



# 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](http://www.oregon.gov/energy)

**To:** Energy Facility Siting Council

**From:** Kellen Tardaewether, Senior Siting Analyst

**Date:** November 4, 2022

**Subject:** Agenda Items B (Public Hearing) and H (Information Item):  
West End Solar Project, Public Hearing on the Draft Proposed Order; and  
Council Review of Draft Proposed Order for the November 17-18, 2022 EFSC  
Meeting

**Attachments:** Attachment 1A: Draft Proposed Order (DPO)  
Attachment 1B: Attachments to DPO  
Attachment 2: Comments Received on Record of DPO Public Hearing (any  
comments received after the date of this staff report will be provided to  
Council in Supplemental Council materials prior to November 17, 2022  
meeting)

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## STAFF RECOMMENDATION

The Oregon Department of Energy's (Department) Draft Proposed Order (DPO) on the Application for Site Certificate (ASC) for the West End Solar Project (proposed facility) recommends that the Energy Facility Siting Council (Council) find that EE West End Solar, LLC (applicant), a subsidiary of Eurus Solar Holdings, LLC., provided sufficient evidence in the ASC to demonstrate that the proposed facility, with recommended conditions, satisfies the requirements of applicable Council standards and other state statutes and local ordinance provisions. The DPO is provided as Attachment 1A of this staff report, and the Attachments to the DPO are included as Attachment 1B.

## PROJECT OVERVIEW

Approximately 50 megawatts (MW) of solar photovoltaic energy generation components that would occupy up to 324 acres on Exclusive Farm Use zoned land. Related or supporting facilities include a 70 MW lithium-ion energy storage system, 15-acre collector and switchyard substation, 15 miles of underground 34.5 kilovolt (kV) collector line system, Supervisory Control and Data Acquisition (SCADA) System, driveway and internal access roads, an Operation and Maintenance (O&M) enclosure, construction staging area, and approximately 3 miles of perimeter fence.

## INTRODUCTION

The Department issued the Draft Proposed Order on October 26, 2022, along with a Public Notice of a 22-day comment period extending from October 26, 2022 through November 17,

2022, unless otherwise extended by the Hearing Officer. A public hearing on the DPO will be held on November 17, 2022 with opportunities for remote and in-person participation. The public hearing provides interested individuals an opportunity to provide written or oral testimony on the DPO and ASC. If the record is closed on November 17, 2022, Council will have an opportunity to review the DPO on November 18, 2022. Following Council's review of the DPO and issues raised in comments received, the Department will issue a Proposed Order intended to address issues raised in comments received that are within Council jurisdiction and based on facts and evidence provided in support of the issue.

### **SUMMARY OF COMMENTS RECEIVED**

To date, the Department has received 1 comment on the DPO from the Oregon Department of Fish and Wildlife (ODFW) (Attachment 2), as summarized below.

- ODFW commented on the Habitat Mitigation Plan (HMP) and whether it demonstrates consistency with the mitigation goals for the habitat categories to be impacted at the proposed facility site (at Category 3, 4 and 5). Based on the lack of habitat function and connectivity at the site (due to development and location among active agriculture), the habitat quality at the site is lower than Category 3 and 4, because of its disconnection and low functionality. ODFW comments support the HMP because it would satisfy a lower habitat mitigation goal, such as the net benefit in habitat quantity and quality for Category 5.

Any additional comments received will be provided to Council in advance, and on the date, of the hearing.

### **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 DPO. This staff report provides an abbreviated summary of select issues and recommended conditions anticipated to be of interest to Council and members of the public. On November 18, 2022, Council will receive a staff presentation that will provide an overview of each applicable Council standard.

#### **IV.A. GENERAL STANDARD OF REVIEW: OAR 345-022-0000 (Begins on page 19 of DPO)**

In the ASC, the applicant represents a 9-month maximum construction schedule, however, under recommended General Standard Condition 1, the Department recommends Council establish a construction commencement deadline that provides sufficient time for planning and unexpected delays of three years after the issuance of the site certificate, and a 24-month completion deadline once construction commences.

#### **IV.B. ORGANIZATIONAL EXPERTISE: OAR 345-022-0010 (Begins on page 25 of DPO)**

The Department recommends Council find that the applicant, through the experience of its parent company (Eurus Solar Holdings, LLC), has the organizational expertise necessary to design, construct, operate and retire the facility compliant with the standard. The Department recommends Council make the following findings of fact:

- The applicant is a wholly owned subsidiary of Eurus Solar Holdings, LLC.
- The applicant and Eurus Solar Holdings LLC have executed a limited liability company agreement, effective September 1, 2021. This agreement establishes, in part, the

ownership and management of assets and interests by the applicant and its sole Member, Eurus Solar Holdings LLC.

