



Oregon

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To: Energy Facility Siting Council

From: Kellen Tardaewether, Senior Siting Analyst

Date: July 22, 2020

Subject: Agenda Item G (Information Item):
Obsidian Solar Center – Staff Report on the Draft Proposed Order on
Application for Site Certificate for the July 23-24, 2020 EFSC Meeting

Attachments: Attachment 1: Comments Received on Record of Draft Proposed Order Public
Hearing, from July 10, 2020 through July 20, 2020 (Close of Public
Comment Period)
Attachment 2: Applicant Responses to DPO Comments

NOTICE OF DPO AND PUBLIC HEARING ON THE DPO

On March 12, 2020, the Department issued the Draft Proposed Order (DPO) and a Public Notice of a public hearing, to be held on April 23, 2020 at North Lake School in Silver Lake, Oregon. Due to the COVID-19 pandemic and procedural issues, the public hearing was rescheduled and held on July 20, 2020 at the Christmas Valley Community Hall in Christmas Valley, Oregon, with an opportunity for both in-person and remote (WebEx and conference call-in) participation.

Department staff and all EFSC members attended the hearing on the DPO either in-person or via the live Webinar. The hearing was presided over by Senior Administrative Law Judge from the Oregon Office of Administrative Hearings, Joe Allen, an EFSC-appointed hearing officer for the proposed facility review. Individuals, including the applicant, had the opportunity to provide oral testimony in any of the provided formats (i.e., in-person, via the WebEx or phone, or written). Department staff and the hearing officer polled individuals wanting to provide comments to establish time limits for commenting. After public comments were provided, under OAR 345-015-0220(5), the applicant was provided an opportunity to respond to comments on the DPO.¹ In its responses to DPO comments, the applicant also requested that the record remain open for the applicant to have the opportunity to respond to written and oral comments on the day of the close of the public comment period. The hearing officer granted the applicant's request for the record to remain open until Wednesday, July 22, 2020 at

¹ OAR 345-015-0220(5) At the commencement of the public hearing, the presiding officer must state that:

(b) A person who intends to raise any issue that may be the basis for a contested case must raise the issue with sufficient specificity to afford the Council, the Department, and the applicant an adequate opportunity to respond, including a statement of facts that support the person's position on the issue.

12:00 p.m. Audio recordings from the [in-person testimony](#) and [webinar](#) are available on the Department project webpage:

<https://www.oregon.gov/energy/facilities-safety/facilities/Pages/OSC.aspx>

DPO COMMENTS AND APPLICANT RESPONSES

On July 10, 2020, the Department provided EFSC a staff report (with an attachment, Attachment 1 to that staff report) that included written comments received from March 12 through July 10, 2020 from the applicant, including its comments on the DPO and responses to comments from the Oregon State Historic Preservation Office (SHPO) and Oregon Department of Fish and Wildlife (ODFW). In addition, the Department provided EFSC written comment letters from members of the public, organizations, legally-represented members of the public; and comment letters from reviewing agencies.

On July 22, 2020, in Attachment 1 of this cover letter, the Department provides EFSC the comments received on the DPO submitted in writing to the Department between July 10, 2020 and the close of the public comment period on July 20, 2020, which include comments provided in writing and orally at the public hearing. Additionally, in Attachment 2 of this cover letter, EFSC is provided the applicant responses to written comments received by July 16, 2020 and applicant responses to written and oral comments received from July 17, 2020 to the close of the public comment period on July 20, 2020.

Table 1: *DPO Comment Summary* below outlines all DPO comments received by members of the public, organizations, reviewing agencies, and the applicant. Table 1 also provides a list of applicant responses to DPO comments and reviewing agencies. All comments received from July 10, 2020 through July 22, 2020 are provided in Attachment 1 of this cover letter. Applicant responses to DPO comments are provided in Attachment 2. Between the July 10 staff report and this staff report, Council has received all comments on the record of the DPO, including the recordings from the July 20, 2020 public hearing.

The Department notes that several individuals and reviewing agencies, including SHPO and ODFW, commented several times. In turn, the applicant provided multiple responses to the comment letters and issues raised in the comment letters. Later versions of reviewing agency comment letters will reference the resolution of a concern; and applicant response to later-received agency comment letters, in turn, adopt recommendations from the agency comment letters. This will be further discussed during the DPO presentation at the July 24 EFSC meeting.

