



Oregon

Kate Brown, Governor



550 Capitol St. NE
Salem, OR 97301
Phone: 503-378-4040
Toll Free: 1-800-221-8035
FAX: 503-373-7806
www.oregon.gov/energy

To: Energy Facility Siting Council

From: Chase McVeigh-Walker, Senior Siting Analyst

Date: April 9, 2021

Subject: Agenda Items B (Public Hearing) and I (Information Item):
Madras Solar Energy Facility, Public Hearing on the Draft Proposed Order; and
Council Review of Draft Proposed Order for the April 22-23, 2021 EFSC Meeting

Attachments: Attachment 1: Draft Proposed Order
Attachment 2: Comments Received on Record of Draft Proposed Order Public
Hearing (to be provided to Council in Supplemental Council materials prior to
April 21-22, 2021 meeting)

STAFF RECOMMENDATION

The Oregon Department of Energy's (Department) Draft Proposed Order on the Application for Site Certificate (Draft Proposed Order) for the Madras Solar Energy Facility (proposed facility) recommends that the Energy Facility Siting Council (Council) find that Madras PV1, LLC (applicant) provided sufficient evidence in the Application for Site Certificate (ASC) to demonstrate that the proposed facility, with recommended conditions, satisfies the requirements of applicable Council standards and other state and local statutes and ordinances. The Draft Proposed Order is provided as Attachment 1 of this staff report.

DRAFT PROPOSED ORDER PROCEDURAL HISTORY

The Department issued the Draft Proposed Order on March 23, 2021, along with a Public Notice of a 30-day comment period extending through April 22 and of an April 22, 2021 public hearing, with opportunities for remote and in-person participation. At the April 22, 2021 meeting, Council appointed Hearing Officer Joe Allen will conduct a public hearing on the Draft Proposed Order. The public hearing provides interested individuals an opportunity to provide written or oral testimony on the Draft Proposed Order and ASC.

Council will review the Draft Proposed Order and any comments received on the record of the Draft Proposed Order (March 23 – April 22, 2021) at the April 23, 2021 meeting. To date, the Department has not received comments on the Draft Proposed Order. Council will have the opportunity to provide comments to the Department for consideration in the Proposed Order, to be issued within 30-days following Council's review of the Draft Proposed Order. In conjunction with the issuance of the Proposed Order, the Department will issue a Notice of

Proposed Order, notifying eligible individuals of their opportunity to request party or limited party status in the contested case proceeding.

PROPOSED FACILITY DESCRIPTION AND LOCATION

The proposed facility would include up to 63 megawatts (MW) of solar photovoltaic energy generation facility components, and related or supporting facilities including: above- and belowground 34.5 kilovolt (kV) electrical collector lines; point of interconnection switching station; substation and associated equipment; an operations and maintenance enclosure; communication and supervisory control and data acquisition (SCADA) system; site access, internal service roads, up to 8-foot perimeter fencing, and gates; temporary staging areas; temporary concrete batch plant; and an up to 63 MW lithium-ion or flow battery storage system.

The proposed facility would occupy up to 277 acres on Exclusive Farm Use zoned land, composed of approximately 126.5 acres of Class III soils (arable land) and 157.6 acres of Class IV soils (non-arable land), within an approximately 284 acre site boundary. The proposed facility site is within the bounds of the North Unit Irrigation District (NUID), which designates the site, regardless of underlying soil conditions or National Resource Conservation District (NRCD) soil classification, as high-value farmland pursuant to ORS 195.300(10)(c)(B). The proposed facility site would be located in Jefferson County, just east of Lake Simtustus, and approximately 5 miles west of the City of Madras.

REVIEW OF COUNCIL STANDARDS

The Department's evaluation and recommendations to Council on the applicant's ability to demonstrate compliance with applicable requirements is provided in the Draft Proposed Order (Attachment 1 of this staff report). For brevity, the evaluation below includes select standards that staff anticipates will be of greater interest to Council and members of the public.

Land Use (OAR 345-022-0030; Section IV.E, pg. 41-105)

The proposed facility would be located entirely within Jefferson's County Exclusive Farm Use A-1 (EFU A-1) zone. Therefore, the governing body within Jefferson County (Jefferson County Board of Commissioners) is a Special Advisory Group (SAG). Because the applicant elected to obtain a Council determination of compliance under ORS 469.504(1)(b), the applicable substantive criteria, as identified by the SAG, from the acknowledged comprehensive plan and land use regulations were evaluated.

The applicant evaluated compliance with the Council's Land Use standard by evaluating local applicable substantive criteria, directly applicable state statutes and rules, and the Land Conservation and Development Commission's (LCDC) administrative rules. Based on exceedance of the 12 acre limit for solar photovoltaic energy generation facilities on high-value farmland, as established in the Jefferson County zoning ordinance and LCDC rules, the applicant requests that Council take an exception to the statewide policy embodied in Goal 3 for Agricultural Lands. The applicant requests Council consideration of a "reasons" exception, where reasons considered appropriate by the Department include that the proposed facility and facility components would be locationally dependent and would have no direct impacts to

agriculture. After review of ASC materials, the Department recommends Council take an exception based on the specific reasons deemed appropriate.

