



Oregon

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To: Energy Facility Siting Council

From: Kellen Tardaewether, Senior Siting Analyst

Date: July 10, 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, To Date (March 12 – July 10, 2020)
Attachment 2: Draft Proposed Order on the Application for Site Certificate

STAFF RECOMMENDATION

The Oregon Department of Energy (Department) issued the Draft Proposed Order (DPO) on the Application for Site Certificate (ASC) for the Obsidian Solar Center on March 12, 2020, recommending that the Energy Facility Siting Council (Council) approve the ASC and grant issuance of a site certificate for the proposed facility, subject to compliance with the recommended site certificate conditions (see Attachment 2 of this staff report).

The opportunity to provide comments on the DPO and ASC (record of the DPO Public Hearing) extends 130-days from March 12 through July 20, 2020. To date, over 17 comment letters were received from members of the public, Obsidian Solar Center LLC (applicant), and state and local government agencies. The applicant confirmed its intent to provide additional responses to public comments on or before July 20, 2020. The Department intends to submit a supplemental staff report providing a summary of applicant responses and any other comments received by the Department after July 10, 2020. Based on review of comments and applicant responses to comments received to date, the Department suggests changes to recommended findings of fact and conditions from the DPO to the proposed order, as described in this staff report.

PROPOSED FACILITY OVERVIEW

The proposed facility includes up to 400 megawatts alternating current (MWac) of solar photovoltaic (PV) energy generation equipment (modules, posts, inverter/transformer units, electrical collection system) to occupy or cover up to 3,590 acres in north Lake County, Oregon. Proposed related or supporting facilities include approximately 2 miles of 115 kilovolt (kV) transmission line, a 34.5 kV electrical collection system, up to 4 collector substations (approximately 1 acre each), a 115/500 kV step-up substation (on approximately 3 acres), up to 2 operations and maintenance building(s), Supervisory Control and Data Acquisition System, site access/gates, approximately 50 miles of internal/perimeter roads, and 7-foot tall perimeter

fencing. Proposed related or supporting facilities also include centralized or dispersed battery storage systems, which include long-duration flow batteries (as opposed to lithium ion battery storage technology), cell stack, balance of plant, all contained within battery storage enclosures. The facility, if approved, may be built in phases or in its entirety upon construction commencement.

NOTICE OF DPO, PUBLIC HEARING, AND COVID19 PANDEMIC EMERGENCY

On March 12, 2020, the Department issued the DPO and a Public Notice of a public hearing, to be held on April 23, 2020 at North Lake School in Silver Lake, Oregon, and of an opportunity to provide comments on the ASC and DPO through April 23, 2020. Due to the COVID-19 pandemic and procedural issues, the public hearing was rescheduled for 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.

DPO COMMENTS

As of July 10, 2020, the Department received written comments 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 received 12 comment letters from members of the public, organizations, and legally-represented members of the public; and multiple comment letters from four state and local government agencies (reviewing agencies), as presented in Table 1: *DPO Comment Summary* below. All comments received from March 12 through July 10, 2020 are provided in Attachment 1 of this staff report.

Table 1: DPO Comment Summary

Commenter Name	Agency/Entity/Public	Date(s) Received	Issue/Topic
Public Comments			
Mike and Dorothy Ferns	Public	03/19/2020	Roadway dust from project-related road use
Gail Carbiener	Public	03/31/2020	Potential historic road within site
Brad Thorsted	Public	05/11/2020	Road impacts from project-related use
Doris Kittredge	Public	05/18/2020	Roadway and crop impacts; limited local economic benefit
Paul Koreiva	Public	05/19/2020	In favor of project
Sam and Alice Dinsdale	Public	05/18/2020	In favor of project
Scott and Jana Kittredge	Public	05/20/2020	Roadway and crop impacts; limited local economic benefit
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