Table 1: DPO Comment and Applicant Response Summary

DocID	Commenter Name	Agency/Entity/Public	Date(s) Received	Issue/Topic
Public Comments				
4-2	Mike and Dorothy Ferns	Public	03/19/2020	Roadway dust from project-related road use
4-4	Gail Carbiener	Public	03/31/2020	Potential historic road within site
4-7	Brad Thorsted	Public	05/11/2020	Road impacts from project-related use

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DocID	Commenter Name	Agency/Entity/Public	Date(s) Received	Issue/Topic
4-11	Doris Kittredge	Public	05/18/2020	Roadway and crop impacts; limited local economic benefit
4-12	Paul Koreiva	Public	05/19/2020	In favor of project
4-13	Sam and Alice Dinsdale	Public	05/18/2020	In favor of project
4-14	Scott and Jana Kittredge	Public	05/20/2020	Roadway and crop impacts; limited local economic benefit
4-10	Justin Ferrell	Fort Rock/Silver Lake Soil and Water Conservation District	05/19/2020	Wind and water erosion, weeds, water runoff; and sufficiency of monitoring
4-15	Ryan Nielsen	Oregon & Southern Idaho District Council of Laborers	06/03/2020	In favor of project, job creation
4-16	Mike Reeder	Law Office of Mike Reeder (representing six individuals)	05/15/2020; 06/03/2020 07/01/2020 07/13/2020	Procedural issues re: hearing and public notice
4-17	Rose Gibson	Public	06/09/2020	Wildlife impacts and global warming
4-18	Gray Eagle	Public	06/13/2020	Wildlife impacts and global warming
4-19	Paul Hawkins	Public	07/14/2020	In favor of project
4-20	Bill Richardson	Rocky Mountain Elk Foundation	07/16/2020	Recommends ODFW coordination to minimize habitat impacts
4-21	James Walls	Lake County Resources Initiative	07/17/2020	Project would benefit climate change – reduce greenhouse gas emissions
4-22	Scott and Tonya Mobley	Dog Lake Construction	07/20/2020	In favor of project – job creation
4-23	Michael O’Casey	Theodore Roosevelt Conservation Partnership	07/20/2020	Habitat mitigation requirement of 2:1 acreage ratio; address long-term monitoring (Department); request for evaluation in future of cumulative project impacts
4-24	Mike Reeder	Fort Rock Neighbors	07/20/2020	Water use; soil erosion; agricultural impacts from soil erosion, dust; consistency with comprehensive plan goals and policies; rodent/animal displacement; public services (recommended conditions); financial capability and retirement estimate
4-25	Brian Meiering	Wetlands and Wildlife LLC	07/20/2020	2:1 habitat mitigation ratio; rodent/animal displacement – impacts to agriculture/adjacent landowners

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DocID	Commenter Name	Agency/Entity/Public	Date(s) Received	Issue/Topic
4-26	Jason Jaeger	Lake County Cooperative Weed Management Association	07/20/2020	Confirmation that CWMA will support project with weed control and revegetation; support of proposed methods/plan
4-27	David Kerr	North Lake Education Foundation	07/20/2020	In favor of project; confirmation of local economic benefit – school funding
4-28	Terry Ozbun	Archeological Investigations Northwest, Inc	07/20/2020	Evaluation/confirmation of project compliance with EFSC Historic, Cultural & Arch standard
4-29	Sue Anderson	Public	07/20/2020	Concern expressed on documented Golden Eagle nest in proximity to project site
4-30	Aaron and Rebecca Borrer	Public	07/20/2020	Concerns regarding dust, road impacts and traffic safety, adjacent farming impacts, waste disposal and facility retirement, issue with Dept of State Land lease and EFSC jurisdiction
4-31	Carl Shumway	Public	07/20/2020	General concern with battery storage, request to see facility plot plan
4-32	Jerald and Verlinda Simmons	Public	07/20/2020	Concerns regarding property values, wildlife impacts, visual impacts
4-33	LeeRoy and Nancy Horton; Dave Hogan	Public and representing LR Farming and Golden Acres	07/20/2020	Concerns regarding impacts to adjacent farm, specifically from wind-borne soil erosion and dust, displacement of rodents, weeds, concern of solar array affecting ambient temperature and humidity; also concern regarding waste and toxicity of broken solar panels.
4-34	Meriam and Jeremiah Thorsted	Public	07/20/2020	Concerns regarding impacts to adjacent farm, specifically impacts from wind-borne soil erosion and dust to livestock and workers; water use; public safety concern.
4-35	Richard Morehouse	Public; past or current owner of leased land to OSC	07/20/2020	Support for project, states that the site is not suitable for agriculture, there is no available water for irrigation, in adequate land to support cattle grazing operation.
4-36	Travis Eri	IBEW Local 125	07/20/2020	Support for project
Applicant Comments/Responses to DPO Comments				

