



# Oregon

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**To:** Energy Facility Siting Council

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

**Date:** January 10, 2025 (revised from the January 3, 2025 Staff Report)

**Subject:** Agenda Item H (Information Item): Madras Solar Energy Facility, Council  
Review of Draft Proposed Order on Amendment 1 for the January 17, 2025  
EFSC Meeting

**Attachments:** Attachment 1: Draft Proposed Order  
Attachment 2: Comments received on the record of the Draft Proposed Order  
Attachment 3: Certificate Holder's responses to DPO comments

**Revisions made to Jan 3, 2025 Staff Report are provided as Track Changes (above and below).**

## STAFF RECOMMENDATION

The Oregon Department of Energy (Department) recommends the Energy Facility Siting Council (EFSC or Council) approve the requested site certificate amendment and grant issuance of the First Amended Site Certificate for the Madras Solar Energy Facility, subject to compliance with existing, recommended amended, and recommended new site certificate conditions.

## APPROVED FACILITY

The approved but not yet constructed facility includes 63 megawatts of solar photovoltaic energy generation to be located within an approximately 284-acre site boundary. The certificate holder is Madras PV1, LLC., a wholly owned subsidiary of Ecoplexus Inc. The Council issued the Site Certificate on July 16, 2021.

## PROPOSED FACILITY MODIFICATIONS

The certificate holder requests a three-year extension to both the construction commencement and completion deadlines. This change would make the new construction commencement deadline June 25, 2027, and new completion deadline 18 months after construction commences.

## PROCEDURAL HISTORY

- June 25, 2024 – Certificate holder filed preliminary Request for Amendment 1 (pRFA1).
- August 22, 2024 – Department determined pRFA1 was incomplete and issued its' first Request for Additional Information (RAI1).
- September 9 and 23, 2024 – Certificate holder responded to RAI1
- September 26, 2024 – Department issued RAI2

- October 3 and 9, 2024 – Certificate holder responded to RAI2
- October 17, 2024 – Department notified certificate holder that amendment request was complete, and the certificate holder filed complete Request for Amendment 1 (RFA1).
- October 18, 2024 – Department issued the Draft Proposed Order (DPO) and the public notice requesting public comment on RFA1 and the DPO.
- November 14, 2024 – A Public Hearing on the DPO was held virtually and in person during the EFSC meeting in Madras. Council extended the public comment period to December 5, 2024 and gave the certificate holder until January 6, 2025 to respond to DPO comments.

### **SCOPE OF COUNCIL REVIEW**

Under OAR 345-027-0375, the Council must determine whether the preponderance of evidence on the record supports the following conclusion:

*After considering any changes in facts or law since the date the current site certificate was executed, the facility complies with all laws and Council standards applicable to an original site certificate application.*

For other changes included in an RFA, such as changes to site certificate conditions, the Council must determine whether the preponderance of evidence on the record supports the following conclusion:

*The facility, with the proposed change, complies with the applicable laws or Council standards that protect a resource or interest that could be affected by the proposed change.*

For all requests for amendment, Council must determine whether the preponderance of evidence on the record supports whether the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.

### **DEPARTMENT EVALUATION OF RFA1 AND SUMMARY OF DPO**

As presented in the DPO, the Department recommends Council find that, subject to existing, and recommended amended and new conditions of approval, the preponderance of evidence on the record supports the conclusion that the facility, with the changes proposed in RFA1, would comply with the Council's general standards in OAR chapter 345, division 022, and with other applicable provisions of OAR chapter 345 and ORS chapter 469.

In the DPO, the Department recommends that the changes proposed in RFA1 would not necessitate new or amended site certificate conditions, and that to the extent applicable, previously imposed conditions would continue to minimize potential impacts under the following applicable standards/requirements:

- Structural (DPO Section III.C., pg: 18-20)
- Soil Protection (DPO Section III.D., pg: 20-21)
- Land Use (DPO Section III.E., pg: 21-27)\*
- Protected Areas (DPO Section III.F., pg: 27-35)
- Threatened and Endangered Species (DPO Section III.I., pg: 46-47)
- Scenic Resources (DPO Section III.J., pg: 48-54)
- Historic, Cultural, and Archeological Resources (DPO Section III.K., pg: 54-57)
- Recreation (DPO Section III.L., pg: 57-62)