Table 1: DPO Comment Summary

Commenter Name	Agency/Entity/Public	Date(s) Received	Issue/Topic
Ryan Nielsen	Oregon & Southern Idaho District Council of Laborers	06/03/2020	In favor of project
Mike Reeder	Law Office of Mike Reeder (representing six individuals)	05/15/2020; 06/03/2020 07/01/2020	Procedural issues re: hearing and public notice
Rose Gibson	Public	06/09/2020	Wildlife impacts and global warming
Gray Eagle	Public	06/13/2020	Wildlife impacts and global warming
<i>Applicant Comments/Responses to DPO Comments</i>			
Elaine Albrich	David Wright Tremaine LLP - Applicant	04/30/2020; 05/22/2020; 06/08/2020	See comment letters and materials
<i>Reviewing Agency Comments</i>			
John Pouley	Oregon State Historic Preservation Office	03/13/2020; 05/15/2020	Cultural Mitigation and Monitoring Plan; Archeological Permits
Seth Thompson	Oregon Department of Aviation	05/14/2020	7460 Analysis Not Required for Facility
Sarah Reif	Oregon Department of Fish and Wildlife	04/24/2020; 05/18/2020; 06/11/2020	Draft Habitat Mitigation Plan; draft Wildlife Monitoring Plan; draft Revegetation and Noxious Weed Plan
Melanie Boozenny	Lake County Board of Commissioners	05/18/2020	In favor of project

All comments received from July 10, 2020 (the date of this staff report) through July 20, 2020 (close of the DPO public hearing, unless extended by Hearing Officer) will be provided to the Council-appointed Hearing Officer – Joe Allen, JD – and the Council, prior to Council’s review of the DPO and DPO comments, anticipated to occur on July 24, 2020.

This staff report evaluates issues raised in DPO comments which are specific to the analysis presented in the DPO and the ASC.

DPO Section IV.A. General Standard or Review (OAR 345-022-0000)

Applicant Comments

Applicant requests, based on desired consistency with other EFSC site certificates, that the construction completion deadline specified in recommended General Standard Condition 1 be modified from a timeframe extending three years from the construction start date to six years from the date of Council approval. The applicant’s requested condition change would authorize a construction duration of six years. As explained in the DPO, the ASC represents a two-year construction duration, which was the basis of the condition recommending no more than a

three-year construction duration. The Department suggests that the recommendations presented in the DPO be maintained in the proposed order.

DPO Section IV.C. Structural Standard (OAR 345-022-0020)

Applicant Comments

Applicant requests recommended Structural Standard Condition 1 (pre-construction geotechnical investigation) be modified to remove details on work to be completed. Applicant asserts that the condition details are consistent with the 2014 version of the Oregon State Board of Geologist Examiners Guideline for Preparing Engineering Geologic Reports, which is already referenced in the condition. As described in the DPO, the details about geotechnical work to be conducted were based on the applicant's geotechnical consultant's recommendations included in ASC Exhibit H Attachment H-1. The Department suggests that the recommendations presented in the DPO be maintained in the proposed order.

DPO Section IV.D. Soil Protection (OAR 345-022-0022)

Applicant Comments

Applicant requests recommended Soil Protection Condition 1 and 2 be modified. Recommended Soil Protection Condition 1 requires adherence to requirements of an Oregon Department of Environmental Quality (DEQ) issued National Pollutant Discharge Permit (NPDES) 1200-C (General Construction Permit); and, semi-annual submittal of NPDES 1200-C compliance requirements to the Department during facility construction. The applicant suggests that the submittal requirement is vague and overly burdensome and requests that the Department rely upon DEQ to assess NPDES 1200-C permit compliance. As described in the DPO, potential construction-related soil impacts include erosion from wind or water, accidental chemical spills, noxious weed infestation, and revegetation failure, which would be minimized through implementation of requirements under the DEQ NPDES 1200-C permit. The Department's recommended findings of compliance relies in part on compliance with DEQ's NPDES 1200-C permit. The recommended submittal requirement would allow the Department the opportunity to review compliance with the Soil Protection standard, separate from DEQ's role of assessing the applicant's compliance with the NPDES 1200-C permit. The Department suggests that the recommendations presented in the DPO be maintained in the proposed order.

Recommended Soil Protection Condition 2 requires implementation of a Spill Management Plan, based on the draft plan provided in ASC Exhibit I Attachment I-2, to be finalized based on Department review and approval prior to facility construction and operation. The applicant asserts that the Spill Management Plan is final and requests that the condition be modified directing implementation of the plan, as currently provided. As explained in the DPO, the plan provided in Attachment I-2 was developed based on 40 Code Federal Regulations 112, federal requirements that apply to facilities with certain types and quantities of hazardous materials, which may not apply to the final facility design. In addition, the plan provided in ASC Exhibit I Attachment I-2 describes that the plan will be finalized at a later date and identifies several

finalization steps, such as identification of onsite oil and hazardous materials and quantities, a final facility diagram, and facility contact names. The Department suggests that the recommendations presented in the DPO be maintained in the proposed order.