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DocID	Commenter Name	Agency/Entity/Public	Date(s) Received	Issue/Topic
4-6; 4.6-1, 4.6-2, 4.6-3, 4.6-4	Elaine Albrich	David Wright Tremaine LLP - Applicant	04/30/2020; 05/22/2020; 06/08/2020; 07/16/2020; 07/20/2020	See comment letters and materials
Reviewing Agency Comments				
4-1	John Pouley	Oregon State Historic Preservation Office	03/13/2020; 05/15/2020	Cultural Mitigation and Monitoring Plan; Archeological Permits
4-3	Seth Thompson	Oregon Department of Aviation	05/14/2020	7460 Analysis Not Required for Facility
4-5; 4- 9; 4.9-1, 4.9-2	Sarah Reif	Oregon Department of Fish and Wildlife	04/24/2020; 05/18/2020; 06/11/2020; 07/16/2020	Draft Habitat Mitigation Plan; draft Wildlife Monitoring Plan; draft Revegetation and Noxious Weed Plan
4-8	Melanie Boozenny (for Lake Co. Commissioners)	Lake County Board of Commissioners	05/18/2020	Road conditions.
Oral Comments on 07/20/2020 Hearing				
	David Brown Michelle Slater	Applicant; Obsidian Solar Center LLC	07/20/2020	Project description and Procedural History; Coordination with Reviewing Agencies including Tribal Governments; Mitigation goals (Habitat and Historic Cultural)
	Terry Craig	Fort Rock/Silver Lake Soil and Water Conservation District	07/20/2020	Wind and water erosion, weeds, water runoff; and sufficiency of monitoring
	Carl Shumway	Public	07/20/2020	Concern of Battery components; displeased with County planning process
	Jerald Simmons	Public	07/20/2020	Concerns for impact to property value; and light pollution from Battery components
	Aaron Borrer	Public	07/20/2020	Concerns of road use impacts; concerns of impact to Elk (migration pattern, and roadway safety due to project fence proximity)
	LeeRoy Horton	Public	07/20/2020	Concern of soil erosion and impact to sheep, cattle, and haying operations; impacts from displacing refugee rodents/wildlife (damage to haying/crop operation); weed management;

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	LeeRoy Horton	On behalf of David Hogan/Golden Acres Farms	07/20/2020	Concern of impact to Hay operation; impacts (and results) of diversion to Elk migration
	Mariam Thorsted	Public	07/20/2020	Concern to future farming and health of livestock (from contaminated soils)
	Patrick Barker	Public	07/20/2020	Concerns to property value; Wildlife impacts (habitat, rodents, and elk)
	Harold Miles	Public	07/20/2020	Concern of erosion; impacts to elk migration; unclear how project benefits the community
	Donny Gallagher	Swinerton	07/20/2020	Obsidian construction contractor - Description of erosion and dust control measures during construction; traffic controls and road impacts managed through road use agreement
	Jen Kirby	Swinerton	07/20/2020	Support for revegetation plan/measures – appropriate seed mix
	Mary and Craig Foster	Fosters Natural Resource Contracting	07/20/2020	Support for habitat mitigation, juniper treatment
	Mike Reeder	Fort Rock Neighbors	07/20/2020	Erosion; groundwater; dust impacts to adjacent landowners and area
	Sarah Reif	ODFW	07/20/2020	WLIP agreement – comments on durability
	Terry Ozbun	Archeological Investigations Northwest, Inc	07/20/2020	Evaluation/confirmation of project compliance with EFSC Historic, Cultural & Arch standard
	Irene Gilbert	Public	07/20/2020	Consistency with Comprehensive Plan goals and policies, weeds
	Jeremiah Thorsted	Public	07/20/2020	Traffic Impacts; Elk migration and impact to farming operations
	Elaine Albrich	Applicant, Davis Wright Tremaine	07/20/2020	Confirmation that responses have been provided for numerous comments (from Public and ODFW); disagree with 2:1 ratio for ODFW mitigation policy for F&W Standard