of the proposed facility would result in beneficial economic consequences from job creation and subsequent tax revenue for the County, and diversification of underlying landowner income sources. While existing
area within the site boundary is used for grazing, the land is not irrigated and does not possess a water-right, is not used for productive agricultural crops, and does not produce significant economic benefits. Therefore, based on the Applicant's characterization of existing agricultural production and use, the Department recommends that the Council conclude that the proposed facility represents a net benefit compared to the site's existing uses and economic consequences.

**Social Consequences**

The Applicant represents that the proposed facility would not result in significant adverse social consequences. The Department considers social consequences as impacts on a community from a proposed facility, such as impacts from facility visibility, noise, traffic or demand on providers of public services. Based on distance and topographical features, the Applicant explains that the proposed facility would not be expected to result in significant adverse visual or noise impacts on any scenic resource, protected areas, or important recreational opportunity within the analysis areas. As demonstrated in the applicable sections of this draft proposed order, the Department agrees that impacts to scenic resources, protected areas, or recreational opportunities would, considering the recommended conditions, not result in significant adverse impacts and would comply with the appropriate Council standards. The Department addresses potential adverse impacts to public services (including traffic impacts) in Section IV.M, Public Services. As discussed in that section, the Department recommends conditions of approval to minimize potential adverse impacts.

As discussed in Section IV.K., Historic, Cultural and Archaeological Resources, the Applicant also represents that it would implement measures to avoid direct impacts from construction, operation, or retirement of the proposed facility on cultural or archaeological resources identified as eligible or potentially eligible for NRHP listing, and the Department recommends that the Council adopt these representations as site certificate conditions. As described further in Section IV.K. of this order, following an evaluation of potential indirect impacts to the visual setting of these resources, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) and the Applicant have reached a mutual agreement on the effects the proposed facility may have on historic properties of religious and cultural significance to the CTUIR.

Based on the Department’s recommended findings of fact and conclusions of law, and recommended conditions of compliance, as presented in the draft proposed order under the Council's Scenic Resources standard; Historic, Cultural and Archeological standard; Public Services standard; and Recreation standard, the proposed facility would not cause significant adverse social consequences.

**Energy Consequences**

The Applicant represents that because the proposed facility would produce up to 75 MW of renewable, emissions-free energy, the energy consequences would be beneficial and would be...
consistent with Policy 3 of the MCCP Energy Conservation Element. Because the proposed facility would provide a source of renewable energy, the Department recommends that the Council conclude that the proposed facility would not cause significant adverse energy consequences, and would provide a positive energy consequence by producing clean, renewable electricity.

Based upon the above analysis, the Department recommends the Council find that the facility would meet the standard under OAR 345-022-0030(4)(c)(B).

Compatibility with Adjacent Land Uses

Under OAR 345-022-0030(4)(c)(C) (and ORS 469.504(2)(c)(C)), in order for the Council to determine whether to grant an “reasons” exception to a statewide planning goal, the Applicant must show that the proposed facility is compatible with other adjacent land uses or will be made compatible through mitigation measures. The Applicant explains that adjacent land uses include: farm use, transportation use, transmission line use, and recreation use. The Department, however, recommends that the evaluation of the proposed facility’s compatibility with adjacent land uses be based on both adjacent land use zone designations and land uses. As represented in ASC Exhibit K, Figure K-2, land use zone designations within the analysis area include EFU, general industrial, and public/federal; however, with the exception of EFU zoned lands, adjacent land use zone designations are separated from the proposed site boundary by I-84. Based upon the evaluation of impacts under Council standards, including noise, visual, traffic and transportation impacts, as presented in this draft-proposed order, the proposed land use (commercial utility facility necessary for public service) would not be expected to be incompatible with adjacent land uses zoned general industrial and public/federal.

The proposed facility would not be expected to be incompatible with the existing transmission line use within the analysis area. Specifically, the proposed 115 kV transmission line would be parallel to PGE’s existing 230 kV transmission but would be separated by a safety buffer distance. Moreover, the proposed facility would not be expected to cause a significant adverse impact to I-84, the land use to the north of the proposed facility. This is further discussed in Section IV. M, Public Services, as well as above in Section IV.E.1., Morrow County of this order.

The Department considers the proximity of the proposed facility to the Willow Creek Wildlife Area to be important when considering land use compatibility. The Applicant commits to providing access to the Willow Creek Wildlife Area during facility construction (further described in Section IV.L, Recreation, of this draft-proposed order). As discussed in Section IV.F, Protected Areas, the proposed facility would not be expected to cause a significant adverse impact from noise, visual, traffic, water or wastewater disposal, to the Willow Creek Wildlife Area.

Finally, for adjacent and nearby farmland (the land generally to the south and east of the proposed facility), as described above [under the ORS 215.274 analysis], the Department...
recommends that the Council conclude that the proposed facility would not cause a significant change to accepted farm practices nor significantly increase the cost of accepted farm practices within the surrounding area. Moreover, the Applicant provided supporting evidence in ASC Exhibit K, Attachment K-1, from the General Manager of Threemile Canyon Farms, the adjacent land owner used for agricultural production, which included a letter stating that the proposed facility would not remove any land from productive economic use, that the proposed site would facilitate a higher and better use of land, and that the proposed facility is compatible with adjacent farming practices. Therefore, the Department recommends that Council conclude that the proposed facility would be compatible with other adjacent land uses and land use zones and that the facility would meet the standard under OAR 345-022-0030(4)(c)(C).

Conclusions of Law

Based on the foregoing findings and the evidence in the record, and subject to compliance with the recommended conditions, the Department recommends the Council find an exception to Goal 3 is justified under OAR 345-022-0030(4)(c) and ORS 469.504(2)(c); and that therefore, the Council finds that the proposed facility complies with OAR 660-033-0130(38)(f) and complies with the applicable statewide planning goal (Goal 3). As such, subject to the recommended conditions, the Department recommends the Council find that the proposed facility complies with the Council’s Land Use standard.

IV.F. Protected Areas: OAR 345-022-0040

(1) Except as provided in sections (2) and (3), the Council shall not issue a site certificate for a proposed facility located in the areas listed below. To issue a site certificate for a proposed facility located outside the areas listed below, the Council must find that, taking into account mitigation, the design, construction and operation of the facility are not likely to result in significant adverse impact to the areas listed below. References in this rule to protected areas designated under federal or state statutes or regulations are to the designations in effect as of May 11, 2007:

(a) National parks, including but not limited to Crater Lake National Park and Fort Clatsop National Memorial;

(b) National monuments, including but not limited to John Day Fossil Bed National Monument, Newberry National Volcanic Monument and Oregon Caves National Monument;

(c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131 et seq. and areas recommended for designation as wilderness areas pursuant to 43 U.S.C. 1782;

(d) National and state wildlife refuges, including but not limited to Ankeny, Bandon Marsh, Baskett Slough, Bear Valley, Cape Meares, Cold Springs, Deer Flat, Hart