- The applicant and parent company affirm its intent to execute a performance guarantee prior to construction of the facility; this guarantee affirms that the parent company unconditionally guarantees to Council the full and prompt payment and performance of all obligations, accrued and executory, which Eurus Energy Holdings LLC presently or hereafter may have under the site certificate.
- Parent company has developed over 700 megawatts (MW) of renewable energy generation in the United States.

#### IV.C. STRUCTURAL STANDARD: OAR 345-022-0020 (Begins on page 32 of DPO)

The Department recommends Council make the following findings of fact:

- There is low seismic risk at the facility site.
- There is risk at the facility site for landslide/slope instability, erosion, flooding and shrinking/swelling soils.
- Non-seismic risks would be addressed through facility design under **recommended Structural Standard Condition 1**, requiring completion of a preconstruction geotechnical investigation and design selection based on the outcome of boring and soil testing.

#### IV.D. SOIL PROTECTION: OAR 345-022-0022 (Begins on page 38 of DPO)

The Department recommends Council make the following findings of fact:

- There are two soil types within the analysis area, including Adkins find sandy loam and Quincy fine sand, which have a moderate to several potential for wind erosion.
- Soils within the site boundary are Natural Resources Conservation System Soil Capability Class IV and VII (arable and non-arable).
- The site has not been used for agricultural purposes.
- Erosion impacts will be minimized under recommended **Soil Protection Conditions 1 through 3**, which would require the submission and implementation of an Erosion Sediment Control Measures (Attachment I-1) during construction and operation.

#### IV.E. LAND USE: OAR 345-022-0030 (Begins on page 43 of DPO)

The Department recommends Council make the following findings of fact related to the request to take an exception to the Statewide Policy embodied in Goal 3, *Agricultural Lands*:

##### *Locational Dependency*

- The proposed site includes the potential to interconnect to the existing transmission grid via three existing transmission lines traversing and parallel to the site.
  - The site is therefore optimal for use by a proposed energy facility because it is locationally dependent on the existing transmission lines and interconnection opportunity.
  - **Recommended Land Use Condition 6** would require that, prior to construction of the facility, the applicant provide an executed interconnection agreement between applicant and one of the three existing utilities operating the identified lines.

- The proposed site omits the need for new or substantially modified public roads; is accessible directly from existing South Edwards Road, which has sufficient carrying capacity to support construction traffic while maintaining an A-rating LOS.

Minimal Direct Impacts to Agriculture within Subject Tracts

- Two underlying landowners provided written comments confirming lack of agriculture use and opportunity at the site; and, limited feasibility and availability of obtaining water rights and using the site for irrigated agriculture

Minimal Indirect Impacts to Agriculture within Surrounding Area

- The site is not currently nor in the last 50 years has it been used for or in support of agricultural activity.
- Therefore, the proposed facility will not displace any jobs or impact any ancillary businesses related to agriculture goods and services.

Minimal Impacts to Resources Protected by Council Standards

- Site offers an advantage because it results in no impacts to wetlands, waters of the state, protected areas, recreational opportunities or important or significant scenic resources.
- Site results in impacts to fish and wildlife habitat, but habitat of threatened or endangered or state sensitive species would not be impacted.

IV.F. PROTECTED AREAS: OAR 345-022-0040 (Begins on page 83 of DPO)

The Department recommends Council make the following findings of fact:

- There are twelve protected areas within 20-miles of the proposed site boundary.
- Cold Spring National Wildlife Refuge, located approximately 2.4 miles northeast of the proposed site is the closest.
- Hermiston Agricultural Research and Extension Center, located approximately 3.2 miles west of the proposed site is the next closest.
- Given facility component heights, distance, topography/vegetative screening, proposed facility would not result in potential significant adverse visual impacts at any protected area.
- Noise from construction and operation of the proposed facility will not be distinguishable from background noise levels at a distance of 2 miles from the proposed facility site.
- Construction-related traffic would be minimal because of distance of the site from the areas and the applicant is required to enter into a Road Use Agreements with Umatilla County, and as described in Recommended Public Services Condition 1 and 2, which would implement best management practices to minimize traffic impacts due to construction, traffic congestion, flagging needs, road closures, and large equipment and deliveries.

IV.G. RETIREMENT AND FINANCIAL ASSURANCE: OAR 345-022-0050 (Begins on page 94 of DPO)

The Department recommends Council make the following findings of fact:

- \$5.7 million (Q3 2022 dollars) is a reasonable estimate of an amount satisfactory to restore the site to a useful, nonhazardous condition.
- Letter from Sumitomo Mitsui Banking Corporation (SMBC) verifies its ability to provide a letter of credit of \$5.8 million, confirms a financial relationship with the parent company and the applicant, and provides reasonable assurance that the applicant has the ability to obtain a bond or letter of credit in the specified amount of \$5.7 million.
- **Recommended Retirement and Financial Assurance Condition 4** imposes mandatory condition under OAR 345-025-0006(8) and is imposed, based on the decommissioning amount recommended by the Department to be considered satisfactory by Council. Sub (c) of the condition references Attachment X-1 of the order which are the last Council approved template for a bond and letter of credit.