Public Comments (Fort Rock/Silver Lake Soil and Water Conservation District)

Comments received from Fort Rock/Silver Lake Soil and Water Conservation District Manager Justin Ferrell express soil-related concerns of wind and water erosion, and compaction at the proposed facility site. The comments evaluate soil types within the proposed facility site, along with the best management practices proposed by the applicant, and provide additional recommendations, based on assessment from Soil Scientist Terry L. Craig. The recommendations include: pre-disturbance, staged establishment of vegetative cover (non-native crested Wheatgrass or similar monoculture), with irrigation, to increase likelihood of successful revegetation within the site in order to reduce erosion potential during facility operation; during construction, use mowing instead of scalping for road construction preparation; phase development; after construction, till or rip in equipment use areas to mitigate for compaction; and contract with the Soil and Water Conservation District to support long-term monitoring and adaptive management strategies related to wind and water erosion impacts. To support the review of the recommendations related to the facts of soil and wind erosion potential at the site, the Department requested input from the Oregon Department of Agriculture and Lake County Planning Director Darwin Johnson, to be further discussed during Council's review of the DPO.

DPO Section IV.G. Retirement and Financial Assurance (OAR 345-022-0050)

Applicant requests revisions to the Department's description of "useful, non-hazardous condition"; and requests to lower the recommended future development contingency, from 20 to 10 percent, applied to the battery storage decommissioning estimate. Applicant asserts that the Department's description of "useful, non-hazardous condition" is inconsistent with historic Council interpretation and application of the standard's requirement. In the DPO, the Department defined "useful, non-hazardous condition," based on the current land use designation - Agriculture Use (A-2) zone – a county designated cattle grazing zone – and big game habitat designation, recognized under the Lake County Comprehensive Plan and ODFW. The Department notes that at the time of facility retirement, 30-40+ years in the future, a retirement and decommissioning plan would have to be reviewed and approved by Council. That plan would finalize the retirement and restoration requirements, including establishing the conditions that constitute compliance with the retirement standard. For this reason, the Department recommends that the description of "useful, non-hazardous condition" be removed from the proposed order.

Applicant requests that the 20 percent future development contingency applied to the battery storage decommissioning estimate be lowered to 10 percent because the recommended findings supporting the value are based on increased risk of subsurface hazardous material leak from unintended battery system failure, which is more appropriate for lithium ion battery systems and not flow battery technology, as proposed in the ASC. As explained in the DPO, the 20 percent future development contingency applied to the battery storage system is based on

the contingency value typically applied to technologies using potentially hazardous materials such as battery storage equipment. The Department suggests that the recommendations presented in the DPO be maintained in the proposed order.

DPO Section IV.H. Fish and Wildlife Habitat (OAR 345-022-0060)

ODFW Comments

The Department notes that ODFW provided several comments on the DPO in response to additional information provided by the applicant, and the applicant provides responses to ODFW comments, both of which are included in Attachment 1 of the staff report. The analysis here provides Department overview and recommendations based on the final iteration of ODFW comments and applicant responses received as of July 10, 2020.

The Department recommends removal of the applicant's sub-habitat categorization (Category 3-5), presented in Tables 1 and 2 of the draft Habitat Mitigation Plan (HMP), to avoid confusion on the mitigation obligation and of the Category 2 habitat designation applicable to the proposed facility site. In its response to DPO comments, the applicant agrees to remove the sub-habitat categorization from the draft HMP.

ODFW recommends reference to Option 1: ODFW Payment to Provide and Option 2: Third-Party Fee In-Lieu Program be removed from the applicant's draft HMP because these options are not available for implementation. In its response to DPO comments, the applicant agrees to clarify in the HMP that the inclusion of these options was for reference and would only be viable if the options became available programs, and would only be implemented if the HMP were amended in the future.

ODFW recommends that, primarily due to risk of mitigation failure from disturbance-related invasive weeds following the applicant's proposed juniper treatment (enhancement action), the applicant's methodology for meeting the Category 2 habitat mitigation goal under Option 3 of the draft HMP rely on an acreage ratio of 2 acres of mitigation area for every 1 acre permanently impacted by the facility (2:1 acre ratio), rather than the applicant's proposed 1.1 mitigation acres to 1 acre permanently impacted (1.1:1 acre ratio). In its response to DPO comments, the applicant agrees to increase the acreage ratio from 1.1:1 to 1.2:1, resulting in approximately 4,304 acres of Category 2 habitat mitigation sites for 3,587 acres of Category 2 habitat loss from the proposed facility.

