



Oregon

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To: Energy Facility Siting Council

From: Kathleen Sloan, Senior Siting Analyst

Date: October 17, 2025

Subject: Agenda Item G (Action Item): Supplemental Staff Report for Council's Review of the Proposed Order on Request for Amendment 1 of the Sunset Solar Project Site Certificate for the October 24, 2025 EFSC Meeting

Attachments: Attachment 1: DPO Comments
Attachment 2: Proposed Order on RFA1

OVERVIEW

The Oregon Department of Energy (Department) provides this staff report as a supplement to the Agenda Item G staff report dated October 10, 2025. The supplemental staff report presents an evaluation of issues raised in comments received on the record of the Draft Proposed Order on Request for Amendment 1 of the Sunset Solar Project Site Certificate (DPO). Changes proposed in response to comments and further evaluation by the Department are presented in Table 1 (Table 1 is incorporated into the Proposed Order as Table A-1).

In addition to the evaluation of issues raised in comments received on the record of the Draft Proposed Order, the Department recommends a material changes to General Standard Condition 1 (GEN-GS-01) based on further review of [OAR 345-027-0385](#) (rule applicable to construction deadline requests). The Departments evaluation and recommended change is presented below Table 1.

The Proposed Order on Request for Amendment 1 of the Sunset Solar Project Site Certificate was issued on October 14, 2025. Comments received on the record of the DPO are provided in Attachment 1 to this Supplemental Staff Report.

Table 1: DPO Comment Evaluation Table

Comments	Department’s Evaluation and Recommendation
Certificate Holder Comments	
<p>Recommended Amended Organizational Expertise Condition 5 (GEN-OE-04)</p> <p>a. Remove the word “may”, so that the reporting requirement only applies to actual violations. Remove reference to “any order” to target orders issued only on the site certificate. Move reporting requirements from (a) to (c)(i)</p> <p>Certificate Holder’s Proposed Condition Language Change – Presented in red, underline/strikeout</p> <p>Recommended Amended Organizational Expertise Condition 5 [GEN]: In addition to the requirements of OAR 345-026-0170, within 72 hours after discovery of incidents or circumstances that violate the terms or conditions of the site certificate, the certificate holder must report the conditions or circumstances to the Department.</p> <p><u>The certificate holder shall, as soon as reasonably possible:</u></p> <p>a. <u>Report incidents or circumstances that may violate the terms or conditions of the site certificate, terms or conditions of any order of the Council, to the Department.</u> In the report to the Department, the certificate holder shall provide all pertinent facts including an estimate of how long the conditions or circumstances existed, how long they are expected to continue before they can be corrected, and whether the conditions or circumstances were discovered as a result of a regularly scheduled compliance audit;</p> <p>b. <u>Initiate and complete appropriate action to correct the conditions or circumstances and to minimize the possibility of recurrence;</u></p> <p>c. <u>Submit a written report within 30 days of discovery to the Department. The report must contain:</u></p> <p>i. <u>A discussion of the cause of the reported conditions or circumstances;</u></p> <p>ii. <u>The date of discovery of the conditions or circumstances by the responsible party; how long they are expected to continue before they can be corrected, and whether the conditions or circumstances were discovered as a result of a regularly scheduled compliance audit;</u></p> <p>iii. <u>A description of immediate actions taken to correct the reported conditions or circumstances;</u></p> <p>iv. <u>A description of actions taken or planned to minimize the possibility of recurrence; and</u></p> <p>v. If the above analysis determines that For conditions or circumstances that may violate <u>the terms or conditions of a the site certificate have been violated</u>, <u>an assessment of the impact on the resources considered under the standards of OAR Chapter 345 Divisions 22 and 24 as a result of the reported conditions or circumstances.</u></p> <p><u>Upon receipt of the written report in sub(c) of this condition, the Department may review 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. If these incidences are determined by the Department to impact the adequacy of the facility decommissioning cost, the Department or Council may adjust the contingencies identified in Final Order on Amendment 1 of Sunset Solar Project Site Certificate, Table 7 and request that the certificate holder promptly provide an updated bond or letter of credit in the adjusted amount.</u></p>	<p>The Department recommends that Council reject the certificate holder’s proposed condition language changes because the language is and is intended to be consistent with Council’s rule at OAR 345-029-0010.</p>
<p>Threatened and Endangered Species Condition 1 (PRE-TE-01):</p> <p>Requests changes to the condition language to be consistent with a condition recommended for Yellow Rosebush Energy Center.</p> <p>Certificate holder states that botanical surveys were completed within the micrositing area in 2018, and that Tygh Valley milkvetch was not identified.</p>	<p>The Department recommends changes be incorporated into the Proposed Order Section III.I Threatened and Endangered Species, consistent with the certificate holder’s proposed condition language changes for the following reasons.</p> <p>The original intent of the condition was to apply to areas along the 230 kV transmission line route which had not been surveyed, but had recently been burned by a fire. And, post fire, had the potential to contain suitable habitat for Tygh Valley milkvetch. The transmission line has been built, and it otherwise appears that the certificate holder</p>

