



Oregon

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To: Energy Facility Siting Council

From: Kellen Tardaewether, Senior Siting Analyst

Date: August 7, 2020

Subject: Agenda Item D (Information Item):
Obsidian Solar Center – Staff Report on the Draft Proposed Order on
Application for Site Certificate for the August 21, 2020 EFSC Meeting

Attachments/Hyperlink: DPO Comments/Applicant Response (Hyperlink to Electronic Documents are included in this staff report)

STAFF RECOMMENDATION

Oregon Department of Energy (Department) recommends the Energy Facility Siting Council (Council) support inclusion of applicant proposed conditions and additional mitigation plans in the Proposed Order on the Application for Site Certificate for the Obsidian Solar Project, as well as additional revisions in response to issues raised in comments received on the record of the Draft Proposed Order (Soil Protection, Fish and Wildlife, Land Use, Public Services and Water Rights), as described in this staff report.

NOTICE OF DPO, PUBLIC HEARING ON THE DPO, AND EFSC REVIEW OF DPO AND COMMENTS

On March 12, 2020, the Department issued the Draft Proposed Order (DPO) on the Application for Site Certificate for the Obsidian Solar Center 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 Energy Facility Siting Council (EFSC) members attended the July 20, 2020 DPO hearing either in-person or via WebEx. The hearing was presided over by Senior Administrative Law Judge from the Oregon Office of Administrative Hearings, Joe Allen, an EFSC-appointed hearing officer. Individuals, including Obsidian Solar Center LLC (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 requested to extend the record from July 20 to July 22, 2020 to allow the applicant to respond to issues raised in comments received, which was granted by the hearing officer.

At its regularly scheduled July 23-24 meeting, Council received a staff presentation with an overview of the DPO, comments received, and applicant responses to comments. Due to the volume of comments received at the July 20 DPO hearing and applicant's July 22, 2020 responses, Council requested to continue review of the DPO and DPO comments received to the August 21, 2020 Council meeting.

DPO COMMENTS AND APPLICANT RESPONSES

On the record of the DPO, the Department received 36 written and oral comments from the general public, state and local government agencies and the applicant, all of which were provided to Council prior to the July 24, 2020 Council meeting, including audio files from the public hearing and electronic copies of all written comments. The DPO hearing is being transcribed and will be posted on the project webpage once available. Below are hyperlinks to the comments on the DPO and applicant responses to comments, which are all available on the Department project webpage at:

[Comments on the Draft Proposed Order](#)

[Applicant Responses to Comments on the Draft Proposed Order](#)

Audio recordings from the [in-person testimony](#) and [webinar](#)

ISSUES RAISED IN DPO COMMENTS AND APPLICANT RESPONSES

This staff report is intended to support Council's continued review of substantive issues raised in comments received on the record of the DPO public hearing, as presented below.

Dust/Wind Erosion/Agricultural Impacts

Comments on the record of the DPO expressed concerns related to dust and wind erosion within the surrounding area and to accepted farm practices from construction-related disturbance and potential site stabilization issues if revegetation is unsuccessful. In response to comments, the applicant refers to the facility design, which would require minimal grading, and compliance with erosion control best management practices per its Oregon Department of Environmental Quality (DEQ)-issued National Pollutant Discharge Elimination System (NPDES) 1200-C Permit to minimize dust and wind erosion at the site. In its response to comments, the applicant proposes additional conditions be imposed in the site certificate requiring that, prior to construction, the applicant place a roadside sign along North Oil Dri Road and at the facility entrance with a facility representative's contact information for reporting of dust complaints; and, a requirement that, during construction, the certificate holder implement a Dust Abatement and Management Control Plan (copy of plan provided). Because these measures would further reduce wind and dust erosion or provide opportunities for the applicant to

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.

respond to reported issues, the Department recommends Council impose these applicant proposed conditions in the site certificate.