- Waste Minimization (DPO Section III.O., pg: 84-86)
- Siting Standards for Transmission Lines (DPO Section III.P., pg: 86-87)
- Noise Control Regulations (DPO Section IV.A., pg: 86-95)
- Removal Fill (DPO Section IV.B., pg: 95-96)
- Water Rights (DPO Section IV.C., pg: 95)

A summary of conditions for standards where there were changes in fact or law, or recommended substantive condition language changes, are presented below:

**General Standard of Review** (DPO Section III.A., pg: 11-14)

**Recommended Amended General Standard Condition 1 (GEN-GS-01)** - Establish an extension of three years to the dates for the beginning and completion of construction. (*Construction completion would remain 18 months after the construction commencement date.*)

**Organizational Expertise** (DPO Section III.B, pg: 14-17)

**Recommended Amended Organizational Expertise Condition 5 (GEN-OE-04)** - Amend condition to allow adjustments be made to the contingencies in the facility decommissioning cost (Table 5 of DPO on RFA1), based on review and evaluation of the facility record for incidents or circumstances reported or reportable under sub(a), related to public health and safety, the environment, or other resources protected under Council standards.

**Retirement and Financial Assurance** (DPO Section III.G., pg: 35-42)

**Recommended Amended Retirement and Financial Assurance Condition 4 (PRE-RF-01)** - Adjust the total amount of financial assurance necessary to restore the site to a useful, non-hazardous condition from \$4.1 million in Q4 2019 dollars to \$4.5 million in Q4 2024 dollars.

**Fish and Wildlife Habitat** (DPO Section III.H., pg: 42-46)

**Recommended Deletion of Fish and Wildlife Condition 1 (GEN-FW-01)** - Removal of this condition because temporary habitat impacts are recommended to be considered permanent impacts, thus the Revegetation Plan is no longer needed.

**Public Services** (DPO Section III.M., pg: 62-68)

**Recommended New Public Services Condition 5 (PRE-PS-02)** - New condition to ensure the water source and provider's legal ability to meet the construction water usage needs are identified, prior to construction.

**Recommended Deletion of Public Services Condition 4 (GEN-PS-03)** - Removal of this condition because the measures and substantive elements of Public Services Condition 4 are now incorporated into the construction Wildfire Mitigation Plan (WMP) which is attached to the DPO as Attachment F-1.

**Wildfire Prevention and Risk Mitigation** (DPO Section III.N, pg: 68-84)

This standard was adopted after the facility was approved in 2021. Below are key findings in the DPO:

- Approximately 13% of the site boundary has a "very high overall fire risk rating", and approximately 40% that includes a "high overall fire risk rating".

- Areas within the site boundary with heightened wildfire risk and high-fire consequence areas are the areas with existing infrastructure, including transmission lines (i.e. the existing Pelton Dam to Round Butte 230 kV transmission line), roads, and residences.
- The Jefferson County 2020 Community Wildfire Protection Plan indicates the facility site is located within a high wildfire risk area (the lowest risk on their scale).

**Recommended New Wildfire Prevention and Risk Mitigation Conditions 1 and 2 (PRE-WF-01, CON-WF-01)** - New conditions to ensure finalization and implementation of the construction WMP.

**Recommended New Wildfire Prevention and Risk Mitigation Conditions 3 and 4 (PRO-WF-01, OPR-WF-01)** - New condition to ensure finalization and implementation of the operational WMP.

#### **SUMMARY OF COMMENTS RECEIVED ON THE RECORD OF THE DRAFT PROPOSED ORDER**

The Public Notice of the DPO initiated a 27-day public comment period on RFA1 and the DPO that extended from October 18, 2024 through the conclusion of the public hearing on the DPO on November 14, 2024. At the November 14, 2024 EFSC meeting, a public comment period extension was requested and granted, extending the deadline for public comments to December 5, 2024 at 5:00pm (Pacific). This changed the comment period from 27 days to 48 days. The Department received six written, and one oral comment on the record of the DPO, in addition to the certificate holder and members of Council. The written comments received are included as Attachment 2 of this staff report.

The complete video/audio file of the DPO Public Hearing is available online at: <https://www.youtube.com/watch?v=Y7sbAdLZmts>. The Madras Solar Energy Facility RFA1 DPO Public Hearing: Timer 1:40 through 2:07 of the video/audio file.

*Table 1* below, provides a summary of the DPO comments received (both written and oral), and the related EFSC Standard as applicable. ~~As of the date of this staff report, the Department had not received the certificate holder's responses to the DPO comments.~~ The deadline for the certificate holder's responses to DPO comments ~~is was~~ 5:00pm (Pacific) on January 6, 2025. The certificate holder's responses to DPO comments are included as Attachment 3 of this staff report, and were received before the January 6, 2025 deadline.