ODFW recommends that the draft HMP Juniper Treatment Plans include the noxious weed prevention and control methods, treatment methods, and monitoring and success criteria contained in the draft Revegetation and Noxious Weed Control Plan Sections 3.0 and 4.0 (Attachment P-3), which applies to the area within the facility site rather than the mitigation sites. The draft HMP generally addresses weed monitoring and control within the mitigation sites, to be implemented by Lake County Cooperative Weed Management Area, but does not include specific methods or success criteria. Based on concerns raised by ODFW on the potential for noxious weed invasion following juniper treatment within the mitigation sites, the Department considers it appropriate to incorporate ODFW's recommendations into the HMP,

as an option and including language such as “unless otherwise approved by ODOE and ODFW,” for treating, monitoring and evaluating success of noxious weed control at the mitigation sites.

ODFW requested that the draft HMP specify the types of remedial actions to be implemented if success criteria are not achieved. The Department agrees that the draft HMP should address adaptive management or alternate mitigation if success is not achieved in a reasonable timeframe, and recommends that the remedial actions include, but not be limited to, the applicant’s obligation to identify additional or other suitable Category 2 mitigation lands meeting site specific criteria which differ from original mitigation sites deemed unsuccessful.

An evaluation and recommendations of ODFW comments and applicant responses regarding the applicant’s proposed Working Lands Improvement Program (WLIP) Agreements for habitat mitigation parcels will be provided in a supplemental staff report.

ODFW and Applicant Comments

ODFW and applicant commented on recommended Fish and Wildlife Habitat Condition 9, which require pre-construction pygmy rabbit surveys; and, development of an incidental wildlife mitigation plan for pygmy rabbits, burrowing owls and white-tailed jackrabbits. ODFW concurs with the condition requiring a pre-construction pygmy rabbit survey, supported by their standard survey recommendations for burrowing mammals identified at a proposed site and the potential for fluctuation in annual movement. The applicant requests removal of the incidental wildlife mitigation plan provision; as an alternative to the incidental wildlife mitigation plan, ODFW recommends that the applicant implement a temporary 3-meter avoidance buffer around any active burrows or complexes identified incidentally during construction. Based on applicant and ODFW comments, the Department recommends the following changes, in underline/strikeout, be incorporated into the proposed order:

Recommended Fish and Wildlife Habitat Condition 9: The certificate holder shall:

- a. No more than 3-years prior to construction of the facility, conduct pygmy rabbit (*Brachylagus idahoensis*) surveys within the portion of the site boundary inside the perimeter fence, based on the final design of the facility, using the same~~based on a survey area appropriate for the location of facility components and a protocol approved for the pygmy rabbit surveys conducted as part of ASC Exhibit P (Attachment P-1 Section 2.3) by the Department in consultation with ODFW.~~ Pygmy rabbit surveys shall also document presence of ~~burrowing owls (*Athene cunicularia hypugaea*) and~~ white-tailed jack rabbits (*Lepus townsendii*). Pygmy rabbit survey reports shall be submitted to the Department for review, in consultation with ODFW.
- b. ~~Prior to construction, the certificate holder shall submit an incidental wildlife mitigation plan (plan) to the Department for review and approval in consultation with ODFW. The plan shall include appropriate minimization and/or mitigation measures that may be implemented if burrow or burrow complexes are identified for pygmy rabbits, burrowing owls, or white-tailed jack rabbits during construction within the survey area. In the event of an incidental wildlife observation of a State sensitive species occurs during construction, the certificate holder shall notify the Department and ODFW within 24 hours. Construction activities shall halt in the immediate area of the identified~~

~~complex or burrow site until an appropriate minimization and/or mitigation approach, as established in the plan, is determined. From January 15 through June 15 (pygmy rabbit breeding period), implement a 3-meter (10 foot) buffer area using flagging or constraint maps around burrow complexes identified during preconstruction surveys per subpart(a) of this condition or identified incidentally during construction, unless otherwise approved by the Department in consultation with ODFW.~~