In the Draft Proposed Order, the Department recommends Council impose Soil Protection Condition 1, requiring that the applicant obtain a DEQ-issued NPDES 1200-C permit, to minimize soil-related erosion impacts. The Department recommends the condition be revised in the proposed order to clarify that compliance with the condition be verified through Department review of the Erosion and Sediment Control Inspection Forms, during construction inspections, and that if the Department identifies a high rate of corrective actions and issues documented on the forms, that the applicant be required to provide electronic copies of the forms within 7-days of the onsite inspections to allow the Department to review and consult with DEQ and Lake County Public Works Department on other, more effective wind erosion and dust control measures to be implemented at the site.

Elk/Rodent Displacement/Agricultural Impacts

Comments on the record of the DPO expressed concern of the proposed facility site and its current use by rodents and large mammals (elk) and the potential impacts of displacement of these species onto surrounding lands, including destruction and economic impacts to irrigated agriculture. These comments relate to ORS 215.296(1) and OAR 660-033-0130(5) which requires a demonstration that conditionally permitted uses with EFU zoned land would not significantly increase the costs of, or significantly impact, accepted farming practices. In response to comments, applicant provides an evaluation on rodent displacement prepared on July 7, 2020 by Fosters Natural Resource Contracting; and, describes programs implemented by Oregon Department of Fish and Wildlife (ODFW) which specifically address elk damage on private property. Based on review of the July 7, 2020 Fosters memo, the analysis suggests that rodent displacement could occur between 500 feet and 0.5 mile from the site and would only be significant if rodent populations were exceptionally high at the site, and would be expected to return to pre-disturbance levels within 6 months due to increased predation and competition between rodents for available resources.

In response to comments on impacts of elk displacement at the proposed facility site to surrounding properties used for agricultural purpose, the applicant refers to its habitat mitigation areas that would provide better function and value for elk foraging, based on long-term management and enhancement actions, compared to the proposed facility site, and describes that access to the mitigation areas would be available for elk migration to the east of the facility site. In addition, the applicant describes ODFW's existing programs to address elk damage on private land. Specifically, in 2020, ODFW adopted administrative rules for a new elk damage hunt program which allows a new general season antlerless elk damage tag to be used in parts of the state with high elk damage. Further, landowners may be eligible for the Oregon Landowner Damage Program, which is intended to address damage caused by elk on privately owned lands. See ORS 498.012; ORS 496.158; OAR 635-075-0011.

The Department consulted with staff from ODFW, Department of Land Conservation and Development and Lake County Planning Department to discuss the potential significance of elk and rodent displacement from the proposed facility site on adjacent lands used for agricultural

practices. Also, consistent with the applicant's response, ODFW explained to staff that its Department maintains an existing program for private landowners which offers support for elk damage, which would continue to be available for landowners, and cautioned not to impose requirements that might allow doubling of compensation or mitigation for the same impact. Based on this preliminary consultation, the Department recommends that Council find that rodent and elk displacement could impact accepted farm practices, but that it would not likely be significant compared to existing, common levels of rodent and elk activity in the area, however, the Department is still reviewing the facts provided on the record on this issue.

Noxious Weed Control

Comments on the record of the DPO expressed concern related to establishment of noxious weeds at the site following construction-related disturbance, and the applicant's presumed responsibility to fully eradicate weeds at the site and abutting properties. In response to comments, the applicant describes that it intends to contract with the Lake County Cooperative Weed Management Area (LCCWA) to manage and control weeds during and post construction, in accordance with the draft Revegetation and Noxious Weed Control Plan (Attachment P-3 of the draft proposed order), to be finalized prior to construction. As noted by the applicant, the success criteria included in the draft plan includes a requirement that the site, post construction, be absent of or contain less than 1 percent of State or County-listed noxious weeds.

During the review of the preliminary and complete Application for Site Certificate, the Department consulted with ODFW on review of the draft plan, which was determined to be sufficient for reestablishment and weed control at the site. The Department recommends Council rely upon the conditions and draft plan, as provided in the DPO, to determine that noxious weeds would not likely result in significant interference with accepted farm practices on surrounding lands.

