



# Oregon

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**To:** Energy Facility Siting Council

**From:** Chase McVeigh-Walker, Senior Siting Analyst

**Date:** June 11, 2021

**Subject:** Agenda Item B (Action Item):  
Madras Solar Energy Facility, Council Decision on Application for Site Certificate (ASC) for the June 25, 2021 EFSC Meeting

**Attachments:** Attachment 1: Proposed Order on ASC  
Attachment 2: Hearing Officer's Order Concluding the Contested Case

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## STAFF RECOMMENDATION

Oregon Department of Energy (Department) staff recommend the Energy Facility Siting Council (Council) find, based on the recommended findings of fact and conclusions of law, as presented in the Proposed Order on the Application for Site Certificate for the Madras Solar Energy Facility (proposed order), that Council approve the proposed order as the final order and grant issuance of a site certificate.

## PROCEDURAL HISTORY OVERVIEW

On December 6, 2019, Madras PV1, LLC (applicant) submitted to the Department a preliminary Application for Site Certificate (pASC) for the Madras Solar Energy Facility. The proposed facility is an approximately 63 megawatt (MW) solar photovoltaic energy generation facility to be located in Jefferson County, Oregon. Following receipt of the additional information requested from the applicant, the Department determined the Application for Site Certificate (ASC) to be complete on October 30, 2020; the applicant filed a complete ASC on November 9, 2020.

On March 23, 2021, after review of the ASC and reviewing agency comments on the complete ASC, the Department issued the draft proposed order on the ASC, which included staff's recommendation to grant with conditions a site certificate for the proposed facility, pursuant to Oregon Administrative Rule (OAR) 345-015-0210. On April 22, 2021, hearing officer Joe Allen conducted a public hearing on the draft proposed order in Madras, Oregon. The record of the public hearing opened on March 23, 2021 (the issuance date of the notice of the draft proposed order public hearing and request for comments) and closed for public comment at the conclusion of the April 22, 2021 public hearing. The Council reviewed the draft proposed order at its regularly scheduled Council meeting on April 23, 2021. At the meeting, staff presented a

summary of the Department's evaluation of compliance with the applicable standards, recommended site certificate conditions, and comments received on the record of the draft proposed order.

On May 10, 2021, following Council's review of the draft proposed order, the Department issued the proposed order taking into consideration the comments received on the record of the public hearing and agency consultation. Concurrent with the issuance of the proposed order, the Department issued a Public Notice of Proposed Order and Contested Case (notice). Pursuant to the notice, the deadline for requesting party status in the contested case is 5:00 pm Pacific Standard Time (PST) on June 10, 2021. No petitions for contested case were received on or before the June 10, 2021 deadline. On June 11, 2021, Hearing Officer Allen issued an Order Concluding the Contested Case to the applicant and individuals that commented on the record of the draft proposed order public hearing (see Attachment 2 of this staff report). Council will then review the Proposed Order and have the opportunity to approve or modify the Proposed Order as the Final Order and grant issuance of a site certificate, or may reject the proposed order and deny issuance of a site certificate at the June 25, 2021 Council meeting.

### **COUNCIL SCOPE OF REVIEW**

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

- 1) Approve as presented by staff.** The Council can approve the proposed order as the final order and grant issuance of a site certificate. The site certificate would become effective based on date of Council approval.
- 2) Amend, and approve.** The Council can amend the staff's proposed order, including either the findings of the order or specific conditions of approval. If the amendments are not considered material, the Council can approve and issue the final order and site certificate at the same Council meeting. However, if the amendments are considered material, including material changes to conditions, the Council must provide public notice and a comment opportunity on the revised findings or conditions, and hold a hearing at a later Council meeting to consider any comments received, and ultimately issue its final order.
- 3) Reject, and deny.** The Council can decide that the proposed facility does not meet one or more Council standards or other applicable rules and statutes, and reject the proposed order and deny issuing a site certificate. However, because the proposed order finds that the facility meets all Council standards and applicable rules and statutes

(with conditions), if Council disagrees with staff’s findings in the proposed order, Council would have to specify which standard or rule is not met and why, and direct staff to prepare findings accordingly. As per ORS 469.370(7), Council would be required to provide public notice and a comment opportunity on the revised findings, and hold a hearing at a later Council meeting to consider any comments received, and ultimately issue its final order.

## **SUMMARY OF REVISIONS – DRAFT PROPOSED ORDER TO PROPOSED ORDER**

The Department’s proposed order included minor administrative changes, as well as revised discussion or analysis within Sections IV.C Structural Standard, IV.E Land Use, and IV.M Public Services that addressed comments received on the record of the draft proposed order. These changes were presented in red-line, track-changes format to allow easy review and reference to the incorporated changes (see Attachment 1 of this staff report), as summarized below:

### Proposed Order Section IV.C Structural Standard

- Recommended Structural Standard Condition 2 was amended, based on comments received from Jason McLaughry of Oregon Department of Geology and Mineral Industrial (DOGAMI), to remove reference to designing the facility to Site Class B and replacing with reference to Site Class based on final, site-specific geotechnical analysis to be conducted prior to construction.
- Recommended Structural Standard Condition 6 was amended to remove reference to inclusion of force majeure provisions in facility design-build contracts as a mitigation measures for nonseismic geologic events at the site. Force majeure contract provisions are not viewed as design measures to minimize hazards from nonseismic hazards, but rather typical contract provisions to relieve liability in the event of an unforeseen hazardous event.

### Proposed Order Section IV.E Land Use

### Proposed Order Section IV.M Public Services

## **SUMMARY OF REVISIONS – PROPOSED ORDER TO FINAL ORDER**

The Final Order, if approved or modified by Council at the June 25, 2021 meeting, will include updates to the procedural history and administrative revisions such as converting “Department recommends” to “Council finds and “proposed order” to “final order.”

### **ATTACHMENT(S):**

- Attachment 1: Proposed Order on ASC  
Attachment 2: Hearing Officer’s Order Concluding the Contested Case