IV.H. FISH AND WILDLIFE HABITAT: OAR 345-022-0060 (Begins on page 106 of DPO)

The Department recommends Council make the following findings of fact:

- Applicant has adequately categorized habitat within the site boundary as Category 3, 4, 5 and 6.
- Draft Habitat Mitigation Plan satisfies the mitigation goals for Categories 3, 4 and 5 via acreage ratio and enhancement actions, including shrub-planting, weed treatment and seeding.

IV.I. THREATENED AND ENDANGERED SPECIES: OAR 345-022-0070 (Begins on page 119 of DPO)

The Department recommends Council make the following findings of fact:

- Site boundary contains suitable habitat for two threatened and endangered species, Washington ground squirrel (WGS) and Laurence's milkvetch.
- Surveys conducted to inform ASC did not identify either of the two potential threatened and endangered species.
- Preconstruction surveys and avoidance, if incidental observations of the species occur, are recommended under **Recommended Threatened and Endangered Species Condition 1.**

IV.J. SCENIC RESOURCES: OAR 345-022-0080 (Begins on page 123 of DPO)

The Department recommends Council make the following findings of fact:

- The analysis are contains 6 important or significant scenic resources: Open Space designed wetlands in the northeast portion of Hermiston; Oregon State University Agriculture Research and Extension Center; views of Hat Rock; view of Boat Rock; view of Columbia River within Hat Rock State Park; and Echo Meadows.
- Important or significant scenic resources are more than 6 miles from the site boundary.
- Given facility component heights, distance, topography/vegetative screening, proposed facility would not result in potential significant adverse visual impacts at any important or significant scenic resource.

IV.K. HISTORIC, CULTURAL, AND ARCHAEOLOGICAL RESOURCES: OAR 345-022-0090 (Begins on page 19 of DPO)

The Department recommends Council make the following findings of fact:

- There are no resources of importance or significance to the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) within or adjacent to the site that could be impacted by the proposed facility.
- Proposed site boundary includes two historic utility corridors containing operating transmission lines: Bonneville Power Administration's (BPA) McNary to Roundup 230-kilovolt (kV) line which was constructed in 1952 and PacifiCorp's Pendleton to Hermiston 69-kV line, which was constructed in 1941.
  - Proposed facility layout would maintain the rights-of-way for the existing transmission lines and would not otherwise impact the historic value of the operating lines.
- There are no historic, aboveground resources within or adjacent to the site that could be impacted by the proposed facility.

IV.L. RECREATION: OAR 345-022-0100 (Begins on page 142 of DPO)

The Department recommends Council make the following findings of fact:

- There are 4 important recreational opportunities within the analysis area: Cold Springs National Wildlife Refuge (closest to site boundary at 2.4 miles), Hermiston Butte, Butte Park, Fort Henrietta Park, and Campground.
- Based on the location and proximity of important recreational opportunities to the proposed facility site, the proposed facility would not be expected to result in direct disturbance, visual, noise or traffic impacts to the important recreational opportunities.

IV.M. PUBLIC SERVICES: OAR 345-022-0110 (Begins on page 155 of DPO)

The Department recommends Council make the following findings of fact:

- **Recommended Public Services Condition 1** would require that the applicant implement and submit a final Traffic Management Plan which would include Road Use Agreements executed between the applicant and the County as well as the submission of any ODOT permits acquired by applicant or third-party contractor.
- **Recommended Public Services Condition 4 and 5** would require the applicant to provide a site orientation and training on facility safety procedures, based on requests from Umatilla County Fire District #1 (UDFD #1).

IV.N Wildfire Prevention and Risk Mitigation: OAR 345-022-0115 (Begins on Page 176 of DPO)

The Department recommends Council make the following findings of fact:

- The wildfire risk within the site boundary is moderate; the wildfire risk within the analysis area is moderate or low.
- The Emergency Management and Wildfire Mitigation Plan includes the necessary criteria under OAR 345-022-0115(1)(b)(A) through (E) and is attached to the DPO as Attachment V-1.
- **Recommended Wildfire Prevention and Risk Mitigation Condition 1** requires the applicant to submit to the Department and the Umatilla County Fire District #1 (UCFD #1), a Final Construction Emergency Management and Wildfire Mitigation Plan (EMWMP) and **Recommended Wildfire Prevention and Risk Mitigation Condition 2**, requires the applicant to submit to the Department and the UCFD #1, a Final Operational EMWMP.