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<p>Certificate Holder’s Proposed Condition Language Change – Presented in red, underline/strikeout</p> <p>Threatened and Endangered Species Condition 1: Prior to construction or operation of the facility, facility component or phase, the certificate holder shall:</p> <p>a. Complete Conduct botanical surveys to confirm the presence or absence of Tygh Valley milkvetch, a state listed threatened or endangered plant species, within <u>unsurveyed</u> areas of permanent or temporary disturbance. The certificate holder shall submit a survey protocol to establish the survey area and methods to the Department for review, in consultation with the Oregon Department of Agriculture or third-party consultant.</p> <p>i. If any T&E species are identified and cannot be avoided, certificate holder must submit an Amendment Determination Request to the Department for a determination whether the impacts and mitigation must be reviewed by Council through the site certificate amendment process.</p> <p>ii. If the impacts and mitigation are determined by the Department not to require review through the Council’s site certificate amendment process, certificate holder shall implement and adhere to the mitigation requirements approved by the Department.</p> <p>b. If the pre-construction surveys identify Tygh Valley milkvetch, or any other state threatened or endangered plant species, the certificate holder shall complete an impact assessment to determine whether temporary or permanent impacts would significantly reduce the likelihood of survivability or recovery of the impacted species, and shall propose mitigation, as determined appropriate by the Department, in consultation with the Oregon Department of Agriculture or its third-party consultant, as necessary.</p>	<p>has fully surveyed the Sunset Solar Project site boundary/micrositing area for botanical resources.</p> <p>In the certificate holder’s proposed amended condition, they offer to survey unserved areas. It is not clear what areas have not been surveyed. Nonetheless, the condition would require that the certificate holder evaluate whether there are unsurveyed areas, prior to construction, complete botanical surveys; and evaluate the results accordingly.</p>
<p>Recommended Removal-Fill Condition 1 (PRE-RF-01)</p> <p>Certificate Holder proposes revising this language to clarify that jurisdictional determination concurrence letter(s) are required to be submitted in instances where applicable. For example, if areas to be impacted during construction are absent of wetlands and surface waters or if Certificate Holder can demonstrate wetlands and surface waters are entirely avoided during construction of the facility.</p> <p>Certificate Holder’s Proposed Condition Language Change – Presented in red, underline/strikeout</p> <p>Recommended Removal-Fill Condition 1 (PRE-RF-01): <u>Prior to construction, where and as applicable, the certificate holder shall provide, to the Department, valid jurisdictional determination concurrence letter(s) from DSL for areas to be impacted during construction demonstrating that no Removal-Fill Permit is needed for the construction of the facility.</u></p>	<p>The Department recommends changes be incorporated into the Proposed Order Section IV.B Removal Fill Law. While the Department disagrees with the certificate holder’s proposed condition language change, changes are recommended as explained below.</p> <p>The Department’s intent is to ensure that a removal fill permit is obtained if it is required. Avoidance of all potential impacts to wetlands and WOS or whether a removal fill permit is required based on impacts to wetlands and WOS is determined by establishing the boundaries of jurisdictional wetlands, which are based on a current DSL concurrence/determination. However, the Department acknowledges the previous jurisdictional determination and facility layout demonstrating that avoidance of all areas was demonstrated.</p> <p>To allow flexibility in the process of determining if a DSL jurisdictional determination may be necessary and also to ensure impacts do not occur without a removal fill permit, the Department recommends the following changes to the Proposed Order Condition PRE-RF-01 allowing the certificate holder to demonstrate the location of construction will occur only in areas that are unlikely to have jurisdictional water or impacts to those waters:</p> <p>Recommended Removal-Fill Permit Condition 1 (PRE-RF-01): <u>Prior to construction, the certificate holder shall provide, to the Department, evidence that no wetlands or</u></p>