Where applicable, the Department has updated *Table 1* to include a summary of the certificate holder's responses, and preliminary recommendations for changes in findings or conditions in the Proposed Order for Council's consideration. Once received, the Department will update *Table 1* to include the certificate holder's responses (as applicable), and any updates to the Department's evaluation and recommendations for the Proposed Order. This updated staff report will be resent with the January 10, 2025 packet materials.

**Table 1: Summary of DPO Comments [Updated on 1/10/25]**

Commenter/ Organization	Issues Raised/Comment Summary	Certificate Holder Responses Summary	Related EFSC Standard(s) and/or Requirements	Recommended Changes to findings or conditions in the Proposed Order
Public				
Alan Clark (Property owner)	In favor of project. Great location, and stats that the project will “preserve the ground for years to come”.	n/a	Land Use	No
Daniel Craig	“we need bad fo rhe [sic] environment”	n/a	n/a	No
Certificate Holder				
Paul Szewczykowski, Ecoplexus	Transmittal of Deschutes Valley Water District letter, confirming their ability to serve the domestic drinking water needs for the amounts Ecoplexus requested.	n/a	Public Services	No
	Transmittal of Jefferson County Fire and EMS letter, confirming ongoing emergency services including fire and life services.	n/a	Public Services	No
Reviewing Agency				
Oregon State Historic Preservation Office	Case number assigned for review of project.	n/a	Historic, Cultural, and Archeological Resources	No
Peter Ryan, Oregon Department of State Lands	Wetland Delineation expired on March 5, 2024. However, there are no jurisdictional wetlands or waterways within the project study area.	n/a	Removal-Fill	No
Jordan Brown, Oregon Department of Agriculture	No comment for RFA1; no listed plants known to occur in Jefferson County.	n/a	Threatened and Endangered Species	No
Confederated Tribes of the Warm Springs Reservation of Oregon (CTWS)	Request to extend the public comment period.	Certificate Holder had no objections	n/a	No
	Site Certificate authorizes a related and supporting facility to enter the Federal Energy Regulatory Commission (FERC) licensed facility project boundary for a non-Pelton Project purpose.	<u>FERC’s precedent on this point strongly suggests that FERC will find that the Tribes may not unilaterally withhold consent to interconnect in this case. But that is a matter to be decided at FERC, not the Council, and indeed the very reason for the requested extension of time here is to allow for such resolution to occur at FERC before construction must commence under the Site Certificate.</u>	General Standard of Review	<u>No</u>
	The Pelton generator line is not subject to regulation under FERC’s open access policies, due to its joint ownership by PGE and the CTWS -which is not regulated as a public utility.		n/a	<u>No</u>
	The CTWS has not provided its consent to access any capacity on the Pelton generator line and interconnection to the Northwest power grid. Therefore, Council’s approval of the goal exception, and determination that the facility is locationally dependent cannot be made to meet its standards.	<u>Madras argues the Tribe is seeking “to reopen the Council’s finding” regarding locational dependence. They contend OAR 345-027-0375(2)(b) is met because “Madras Solar is not in violation of any laws by proposing to interconnect to the generator tie line . . .” The further argue the requested amendment is warranted because they only need to</u>	Land Use	<u>When Council approved the original application, CTWS did not inform Council that it had not agreed to allow Madras to interconnect to the Pelton line. CTWS has now made Council aware of that fact. Thus, pursuant to OAR 345-027-0375(2)(b), Council must take that fact into</u>