The applicant evaluated the proposed 230 kV transmission line as an associated transmission line under ORS 215.274. Based on review, the Department recommends Council find that there are no reasonable alternative transmission line routes on non-EFU zoned land, that the proposed transmission line would be locationally dependent, and that there is a lack of available rights of way, which then satisfies the criteria under ORS 215.274 and qualifies the associated transmission line as “necessary for public service.”

Retirement and Financial Assurance (OAR 345-022-0050, Section IV.G, pg. 118-125)

The applicant evaluated compliance with the Council’s Retirement and Financial Assurance standard by assessing decommissioning tasks, actions, methods, and assumptions, to provide a retirement cost estimate. The applicant estimates the proposed facility’s useful life to be 40 years, and provided evidence (in the form of a letter) from an EFSC evaluated and pre-approved financial institution (Hanover Insurance Group) to support their ability to receive an adequate bond or letter of credit in a form and amount satisfactory to restore the facility to a useful non-hazardous condition.

In its evaluation of the applicant’s retirement cost estimate, the Department recommended that contingency costs for future development, administration and project management cost, and cost for maintaining a performance bond be added to the applicants estimate to find a reasonable estimate of an amount satisfactory to restore the site to a useful, nonhazardous condition. The Department’s Proposed Facility Decommissioning Cost Estimate, including the adjusted contingencies is \$4.9 million (Q4 2019 dollars). Based on review of the methods and assumptions used to determine the decommissioning tasks and actions, and evidence of its ability to obtain some level of assurance of its ability to obtain a bond or letter of credit, the Department recommends Council find that the proposed facility would be consistent with the requirements of the standard.

Fish and Wildlife Habitat (OAR 345-022-0060; Section IV.H, pg. 126-136)

The applicant evaluated compliance with the Council’s Fish and Wildlife Habitat standard through desktop and field surveys, and consultation with the Oregon Department of Fish and Wildlife (ODFW) and the Department. Based on the desktop survey, there is suitable habitat within and near the proposed facility site (0.5-mile analysis area) for 10 state sensitive species (3 birds, 4 mammals and 3 fish species). Based on 2018-19 field surveys conducted for habitat, wildlife, wetlands, and raptors and eagles, habitat within the proposed facility site is considered Category 4 (grassland and shrub-steppe) and 6 (developed, paved road), as concurred by ODFW. Estimated temporary and permanent habitat impacts, based on the proposed facility footprint, is 7 and 271 acres, respectively.

The mitigation goal for Category 4 habitat is no net loss in either existing habitat quantity or quality. To achieve this goal, impacts must be avoided or unavoidable impacts must be mitigated through “reliable in-kind or out-of-kind, in-proximity or off-proximity” habitat mitigation to achieve no net loss in either pre-development habitat quantity or quality. The applicant proposes to comply with the Category 4 mitigation goal for temporary and permanent

habitat impacts by adhering to the requirements of a Revegetation Plan, Noxious Weed Control Plan and Habitat Mitigation Plan (HMP). The Revegetation Plan addresses mitigation for temporary impacts, resulting in restoration of 7 acres. The Noxious Weed Control Plan would be implemented for the life of the proposed facility, and would minimize degradation of habitat quality within the facility site and restored temporary disturbance areas. The HMP requires acquisition of the legal rights to enhance (native grass planting, shrub planting, weed control) and maintain up to 274 acres of Category 4 habitat in proximity to the proposed facility site. Based on compliance with the requirements of the monitoring and mitigation plans, to be finalized prior to construction, the Department recommends Council find that the proposed facility would be consistent with the requirements of the standard.

Historic, Cultural and Archeological Resources (OAR 345-022-0090, Section IV.K, pg. 155-157)

The applicant evaluated compliance with the Council's Historic, Cultural and Archeological Resources standard through desktop and field surveys. Based on the desktop survey, there were no previously recorded resources identified within the proposed site boundary. Based on the field survey, conducted by Jacobs Engineering Group and an archeological technician from Geo Visions, Inc – an entity owned by the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWSRO), there were no resources identified within the proposed facility site.

During ASC review, the Department received comments from CTWSRO Archeologist Christian Nauer confirming that the applicant demonstrated a good faith effort to evaluate potential resources at the site. Based on these comments, and the results of the applicant's desktop and field surveys, the Department recommends Council find that there are no known resources that would be impacted by construction or operation of the proposed facility. The applicant commits to implementing and adhering to the requirements of an Inadvertent Discovery Plan (IDP), in the event of unknown resources discovered during construction or operation. Based on compliance with IDP requirements, the Department recommends Council find that the proposed facility would be consistent with the requirements of the standard.

Other Council Standards

Should any Council member like to receive an overview of any other applicable standard, please let us know in advance of April 22nd and we will include that in our presentation.

ATTACHMENTS:

Attachment 1: Draft Proposed Order

Attachment 2: Comments (to be provided to Council in Supplemental Council materials prior to April 21-22, 2021 meeting)