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Comments	Department’s Evaluation and Recommendation
	<u>waters of the state are present in areas that will be impacted by construction. If wetlands or waters are present, the certificate holder shall provide a valid jurisdictional determination concurrence letter(s) from DSL demonstrating that no Removal-Fill Permit is needed for the construction of the facility.</u>
<p>Recommended Organizational Expertise Condition 7 (CON-OE-01):</p> <p>Certificate holder proposes to revise the condition language to be similar to Leaning Juniper IIA Wind Power Facility.</p> <p>Certificate holder proposes to remove the requirement to report changes in the construction manager within 72-hrs, and instead replace with the word “promptly.”</p> <p>Certificate Holder’s Proposed Condition Language Change – Presented in red, underline/strikeout</p> <p>Recommended Organizational Expertise Condition 7 (CON-OE-01): <u>During construction, the certificate holder shall have an on-site construction manager to ensure compliance with construction-related site certificate conditions require that a qualified compliance manager is onsite during ground disturbance activities to manage compliance with site certificate requirements.</u> The certificate holder shall <u>promptly</u> notify the Department and Wasco County Sheriff’s Department within 72 hours upon any change to the on-site construction compliance manager.</p>	<p>The Department recommends changes be incorporated into the Proposed Order Section III.B Organizational Expertise, consistent with the certificate holder’s proposed condition language because they are reasonable, and consistent with original intent, but also allows useful flexibility.</p>
<p>Recommended Organizational Expertise Condition 8 (PRO-OE-01):</p> <p>Certificate Holder proposes revising this condition language to better align with the position details of the manager responsible for operational permit compliance.</p> <p>Certificate Holder’s Proposed Condition Language Change – Presented in red, underline/strikeout</p> <p>Recommended Organizational Expertise Condition 8 (PRO-OE-01): <u>Before beginning operation, the certificate holder shall notify the Department of the identity, telephone number, e-mail address and qualifications of the facility/asset operations permit compliance manager. Qualifications shall demonstrate that the operations manager has experience in managing permit and regulatory compliance requirements and is qualified to manage operation of a utility scale solar facility.</u></p>	<p>The Department recommends changes be incorporated into the Proposed Order Section III.B Organizational Expertise, consistent with the certificate holder’s proposed condition language because it aligns with the certificate holder’s position titles for those responsible for compliance.</p>
<p>Recommended Organizational Expertise Condition 9 (OPR-OE-01):</p> <p>Certificate holder proposes changes consistent with PRO-OE-01 above.</p> <p>Recommended Organizational Expertise Condition 9 (OPR-OE-01): <u>During operation, the certificate holder shall require that a qualified facility/asset operations permit compliance manager be responsible for managing compliance with operations-related site certificate requirements.</u></p>	<p>The Department recommends changes be incorporated into the Proposed Order Section III.B Organizational Expertise, consistent with the certificate holder’s proposed condition language because it aligns with the certificate holder’s position titles for those responsible for compliance.</p>