- ~~c. During design and prior to construction of the facility, the certificate holder shall develop constraint maps clearing delineating avoidance areas for any previously identified complex (ASC Exhibit P Figure P-1 and pre-construction survey maps) within or in close proximity to the site boundary. Disturbance and facility components shall not occur or be located within identified complexes. Avoid impacts to complexes shown on ASC Exhibit P Figure P-1 and identified during preconstruction surveys and identify the avoidance areas on pre-construction constraint maps.~~

Applicant Comments

Applicant requests recommended Fish and Wildlife Condition 1 (Revegetation and Noxious Weed Control Plan) be modified to remove details specifying plan finalization requirements because those specific requirements were provided or are addressed in the draft plan. The specific requirements include: 1) completion of a final assessment of temporary habitat impacts; 2) preparation of a survey/sampling protocol for paired monitoring and reference sites; 3) ODFW approval of an appropriate revegetation seed mix; 4) 5-year annual revegetation and noxious weed monitoring schedule; and 5) final assessment of appropriate revegetation success criteria. As described in the DPO, the finalization requirements were recommended to clarify the scope of work and potential changes that could occur between draft to final plan. The applicant's draft Revegetation and Noxious Weed Control Plan covers finalization requirements 2, 3, and 4. The Department suggests that the recommendations presented in the DPO be maintained in the proposed order.

IV.K. Historic, Cultural, and Archaeological Resources (OAR 345-022-0090)

Comments on DPO Section IV.K., *Historic, Cultural, and Archaeological Resources*, were received from SHPO, a member of the public, and the applicant. The comment provided by SHPO was a minor edit to a technical term used in the DPO section. In its comments on the DPO, the applicant provides a summary letter and direct edit recommendation to the DPO in a "redline" Word version of the DPO.

Public Comments

A public comment received from Gail Carbiener included a Bureau of Land Management (BLM), General Land Office (GLO) map from 1913. Mr. Carbiener states that the map illustrates that the Fort Rock to Christmas Valley Road runs through the site. He also explains that this road is described in a book by Larry Nielsen, *Pioneer Roads in Central Oregon*, published in 1985. He concludes with a statement that he is surprised the applicant did not find traces of the road and that perhaps the applicant could provide additional historic signage in the area. The Department notes that this road is not discussed in the ASC or the technical reports associated

with the archaeological and historic surveys conducted by the applicant's consultant, nor did SHPO comment on the possibility of such a road existing.

Applicant and SHPO Comments, and Applicant Responses to SHPO

The applicant proposes technical and grammatical edits to industry terminology for certain resources, as described below.

Applicant suggests revised and deleted language in the Archeological Testing and Excavation Methods Plan (Plan) provided in DPO Attachment S-1. Namely, the applicant requests to specify that the Plan applies during construction rather than pre-construction. Based on agency consultation, SHPO confirmed that the requirements of the Plan should apply during construction, and therefore the Department recommends that the requested revisions be incorporated into the Plan.

In its comments, SHPO expresses concerns on the applicant's recommendations of National Registry of Historic Places (NRHP) eligibility for prehistoric archaeological sites representing the ancestors of modern Tribes (in DPO described as Tribal Resources). SHPO maintains that the Klamath Tribe were not consulted on eligibility recommendations, and since the contractor recommended most of the archaeological sites as not eligible, there would be no reason for mitigation. Further, SHPO states that while an applicant can enter into any type of agreement with a Tribe, or other party, if SHPO is not a participant in that agreement, they still must be involved with eligibility and mitigation discussions. In response to these concerns, the applicant explains that The Klamath Tribes provided a comment letter on the record regarding the field surveys and proposed avoidance, minimization, and mitigation measures. The letter describes the agreement reached between the Tribes and applicant along with the Tribes' review and acceptance of the results and recommendations in the project's archeological reports. The applicant recommends that the proposed order describe that the preliminary NRHP eligibility recommendations were subsequently replaced to treat all of the archaeological sites and isolates as part of an archaeological district. The Department recommends incorporating the applicant-recommended language into the proposed order and include that the treatment of the isolates and sites as a district was agreed upon in consultation with SHPO.

The applicant provides extensive edits to findings related to recommended Historic, Cultural and Archeological Condition 1. Recommended Historic, Cultural and Archeological Condition 1 requires that, prior to and during construction, any surveys be conducted consistent with the Plan and that the resulting information be submitted to SHPO, the Tribes, and the Department. The condition also requires the finalization of provisions in the draft Cultural Mitigation and Monitoring Plan (CMMP) (DPO Attachment S-3) which includes a review and approval process with Tribes and the Department prior to construction. Finally, the condition requires compliance with the Inadvertent Discovery Plan (DPO Attachment S-2).