Water Use/Availability

Comments on the record of the DPO argue that, based on several issues, the proposed facility would be required to obtain a water right from Oregon Water Resources Department; and, that if water rights are required for the facility, such rights must be identified in the (ASC) per local zoning requirements. Comments express concern regarding the Department's recommendation of approval for more than one permit exempt wells on the project site which allows withdrawal of up to 5,000-gallon per day each. The comments further identify concerns of the ability of the primary water supplier (Christmas Valley Domestic Water Supply) to sell water for use at the site, or portions of the site, based on permit limits established for a quasi-municipal use and places of use designated in the permit, which omit approximately half of the proposed site.

Wells

Comments on the record of the DPO expressed concerns related to the recommendation of approval for construction and use of two 5,000-gallon per day, permit exempt wells, if located on separate tax lots. The Department's recommendation interpreted ORS 537.545(1)(f) and

OAR 690-340-0010(1)(d) to allow more than one permit exempt well at the site, if located on separate tax lots and serving separate uses (i.e. separate operations and maintenance buildings). Commenters suggest that permit exempt wells are established based on the “purpose” of the use - the proposed solar facility and therefore, if it is maintained that a water right is not required for the proposed facility, the applicant should be limited to either two wells not to exceed 5,000 gallons per day in total, or one well not to exceed 5,000 gallons per day. Commenters also recommend Council require the installation of a self-regulating water meter with automatic shut off valve to ensure that cumulatively not more than 5,000 gallons per day is withdrawn from all wells combined.

In its responses to comments on the DPO, the applicant maintains that if the proposed facility constitutes a “single commercial purpose,” then applicant would limit its daily usage to 5,000 gallons per day under ORS 537.545(1)(f). Further, the applicant proposes to install water meter(s) on any groundwater well located within the site boundary to confirm the water usage for the proposed facility construction and operation.

The Department consulted with the Oregon Water Resource Department (OWRD), and concurs that under ORS 537.545(1)(f), an exempt use of ground water includes any single industrial or commercial purpose in an amount not exceeding 5,000 gallons a day. The “purpose” is the construction and operation of the proposed solar facility; therefore, the proposed facility may not exceed 5,000 gallons per day use water from the well system. Further the Department recommends revisions to Recommended Water Rights Condition 2 to include that based on applicant representations, during construction and operation of the proposed facility the applicant must install and maintain totalizing flowmeters or dedicated measuring tubes.

Water Supplier Permits

Comments on the record of the DPO expressed concerns about the applicant’s ability to obtain and use approximately 30 million gallons total, or 17 million gallons per year for two years, during construction of the proposed facility. The applicant explains that most of the water would be used for dust suppression, purchased from the Christmas Valley Domestic Water Supply District under the District’s existing water permits. Commenters contend that the District’s permits issued for “quasi-municipal use” do not allow for use by a proposed solar facility (and identify a use category for the proposed facility as “private commercial generation of electrical power for resale use of water”). Commenters further assert that the District’s water right permits do not allow for such use of water because the location of the proposed facility (and water use for the proposed facility construction and operation) is outside the “place of use” designated within the permits. Finally, the commenters point to the applicant’s assertion in the ASC that if it cannot obtain water from the District, it would obtain water from the City of La Pine, however the applicant does not provide evidence of such agreement.

In its response to comments on the DPO, the applicant contends that the proposed facility’s water use is considered a “municipal purpose” pursuant to OAR 690-300-0010(29) and that “quasi-municipal use” authorizes uses for municipal purposes (which includes commercial and industrial uses). The applicant also maintains that, per ORS 540.510, because the District is an entity organized under ORS chapter 264, it is treated like a municipality and therefore is

authorized to sell water outside of the places of use specified on water rights certificates. Under ORS 540.510, the District may apply water to beneficial use on “lands to which the right is not appurtenant” if “the use continues to be for municipal purposes and would not interfere with or impair prior vested water rights.” For these reasons, the applicant asserts, that the District has the authority to sell water associated with its three permits for quasi-municipal use to the applicant for use on lands to which the permits are not appurtenant.

