



Oregon

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To: Energy Facility Siting Council

From: Chase McVeigh-Walker, Senior Siting Analyst

Date: September 10, 2021

Subject: Agenda Item B (Action Item):
Boardman Solar Energy Facility, Request for Amendment 1 –
Council Review of Proposed Order for the September 24, 2021 EFSC Meeting

Attachments: Attachment 1: Proposed Order on Request for Amendment 1
Attachment 2: Draft Proposed Order Comments

STAFF RECOMMENDATION

The Department recommends Council review the Proposed Order, and DPO comments at the September 24, 2021 Council meeting and take action to either approve or modify the Proposed Order as the Final Order and issue an amended site certificate.

At the September 24, 2021 Council meeting, the Department will present a summary of the changes proposed in Request for Amendment 1 (RFA1) of the site certificate, the draft proposed order (DPO), comments received on the DPO, and the Department's evaluation of DPO comments as found in the Proposed Order. The Proposed Order is attached to this staff report as Attachment 1, and all comments received on the record of the Draft Proposed Order are included as Attachment 2 to this staff report.

BACKGROUND

The Boardman Solar Energy Facility (facility) is an approved, but not yet constructed solar photovoltaic power generation components and related or supporting facilities, with a peak generating capacity of approximately 75 megawatts (MW). The site boundary encompasses approximately 798 acres, and is located within Morrow and Gilliam counties.

PROPOSED FACILITY MODIFICATIONS

The certificate holder, Boardman Solar Energy LLC (certificate holder), submitted a complete RFA1 on August 4, 2021.

The amendment request seeks Council's approval to extend the deadlines for beginning and completing construction of the facility by three years. The proposed change would extend the construction commencement deadline from February 23, 2021 to February 23, 2024.

PROCEDURAL HISTORY SUMMARY

On August 12, 2021, the Department issued its DPO. On the same day, the Department also issued a notice of a public comment period on the amendment request and DPO. The comment period extended 25-days from August 12, 2021 through September 6, 2021. On the record of the DPO, the Department received comments from the Oregon Department of Aviation, the Morrow County Board of Commissioners (the Special Advisory Group), and a member of the public.

A summary of the comments received on the record of the DPO can be found below in Table 1: *DPO Comment Summary*:

Table 1: DPO Comment Summary

Commenter Name	Agency/Entity/Public	Date(s) Received	Issue/Topic
Melissa Lindsay, Don Russell, and John Doherty	Morrow County Board of Commissioners	9/1/2021	Local permits; Road Use Agreement
Seth Thompson	Oregon Department of Aviation	9/3/2021	Mitigation for glare impacts to local airports
Julia Pommert	State Historic Preservation Office	9/6/2021	Opposition to extension; HB 2021

Based on review of the above referenced comments, the Department recommends Council rely on the certificate holder's proposed facility design (which includes modules manufactured with antireflective coating) and previously imposed conditions (Land Use Condition 3; Public Services Condition 4, see Attachment A of this order) that already address the issues raised.

On September 10, 2021, the Department issued both its Proposed Order recommending that Council approve RFA1, and notice of the Proposed Order.

This amendment request is being processed under Council's Type B review process, and therefore does not include a public hearing on the DPO nor an opportunity to request a contested case proceeding on the Proposed Order.

STAFF EVALUATION OF AMENDMENT REQUEST AND SUMMARY OF PROPOSED ORDER

The Proposed Order addresses each of the Council Standards and recommends that the Council find that the facility, with proposed deadline extension, would comply with, or, based on compliance with existing and recommended amended site certificate conditions would comply with each of the Council standards.

The Proposed Order includes new analysis and new recommended findings, not previously relied upon by Council, or recommended amended conditions for the following standards:

- **General Standard of Review (Recommended Amended Conditions):**
 - Staff recommends Council amend General Standard Condition 1 and Site Specific Condition 1 to grant a three year construction commencement and completion

deadline extension, and update the reference to an out of date code reference respectively. (pg.'s. 13 and 14 of the PO)