In general, the applicant's comments on recommended Historic, Cultural and Archeological Condition 1 request removal of details the Department included specifying the review, approval, and finalization of surveys and Plans, such as;

- Removing language requiring any necessary pre-construction surveys or archaeological testing be completed.
- Removing submission and review procedures to Tribes and SHPO for results of archaeological surveys or testing.
- Removes review and approval finalization step of the CMMP which requires coordinating with the Department, SHPO, and Tribal Governments.

The applicant requests the Department include its recommended edits in the CMMP and that recommended Historic, Cultural and Archeological Condition 1 more generally reference the Plans and require construction activities to be conducted consistent with the Archeological Testing and Excavation Methodologies Plan, Cultural Mitigation and Monitoring Plan, Inadvertent Discovery Plan.¹ As noted above, SHPO affirmed that the survey timing commented by the applicant is accurate and notes that the purpose of negotiating the MOA was to address how to proceed according the agreed upon field survey and evaluation guidelines. The Department, therefore, recommends revisions consistent with SHPO and applicant recommendations.

In the DPO, the Department compiled and included, without revision, applicant descriptions and representations from ASC Exhibit S in the Cultural Mitigation and Monitoring Plan (CMMP). The Department also included, without revision, the conditions specified in the SHPO Archaeological Permits in the CMMP. The applicant requests substantial edits and revisions to the CMMP (Attachment S-3), first of which, is the request that Council consider this Plan as final rather than a draft to be finalized prior to construction, as recommended by the Department. The applicant requests revisions to the CMMP to their recommended Section II., *Avoidance and Minimization Measures*, which include;

- Removing details included from the ASC that describe acreage estimates for potentially eligible sites and the description of avoidance areas.
- Reference and inclusion of the Inadvertent Discovery Plan (IDP) to be implemented during construction.

The Department will incorporate, in part, the applicant requested revisions and clarifications into the proposed order.

The applicant requests revisions to the CMMP to their recommended Section III., *Mitigation Measures*, which include:

- Reference and inclusion of the Archeological Testing and Excavation Methodologies Plan to be implemented prior to and during construction.
- Reference and inclusion of the Inadvertent Discovery Plan (IDP) to be implemented during construction.
- Reference and inclusion of the SHPO archeological permits to be complied with during construction.

¹ The Department highlights that, while the applicant's requests do include substantive changes, many of its suggested revisions reorganize the presentation of information and requirements in the DPO and Cultural Mitigation and Monitoring Plan (CMMP).

- Reference and inclusion of the applicant commitment to comply with the mitigation obligations agreed to by the applicant and the Klamath Tribes.

SHPO objects to calling the agreement with the Klamath Tribes “mitigation.” The applicant proposes to replace the words “mitigation obligations” with “avoidance, minimization and mitigation measures” to reflect more accurately the nature of the measures applicant agrees to implement during facility construction. The Department will incorporate, in part, the applicant requested revisions and clarifications into the proposed order.

The applicant requests revisions to the CMMP to their recommended Section IV., *Inadvertent Discovery Plan and Construction Monitoring*, which include;

- Reference and inclusion of the Inadvertent Discovery Plan (IDP) to be adhered to and implemented during construction.
- Removal of the Proposed Monitoring Program information provided in the ASC.
- Inclusion of monitoring during construction: professionally qualified tribal monitor leads will provide weekly reports describing work activities and any findings. This information will be compiled in a monitoring report to be distributed to the area tribes, the Department, SHPO, and as appropriate the Oregon Department of State Lands (DSL) (landowner), at the completion facility construction.
- Inclusion of the applicant commitment that it will enter into monitoring agreements Klamath Tribes and the Burns Paiute Tribe.

The Department will incorporate, in part, the applicant requested revisions and clarifications into the proposed order.