Based on initial consultation with Oregon Water Resource Department (OWRD), OWRD interprets the rule as “ A quasi-municipal water right shall not be granted the statutory municipal preferences given to a municipality under ORS 537.190(2), 537.230(1), 537.352, 537.410(2), **540.510(3)**, 540.610(2), (3), or those preferences over minimum streamflows designated in a basin program, which the Department, in consultation with DOJ and OWRD, is continuing to evaluate.

As noted, the Department continues to evaluate the applicant’s proposal to supply water for the construction and operation of the proposed facility, including permissible uses under the water right permits from the Christmas Valley Domestic Water Supply District and the “place of use” including locations within the site boundary. If the applicant requires a water right, it may obtain a water right from OWRD via its third-party contractor or submit a request to amend its site certificate in the future, if the site certificate is approved, which the Department proposes in Recommended Water Rights Condition 1.

Success of Juniper Treatment, WLIP Agreements, and Mitigation Ratio

The Oregon Department of Fish and Wildlife (ODFW) provided iterative comments on the DPO in response to additional information the applicant provided to the Department and ODFW for review during the extended DPO comment period. ODFW provided oral testimony at the hearing on the DPO which mirrored its comments from its comment letter dated July 16, 2020 regarding the applicants proposed Working Lands Improvement Program Agreement (“WLIP Agreement”) and its letters dated April 24, 2020 and May 18, 2020 with regard to the ODFW recommended 2:1 mitigation ratio for impacts to Category 2 big game winter range.

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.² For comparison, the Department provides the acreage differences associated with each proposed or recommended mitigation ratio:

Permanent Category 2 Impacts = 3,587 acres

² OAR 635-415-0025 (2) “Habitat Category 2”... (a) The mitigation goal if impacts are unavoidable, is no net loss of either habitat quantity or quality and to provide a net benefit of habitat quantity or quality.

(b) The Department shall act to achieve the mitigation goal for Category 2 habitat by recommending or requiring:

(B) Mitigation of impacts, if unavoidable, through reliable in-kind, in-proximity habitat mitigation to achieve no net loss of either pre-development habitat quantity or quality. In addition, a net benefit of habitat quantity or quality must be provided.”

1.1:1 Mitigation Ratio = 3,945 acres

1.2:1 Mitigation Ratio = 4,304 acres

2:1 Mitigation Ratio = 7,174 acres

The applicant proposes to mitigate the 1.2 acres to every one acre of permanent impacts to Category 2 habitat by protecting Category 2 habitat site(s) from development using the Working Lands Improvement Program (“WLIP”) Agreement, which would apply for the life of the proposed facility. The applicant maintains that the WLIP Agreements ensure that there is not net loss of habitat quantity or quality and that there is a net benefit of habitat quantity. In its comments on the DPO, ODFW raised ongoing concerns about the reliability and durability of the Agreements used to secure the proposed mitigation sites, which are necessary to meet the Council’s Fish and Wildlife Habitat Standard. Namely ODFW recommends to:

- Incorporate the provisions within the applicant’s proposed WLIP Agreement into the HMP;
- Requires periodic site visits by ODOE and ODFW;
- Maintain the Agreement for the life of the project;
- Require the applicant give notice to ODOE if they enter into/maintain a new agreement with the new landowner;
- Attach the finalized HMP to the WLIP agreement;
- Improve the list of allowable/prohibited uses in the WLIP, and include as conditions in the HMP
 - Add prohibited uses that include: temporary or permanent residential, commercial or industrial development for private or public use, roads and associated infrastructure, transmission lines and energy development, land divisions, recreation facilities, including golf courses, parks, campgrounds, youth camps, recreational vehicle parks, hunting and fishing preserves
 - Remove allowed uses including recreation, hunting access, quiet enjoyment, and landowner’s desired buildable areas from the WLIP lease area.
- Improve baseline information for mitigation sites including:
 - Identify and map all existing structures; impervious surfaces or access road networks, the final mitigation area
 - Identify the current grazing management practices