		<u>extend the deadlines due to unexpected delays in obtaining PGE and the Tribe’s consent to amend their license to allow Madras to interconnect to the Pelton line.</u>		<u>consideration when determining whether to grant the request to amend the site certificate.</u>  <u>The fact that CTWS has not agreed to allow Madras to interconnect to the Pelton line does not mean Council cannot maintain the exception to Goal 3.</u>  <u>The Department recommends Council consider one of the following three options in response to CTWS comments regarding locational dependency as a Goal 3 exception reason:</u>  <u>1) Affirm the exception to Goal 3 based on a locational dependence reason, while imposing a condition that, prior to construction, Madras provide evidence that it will be able to interconnect to the Pelton line;</u> <u>2) Revise the analysis of the exception to Goal 3 to maintain the locational dependence reason but basing the reason not on interconnection to the Pelton line but on the facility’s proximity to the line and potential to interconnect to the line; or</u> <u>3) Revise the analysis of the exception to Goal 3 to remove the locational dependence reason and base the exception only on the reasons of no direct impacts to agriculture and no impacts to other resources protected by Council standards (if Council believes those reasons are sufficient).</u>
	The CTWS does not concur that FERC has the discretionary authority as advocated by Madras to amend the Pelton Project hydropower license to the extent necessary to allow Madras’ interconnection. To the extent discretion does exist, the CTWS does not believe that FERC will order use of the Tribe’s facilities over its objection.	<u>Issues related to the interconnection agreement are “properly before FERC and beyond the scope of the Council’s Site Certificate.”</u>  <u>There is no preemption because the Site Certificate does not require anything of CTWS or PGE (e.g., Council is not requiring the Tribes or PGE to obtain any permits from the Council), rather the Site Certificate creates obligations for Madras. Further, the Site Certificate already includes a condition requiring Madras to comply with any FERC directives on interconnection to the Pelton line.</u>	<del>Land Use</del> /a	<u>No. Council does not have the authority to grant an interconnection agreement.</u>
	The Tribe questions whether the Council is preempted under the Federal Power Act.		n/a	<u>No. General Standard of Review Condition 3.d. requires the certificate holder to design, construct, operate and retire the facility “[i]n compliance with all applicable lawful rules and requirements of federal agencies.” Thus, the Site Certificate is not preempted because it</u>

		<u>FERC regularly approves non-hydropower projects within licensed hydropower boundaries and expressly requires compliance with “all necessary local, state, and federal permits” for such activities and cites to several FERC orders approving such activities.</u>		<u>expressly requires compliance with applicable federal law.</u>
	The Tribe urges [EFSC], at a minimum, to impose conditions of approval necessary to permit it to make the necessary findings to meet the Council’s standards and to craft any modifications to the Site Certificate necessary to conflict with FERC authority.	<u>Regarding the Tribes contention that construction of a fenced boundary under the Site Certificate will exclude the Tribes from accessing the Pelton line, Madras notes it’s not clear which area the Tribes are referencing. They point out that under current plans there will be a fence surrounding the point of interconnection substation, that this is a standard safety feature for substations and that PGE, not Madras, will own and control the substation and access to it. Madras also offers to provide updated site plans to clarify that site fencing will not eliminate PGE and the Tribes access to the point of interconnection substation or any areas with their hydropower project’s boundaries.</u>	<u>FERC = n/a</u>  <u>Access/rights = OAR 345-025-0006(5)</u>	<u>Regarding CTWS’ contention that the site certificate would eliminate their access to the Pelton line through construction of a fenced boundary, certificate holder pointed out that if the Tribes are concerned about the fence around the point of interconnection PGE, not the certificate holder, will own and control access to the substation. Certificate holder, however, has not explained how their plans for a perimeter fence around the entire facility would impact CTWS’ access to the Pelton line. Therefore, the Department recommends Council impose a condition requiring <del>that</del> Madras to give CTWS and PGE access to the Pelton line (see figure below for reference to transmission line ROW and perimeter fence).</u>



Figure 1: Facility Site Boundary/Transmission Line and Perimeter Fence





## **NEXT STEPS**

No later than 30 days after the Council's review of the DPO, the Department must issue a Proposed Order recommending approval, modification or denial of the request for amendment to the site certificate. The issuance of the Proposed Order will be accompanied by a public notice establishing a deadline for requests for a contested case proceeding.

To be eligible to request a contested case proceeding, a person must have raised an issue either in person at the public hearing or in a written comment submitted between October 18, 2024 and December 5, 2024, the date the record closed. Contested case requests must be submitted in writing to ODOE by a deadline that will be specified within that notice.

Following the conclusion of the contested case, or if there is no contested case, the Council will review the Proposed Order which may be adopted, modified, or rejected. If the Proposed Order is adopted or adopted with modifications, the Council will issue a Final Order granting issuance of an amended site certificate. If the Proposed Order is denied, the Council shall issue a Final Order denying issuance of the amended site certificate. The Final Order will be subject to judicial review by the Oregon Supreme Court as provided in ORS 469.403.

Unlike an application for a site certificate, there is no requirement that an automatic contested case occur. For Type A amendment review, under OAR 345-027-0371, there is an opportunity to request a contested case proceeding.