- **Recommended Wildfire Prevention and Risk Mitigation Condition 3** imposes the applicant-representation for implementing the Operational EMWMP, and includes the schedule that the applicant would evaluate wildfire risk at the site, specifically, every 5 years after the first operational year, the applicant will review and update the evaluation of wildfire risk under OAR 345-022-0115(1) and submit the results in the annual report required under General Standard of Review Condition 10 for that year.

IV.N. WASTE MINIMIZATION: OAR 345-022-0120 (Begins on page 187 of DPO)

The Department recommends Council make the following findings of fact:

- **Recommended Waste Minimization Condition 1** requires that the applicant maintain plans to manage the accumulation, storage, disposal and transportation of waste generated by operation of the facility,
- **Recommended Waste Minimization Condition 2** requires annual reporting of: quantities of solar panels and lithium-ion batteries recycled or disposed of, the identification of the availability of programs or licensed facilities that recycle solar panels and lithium-ion batteries, and the identification of final recycling destination facility or program for recycled solar panels and lithium-ion batteries. If recycling programs or facilities are not available, the identification of final disposal destination facility or program for disposed solar panels and lithium-ion batteries and their capacity to accept waste.

IV.O. Division 23 Standards (Begins on page 190 of DPO)

The proposed facility is not a nongenerating facility as defined in statute, and therefore Division 23 is inapplicable to this application for site certificate.

IV.Q.1 Siting Standards for Transmission Lines: OAR 345-024-0090

The applicant is not proposing a transmission line in the ASC as a related or supporting facility and states that it would connect to one of three existing transmission lines within or adjacent to the site boundary, therefore, OAR 345-024-0090 does not apply to this proposed facility.

IV.Q. OTHER APPLICABLE REGULATORY REQUIREMENTS UNDER COUNCIL JURISDICTION (Pages 301-322)

*IV.Q.1. Oregon Department of Environmental Quality (DEQ) Noise Control Regulations for Industry and Commerce: OAR 340-035-0035 (Begins on page 19 of DPO)*

The Department recommends Council make the following findings of fact:

There are 12 noise sensitive receptors (NSRs) identified within 1-mile of the proposed site boundary and evaluated for operational noise impacts. The Department recommends Council find that the applicant's methods for evaluating operational noise impacts are acceptable.

The maximum noise level for noise-generating equipment, at the noise source is:

- 25 inverters, 88 dBA per inverter
- 25 inverter step-up transformers, 77 dBA per transformer
- 2 main power transformers, 102 dBA per transformer
- 200 battery storage HVAC units, 98 dBA per unit

Noise modeling was conducted under two different design or build-out scenarios:

1. Distributed Battery Storage: Eight (8) battery energy storage units collocated with each of the 25 inverter skids (200 battery energy storage units total); and
2. Centralized Battery Storage: Two hundred (200) battery storage units would be located in one consolidated area in proximity to the collector substation.

Under the distributed battery layout scenario, the maximum allowable noise standard of 50 dBA at L<sub>50</sub> under OAR 340-035-0035(1)(b)(B), would be exceeded at NSR 1 with a L<sub>50</sub> nighttime noise level of 51 dBA. Additionally, at NSR 1 under the distributed battery layout, the ambient statistical noise levels would increase by 13 dBA during the day and 16 dBA at nighttime, therefore, the ambient noise degradation standard is also not met. Thus, under the distributed battery layout, at one NSR, the applicant does not meet the maximum noise or the ambient noise degradation standards under OAR 340-035-0035. Therefore, the applicant is precluded from constructing the distributed battery layout as presented in the ASC.

The Department recommends **Noise Control Condition 1**, to ensure that adequate information is provided to the Department that demonstrates that the final facility design and layout satisfy the maximum allowable noise standard and ambient noise degradation standard.

#### *IV.Q.2. Removal-Fill Law (Pages 312-318)*

The Department recommends Council make the following findings of fact:

- Proposed facility would not impact waters of the state or require a removal-fill permit.

#### *V.Q.3. Water Rights (ORS 537, 540 and 690) (Begins on page 19 of DPO)*

The Department recommends Council make the following findings of fact:

- The applicant has not requested a water right, water right transfer or limited water use license for the proposed facility.
- **Recommended Water Rights Condition 1** requires the applicant to identify all water-related needs and estimate daily and annual water demand for each construction phase, as applicable and to provide excerpts of agreements or other similar conveyance from the water-providing entity.
- **Recommended Water Rights Condition 2** indicates that if a water right, limited water use license or water rights transfer is needed and would not be obtained by a third-party, the applicant must submit and obtain approval of the applicable water permit through the site certificate amendment process.



**ATTACHMENTS:**

Attachment 1A: Draft Proposed Order

Attachment 1B: Attachments to DPO

Attachment 2: Comments Received on Record of Draft Proposed Order Public Hearing (any comments received after the date of this staff report will be provided to Council in Supplemental Council materials prior to November 17, 2022 meeting)