In its responses to the ODFW comments, the applicant reiterates that many of the ODFW comments are already addressed by language in the WLIP Agreement and are resolved with additional language to reiterate real estate fundamentals and operations of law between the HMP and WLIP Agreement. The applicant states that:

- Compliance with the HMP is mandatory because compliance is required by DPO Recommended FWH Condition 2. Further, the HMP requires that the applicant enter into and remain in good standing under the WLIP Agreements.
- In addition to reporting, ODOE has authority to conduct inspections pursuant to OAR 345-026-0050 to ensure that WLIP is being carried out consistent with the HMP. The WLIP Agreement grants ODOE and ODFW limited access rights for inspections with reasonable written notice to the Property Owner and applicant.

- The HMP already provides that the “term of the WLIP Agreement is for the life of the Facility.” The applicant proposes to also add language stating that it is obligated to maintain in good standing under the WLIP Agreement for the life of the Facility.
- The WLIP Agreement is binding on all successors and assigns of the mitigation landowner and will be recorded in the real property records of Lake County to provide notice to any potential purchasers that the property comes subject to the WLIP Agreement.
- The applicant proposes to include the final HMP as Exhibit D to the WLIP Agreement.
- The WLIP Agreements expressly state that all nonagricultural activities, unless otherwise identified in the WLIP Agreement, are prohibited – this means that all commercial, industrial, and agri-tourism activities (including those uses mentioned in the July ODFW Letter) are prohibited.
- Applicant objects to removing passive recreation and hunting from the WLIP Agreement as these privileges are important to the landowners and removing these privileges could jeopardize a landowner’s willingness to participate in the WLIP. The applicant also objects to removing the applicant’s right of quiet use and enjoyment because this is intended to further the applicant’s efforts in carrying out the HMP objectives.

The Department concurs with the applicant responses to the ongoing coordination with ODFW and proposed revisions to the HMP and the Department recommends including the applicant revisions to the HMP as an attachment to the proposed order as referenced in Recommended Fish and Wildlife Habitat Condition 2. The Department is currently reviewing the details of the applicant responses and ODFW comments for consistency with the general ODFW fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1) through (6) for any proposed revisions to recommended fish and wildlife conditions.

Decommissioning/Financial Assurance

In its comments on the DPO the applicant requests revisions to the Department’s description of “useful, non-hazardous condition” provided in the section, and lowering of 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. The Department recommends that this description of “useful, non-hazardous condition” be removed from the proposed order

Also included in its comments on the DPO the 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.

In the DPO, based on the applicant's methodology and assumptions, the Department recommends Council consider that \$23.9 million (Q3 2018 dollars) is a reasonable estimate of an amount satisfactory to restore the site of proposed facility components to a useful, non-hazardous condition and that, including Department-recommended contingencies, the total decommissioning amount, would be \$28.8 million (Q3 2018 dollars).

Commenters express concern related to the applicant's proposal to restore the site to a useful, non-hazardous condition and question the applicant's ability to obtain a bond or letter of credit. Commenters assert that the applicant's cost estimate to restore the site is low (referencing the estimate in ASC Exhibit W of approximately \$19 million) and that there appears to be basic computational errors in the estimate that call into question the overall trustworthiness of the estimate. Further, they contend that the cost estimate is out of date because they use 2018 dollars. Commenters continue by noting that the documentation provided as part of ASC Exhibit M and W do not adequately demonstrate that the applicant has a reasonable likelihood of obtaining a bond or letter of credit in an amount and form satisfactory to the Council because the letter is not signed, is not from a financial institution, and is outdated.