- **Organizational Expertise** (Recommended Amended Condition)
 - Staff recommends Council amend Organizational Expertise Condition 4 to update and replace guidance from DEQ relating to minimizing impacts to soils from contamination. (pg. 18 of the PO)
- **Structural Standard** (Recommended new non substantive Findings) The Department recommends Council rely on its previous evaluation of compliance to the Structural Standard. (pg.'s 19 through 23)
- **Soil Protection** (Recommended Amended Condition)
 - Staff recommends Council amend Soil Protection Condition 1 in accordance with LCDC's May 2019 rule amendment re: topsoil management. (pg. 24 in PO)
- **Land Use** (Recommended New Findings) The Department evaluated the applicable conditional uses, requirements, and state statutes and administrative rules and determined that based on the analysis provided in the proposed order, evidence in the record, and subject to compliance with existing site certificate conditions, the facility would continue to comply with the Land Use Standard. (pg.'s 25 through 38)
- **Protected Areas** (Recommended new non substantive Findings) The Department recommends Council rely on its previous evaluation of compliance to the Protected Areas Standard. (pg.'s 38 through 43)
- **Retirement and Financial Assurance** (Recommended Amended Condition):
 - Staff recommends Council amend Retirement and Financial Assurance Condition 4 and consider several administrative changes, and adjust the decommissioning cost estimate (pg. 47 of the PO). The Decommissioning cost Council previously found to be a reasonable estimate to restore the site to a useful, non-hazardous condition was \$8.78 million (Q4 2017) dollars. The Department's estimated total for site restoration (rounded to the nearest \$1,000, and in Q3 2021 dollars) is \$7.654 million, which accounts for the reduction of \$1.25 million for gravel removal.
- **Fish and Wildlife Habitat** (Recommended Amended Condition):
 - Staff recommends Council amend Fish and Wildlife Habitat Condition 3 to clarify how occupied nests are to be determined both prior to and during the sensitive nesting season, and allow for work to occur within the restricted area if an occupied nest becomes unoccupied (pg. 50 of PO)
- **Threatened and Endangered Species** (Recommended new non substantive Findings) The Department recommends Council rely on its previous evaluation of compliance to the Threatened and Endangered Species Standard. (pg.'s 52 through 54)
- **Scenic Resources** (Recommended new non substantive Findings) The Department recommends Council rely on its previous evaluation of compliance to the Scenic Standard. (pg.'s 54 through 56)
- **Historic, Cultural, and Archeological Resources** (Recommended Amended Conditions):
 - Staff recommends Council amend Historic, Cultural and Archeological Resources Condition 5 and Historic, Cultural and Archeological Resources Condition 7 to clarify the intent of the Monitoring Plan, and clarify that the IDP must be finalized prior to construction, respectively. (pg. 59 of the PO)

- **Recreation** (Recommended new non substantive Findings) The Department recommends Council rely on its previous evaluation of compliance to the Recreation Standard. (pg.'s 60 through 62)
- **Public Services** (Recommended new non substantive Findings) The Department recommends Council rely on its previous evaluation of compliance to the Public Services Standard. (pg.'s 62 through 64)
- **Waste Minimization** (Recommended new non substantive Findings) The Department recommends Council rely on its previous evaluation of compliance to the Waste Minimization Standard. (pg.'s 64 through 65)
- **Siting Standards for Transmission Lines** (Recommended new non substantive Findings) The Department recommends Council rely on its previous evaluation of compliance to the Siting Standards for Transmission Lines. (pg.'s 65 through 66)
- **Noise Control Regulations** (Recommended new non substantive Findings) The Department recommends Council rely on its previous evaluation of compliance to Noise Control Regulations. (pg.'s 67 through 69)
- **Removal-Fill** (Recommended new non substantive Findings) The Department recommends Council rely on its previous evaluation that the facility maintains compliance with the removal-fill law. (pg.'s 69 through 70)
- **Water Rights** (Recommended new non substantive Findings) The Department recommends Council rely on its previous evaluation of compliance with the Ground Water Act of 1955 or Water Resources Department rules. (pg.'s 70 through 71)

RECOMMENDED COUNCIL ACTION

The Department recommends Council review the Proposed Order and DPO comments, as provided as Attachments 1 and 2 respectively, at the September 24, 2021 Council meeting and take action to either approve or modify the Proposed Order as the Final Order and issue an amended site certificate.

ATTACHMENTS:

- Attachment 1: Proposed Order on Request for Amendment 1
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