The applicant requests revisions to the CMMP to their recommended Section V., *SHPO Archaeological Permits*, which include;

- Removal of copied, verbatim permit conditions from DSL (landowner) and the Klamath Tribes and the Burns Paiute Tribe submitted in the draft SHPO Archaeological Permits submitted to the Department and attached to the DPO (Attachment S-4).
- Inclusion of an introduction of the permits and statement that the archaeological excavations serve as mitigation for construction impacts to archaeological sites.
- Inclusion of a summary of the provisions outlined in the SHPO Archaeological Permits, which includes obligations to:
 - Entering into monitoring agreements with the Klamath Tribes and Burns Paiute Tribe.
 - Diagnostic artifacts identified during monitoring may be collected.
 - Implementation of the Archeological Testing and Excavation Methodologies Plan and IDP.
 - The applicant will provide copies of all reports for monitoring and discoveries within the Facility site boundary to ODOE, SHPO, the Klamath Tribes, and the Burns Paiute Tribe and DSL for their applicable parcel.

The Department will incorporate, in part, the applicant requested revisions and clarifications into the proposed order and will remove redundant information from the SHPO archaeological permits.

The applicant requests edits to text under the section of the DPO discussing SHPO archaeological permits (Attachment S-4) and recommended Historic, Cultural and Archeological Condition 2. The DPO explains that because the applicant intends to conduct work within an area of known archaeological objects and sites, the applicant must comply with requirements under ORS 390.235, OAR 736-051 0000 through 736-051-0090 which specify that archeological permits must be obtained for any work conducted within know sites including ground probing for archaeological surveys, top soil removal, excavation, and trenching.

In the ASC, the applicant requested that the SHPO archaeological permits be included and governed by the site certificate under the EFSC review process. The Department, applicant, and SHPO coordinated to submit applications for the SHPO archaeological permits, which SHPO reviewed and circulated to necessary parties for comment. The SHPO archaeological permits, including all permit conditions, were provided to the Department for inclusion in the DPO. Because the permits are under EFSC jurisdiction, the effective date of the permits will be a date after the EFSC final affirmative decision and issuance of the site certificate, therefore the permits attached to the DPO are not dated or signed. The Department suggests that the recommendations presented in the DPO be maintained in the proposed order.

The DPO states that the duration of the permit governance should be consistent with the construction timeframes identified in recommended General Standard of Review Condition 1, and provides an explanation about how to coordinate with SHPO to extend the expiration of the permits to be consistent with the timeframes in the site certificate, which usually are active for one year with an opportunity to amend them for one additional year.² The applicant's requested edits remove this language and solely provide reference to recommended General Standard of Review Condition 1. The applicant's requested edits to recommended Historic, Cultural and Archeological Condition 2, remove the reference for amending or extending the SHPO Archaeological Permits consistent with recommended Historic, Cultural and Archeological Condition 2. Finally, the DPO explains that under ORS 469.401(3), for permits under EFSC jurisdiction, after issuance of the site certificate, agencies shall, upon submission by the applicant of the proper applications and payment of the proper fees, but without hearings or other proceedings, promptly issue the permits, licenses and certificates addressed in the site certificate subject only to conditions set forth in the site certificate. Therefore, this provision is

² From DPO: Recommended General Standard Condition 1: The certificate holder shall begin and complete construction of the facility by the dates specified in the site certificate.

a. Construction of the facility shall commence within three years after the date of Council action [DATE TO BE SPECIFIED]. Within 7 days of construction commencement, the certificate holder shall provide the Department written verification of the construction commencement date and that it has met the construction commencement deadline.

b. Construction of all facility components shall be completed within [DATE TO BE SPECIFIED] three years after construction commencement identified in (a.) of this condition. Within 7 days of construction completion, the certificate holder shall provide the Department written verification that it has met the construction completion deadline.***

included by the Department under the Conclusions of Law at the end of the section, as a directive to SHPO to promptly issue the permits which would then be signed and dated by SHPO and provided to the applicant. The applicant requests removal of this language. The Department suggests that the recommendations presented in the DPO be maintained in the proposed order.

DPO Section IV.M. Public Services (OAR 345-022-0110)

Public Comments

Several public comments express concern on potential dust impacts from use of area roads from the proposed facility. As presented in the DPO, recommended Public Services Condition 1 requires implementation of a Traffic Management Plan (included as Attachment U-2), which includes the execution of a county road use agreement between Lake County Public Works Department and the applicant. It further describes best management practices (BMPs) to reduce potential impacts to public and private traffic service providers from construction activities. The county road use agreement and BMPs may result in public roadway dust abatement, if determined appropriate and necessary by county roadmaster. The Department suggests that the recommendations presented in the DPO be maintained in the proposed order.

ATTACHMENTS:

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