In its responses, the applicant maintains that its construction contractor, Swinerton Renewable Energy, is an expert in the field and utilized its expertise to generate the cost estimate. They point to Recommended Retirement and Financial Assurance Condition 5 which ensures that adequate financial assurance be posted for the life of the proposed facility, and that if the applicant is unable to obtain the required financial assurance prior to construction, the proposed facility cannot be constructed.

The Department points to the summary provided in the DPO which explains that the applicant provided supplemental information after the complete application was submitted and that this information is provided on the Department's webpage. The supplemental information for Exhibit W included revised cost estimate totals and calculations in response to Department Requests for Additional Information (RAI's), the applicant also included a revised retirement proposal in its supplemental Exhibit W information. In the supplemental information, the applicant's revised cost estimate is \$23.9 million (Q3 2018 dollars), and not \$19 million as provided in ASC Exhibit W. As discussed in the DPO, the Department applied contingencies higher than the applicant-proposed contingencies to yield a total estimate to restore the proposed facility of \$28.8 million (Q3 2018 dollars). The Department concurs with the applicant's assertion that the date the estimate is generated is based off of the date of the preliminary and complete application submission, and the Department further points to the condition language in Recommended Retirement and Financial Assurance Condition 5, that contemplates adjusting the totals; "The total bond or letter of credit amount for the facility is \$28.8 million dollars (Q3 2018 dollars), to be adjusted to the date of issuance, and adjusted on

an annual basis thereafter...” The Department also concurs with the applicant response that Recommended Retirement and Financial Assurance Condition 5 ensures that adequate financial assurance be provided and maintained for the life of the proposed facility, and that without a bond posted, the facility cannot be constructed. A bond or letter of credit provides a site restoration remedy to protect the state of Oregon and its citizens if the applicant fails to perform its obligation to restore the site. The bond or letter of credit must remain in force until the applicant has fully restored the site.

The Department does not recommend revisions in response to commenters on the DPO.

Consistency with Lake County Comprehensive Plan Goals and Policies

Commenters express concerns related to the applicant’s ability to comply, or to be consistent, with numerous Lake County Comprehensive Plan goals and policies, including Goal 1, 2, 3, 6, 9, 11, and 13. Several of the cited goals and policies are listed below for reference:

- Goal 1, Policy 2. That citizens will have an opportunity to participate in all phases of the planning process.
- Goal 1, Policy 3. That opportunities will be provided for the public to respond to preliminary planning documents prior to their finalization.
- Goal 1, Policy 6. That broad participation in planning activities will be solicited to provide a cross-section of geographical and professional interests.
- Goal 2, Policy 10. That the area designated on the Land Use Plan map as “Fort Rock Planning Area” will be subject to those policy provisions specifically applicable to Fort Rock.
- Goal 2, Policy 11. That additional development in Fort Rock be limited to a depth of 600 feet from the existing road system.
- Goal 2, Policy 17. That development will be encouraged, providing it does not unduly diminish agriculture or forestry resources of the area, nor unduly increase related public service costs or taxes.

Commenters provide reasoning under each goal and policy for which it is believed the proposed facility would be inconsistent; and, in the July 22, 2020 responses, applicant addresses and provides additional explanation of why it believes the proposed facility would be consistent with all identified comprehensive plans and policies.

Based on review of the issues raised, the Department recommends that Council rely on the analysis of applicable substantive criteria, as identified in ASC Exhibit K and Section IV.E. Land Use of the DPO to evaluate consistency with comprehensive plan goals and policies. Under ORS 197.175(2)(b) a county must “enact land use regulations to implement their comprehensive plans.” ORS 197.015(11) further defines a “land use regulation” as any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.” Therefore, the Department does not consider it appropriate to evaluate consistency with comprehensive plan goals and policies separately from the evaluation of compliance with applicable zoning

provisions. The Department recommends Council find that the proposed facility would comply with all applicable zoning requirements, with the exception of the directly applicable OAR 660-033-0130(38)(j) (acreage threshold), and continue to find that the proposed facility would comply, or be consistent with all applicable comprehensive plan goals and policies.