Table 1: DPO Comment Evaluation Table

Comments	Department’s Evaluation and Recommendation
ODFW Comments (Jessica Wilkes, Regional Habitat Biologist)	
<p>ODFW commented on Recommended Amended Fish and Wildlife Habitat Condition 2 (GEN-FW-01).</p> <p>First, ODFW requested that the condition require consultation with ODFW on appropriate best management practices (BMPs) if sheep grazing is proposed at the facility site for vegetation management. ODFW expressed concerns regarding disease transmittal between domestic sheep and bighorn sheep. BMPs are intended to provide separation and includes: monitoring of fence integrity; double fencing; reporting sightings of bighorn sheep to ODFW; and reporting status and composition of onsite flock.</p> <p>Second, ODFW requested that a change proposed by the Department be reversed. The change was the removal of a preconstruction finalization requirement for the Noxious Weed Control Plan of establishing the reporting format for noxious weed monitoring.</p>	<p>The Department recommends that Council incorporate the list of potential BMPs into the draft amended Noxious Weed Plan, but not make changes to the condition language. Sub(c) of the condition requires consultation on appropriate BMPs if sheep grazing is planned at the site, consistent with ODFWs comments. The plan could benefit from providing examples to support future understanding of the scope of BMPs.</p> <p>The Department recommends Council not accept ODFW’s request to retain the preconstruction finalization requirement to establish the reporting format. The reason the Department removed this element from the condition is because the draft plan already includes the reporting format – this is no longer a preconstruction finalization requirement and is recommended to be removed from the condition to omit potential confusion about the scope of finalization tasks and actions needed to be completed by the certificate holder.</p>
DSL Comments (Daniel Evans, Wetland Ecology Specialist)	
<p>DSL affirmed that the prior wetland delineation for the project expired on September 4, 2024; but that the prior evaluation identified that wetlands and waters of the state would be avoided and that a removal fill permit would not be needed. Due to the expiration of the prior wetland delineation concurrence, DSL has not issued a current “No State Permit Required” for the project.</p>	<p>As presented above, the Department recommends modifications to its proposed Removal-Fill Permit Condition 1 (PRE-RF-01), requiring that the certificate holder obtain a wetland delineation concurrence from DSL for any areas with potential impacts to jurisdictional waters. The Department believes this condition ensure impact avoidance or would identify that a removal fill permit is needed.</p>

The recommended changes presented in the above table have been incorporated into the Proposed Order.

The certificate holder requested to modify the completion deadline, to be based on a 3-year timeline from the actual commencement date, versus an actual date. For a Request for Amendment seeking to extend the construction deadlines, OAR 345-027-0385(3) establishes that Council must specify new deadlines for both beginning and completing construction that is three years from the deadlines in effect before the Council grants the amendment. The existing construction completion deadline is April 24, 2026. To be consistent with this rule, the Department recommends the following change to General Standard Condition 1 (GEN-GS-01), as presented below:

Recommended General Standard Condition 1 (GEN-GS-01): The certificate holder shall begin and complete construction of the facility, facility component or phase by the dates specified in the site certificate.

- ~~a. Construction of the facility, facility component or phase shall commence on or before April 24, 2023, three years after the date of Council action. Within 7 days of construction commencement, the certificate holder shall provide the Department written verification that it has met the construction commencement deadline.~~
- b. Construction of the ~~last~~ facility, facility component or phase, shall commence on or before April 24, ~~2028~~2025, five years after the date of Council action. Within 7 days of construction commencement, the certificate holder shall provide the Department written verification that it has met the construction commencement deadline.
- ~~c.~~ Construction of all facility components shall be completed on or before three years from the date of construction commencement April 24, 2029 ~~April 24, 2026, six years after the date of Council action.~~ Within 7 days of construction completion, the certificate holder shall provide the Department written verification that it has met the construction completion deadline.

[General Standard Condition 1, Final Order on Bakeoven ASC (2020), AMD1 (2021); Final Order on SSF AMD1; Mandatory Condition OAR 345-025-0006(4)]