

OREGON DEPARTMENT OF ENERGY

Statutes, Administrative Rules and Other)
Requirements Applicable to the Application for Site)
Certificate for **Bonanza Energy Facility**)

PROJECT ORDER

**ISSUED BY
OREGON DEPARTMENT OF ENERGY
550 Capital Street NE
Salem, OR 97301-3742**

Issued December 18, 2020

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1 **I. INTRODUCTION**

2
3 The Oregon Department of Energy (ODOE or Department) received a Notice of Intent (NOI) on
4 August 7, 2020 from Hecate Energy Bonanza LLC (applicant), a wholly owned subsidiary of
5 Hecate Energy NAF LLC. The NOI was submitted in accordance with OAR 345-020-0006 and
6 provides information about the proposed site and characteristics of the Bonanza Energy Facility
7 (proposed facility), a proposed solar photovoltaic energy generation facility with a generating
8 capacity ranging between 150 and 300 megawatts (MW) (depending on the solar module
9 technology selected at final design) that would use or occupy up to 2,733 acres of land in Lake
10 Klamath County, Oregon.¹ The proposed facility would be located on both public (federal) and
11 private land.

12
13 Following review of an NOI, pursuant to Oregon Revised Statute (ORS) 469.330(3) and OAR 345-
14 015-0160, the Department issues a Project Order to the applicant establishing the statutes,
15 administrative rules, Council standards, local ordinances, information and study requirements
16 for the application for site certificate (ASC). Accordingly, the Department issues this Project
17 Order establishing the requirements for the ASC for the proposed facility. As provided in ORS
18 469.330(4), this is not a final order and the Department or the Energy Facility Siting Council
19 (EFSC or Council) may amend this Project Order at any time.

20
21 ORS 469.401(4) provides that a site certificate issued by the Council does not govern certain
22 matters. The Project Order identifies only those matters that will be included in and governed
23 by the site certificate, if issued by EFSC, and as applicable to issuance of the site certificate for
24 the proposed facility pursuant to ORS 469.503(3). Throughout this Project Order, the definitions
25 in ORS 469.300 and OAR 345-001-0010 apply, except where otherwise stated or where the
26 context indicates otherwise.

27
28 As presented in the NOI, the facility is a proposed solar photovoltaic energy generation facility
29 with a generating capacity ranging between 150 and 300 MW. Related or supporting facilities
30 include collector lines, power conversion stations (inverters and transformers), an onsite facility
31 substation, 500 kilovolt (kV) generation-tie transmission line, point of interconnection,
32 operations and maintenance building, service roads and gated access points, access roads, and
33 construction areas, as well as an up to 1,100 MW battery storage system. The proposed energy
34 facility and its related or supporting facilities are referred to as the proposed facility.

35
36 On September 29, 2020, the Department issued public notice of the NOI to the EFSC mailing
37 list, adjacent property owners as defined at OAR 345-020-0011(1)(f), and the local newspaper
38 *Herald and News*. The public notice included information regarding the proposed facility and

¹ Pursuant to ORS 469.300(11)(a)(D), proposed solar photovoltaic energy generation facilities that would use or occupy more than 160 acres of high value farmland, 1,280 acres of predominately cultivated or soil capability class I to IV, or 1,920 acres of “other land” are energy facilities under State jurisdiction, which requires approval and issuance of a site certificate by the Oregon Energy Facility Siting Council prior to construction and operation of the facility.

1 the EFSC review process; announced that a virtual public informational meeting would be held
2 on October 13, 2020; and established October 29, 2020 as the public comment deadline for the
3 NOI. The Department and applicant held the virtual public informational meeting on October
4 13, 2020. On October 29, 2020, the Department issued public notice of an extension of the
5 public comment period to November 30, 2020.

6
7 Pursuant to ORS 469.480(1), the Council must designate as a Special Advisory Group (SAG) the
8 governing body of any local government within whose jurisdiction the facility is proposed to be
9 located. At the September 25, 2020 EFSC meeting, the Council appointed the Klamath County
10 Board of Commissioners as the SAG.²

11
12 In compliance with OAR 345-021-0050(1), ODOE prepared a memorandum to reviewing
13 agencies, Tribal Governments, and the SAG, and compiled a distribution list, including all
14 reviewing agencies identified and defined in OAR 345-001-0010(52). In accordance with ORS
15 469.350(2) and OAR 345-020-0040, on September 29, 2020 ODOE sent the memorandum and a
16 hyperlink for electronic access to the NOI to each of the reviewing agencies, Tribal
17 Governments and SAG, as presented in Table 1 below. The Department initially requested
18 comments from reviewing agencies on or before October 29, 2020, but on October 29th notified
19 reviewing agencies and the SAG that the comment period was extended to November 30, 2020.

20
21 As discussed in Section V. *Comments on the Notice of Intent*, and in accordance with OAR 345-
22 015-0140, the Department sent the applicant a copy of each comment letter received for their
23 review and consideration in preparing the application for site certificate.

² Pursuant to ORS 469.480, the governing body of a local government within whose jurisdiction the facility is proposed to be located shall be designated by EFSC as a “special advisory group.”

1

Table 1. Reviewing Agency Distribution List

Federal Agencies	
<ul style="list-style-type: none"> • Bureau of Land Management • U.S. Forest Service 	<ul style="list-style-type: none"> • U.S. Bureau of Reclamation • U.S. Army Corps of Engineers
State Agencies	
<ul style="list-style-type: none"> • Oregon Department of Transportation • Oregon Department of Agriculture • Oregon Department of Fish and Wildlife • Oregon Department of Geology and Mineral Industries • Oregon Department of Aviation • Oregon Department of State Lands • Oregon Department of Environmental Quality 	<ul style="list-style-type: none"> • Oregon Department of Forestry • Oregon Public Utilities Commission • Oregon Water Resources Department • Department of Land Conservation and Development • Office of State Fire Marshal • Oregon State Historic Preservation Office
Native American Tribes	
<ul style="list-style-type: none"> • Klamath Tribes • Burns Paiute Tribe 	<ul style="list-style-type: none"> • Confederated Tribes of Warm Springs • Cow Creek Band of Umpqua Tribe of Indians
Special Advisory Group	
<ul style="list-style-type: none"> • Klamath County Board of Commissioners 	
Other Reviewing Agencies	
<ul style="list-style-type: none"> • Northwest Power Planning Council • City of Klamath Falls 	<ul style="list-style-type: none"> • Klamath County Planning Department
Local Jurisdictions within 10 miles of the Site Boundary	
<ul style="list-style-type: none"> • Town of Bonanza 	<ul style="list-style-type: none"> • City of Malin

2

3 **II. EFSC REGULATORY FRAMEWORK**

4

5 Issuance of a site certificate is governed by the statutory requirements in ORS 469.300 *et seq.*
 6 and administrative rules in OAR Chapter 345. The following divisions of OAR Chapter 345
 7 include rules related to ASC requirements, EFSC review of an ASC, and construction and
 8 operation of an approved facility:

9

10 **OAR Chapter 345, Division 21** (Site Certificate Application Requirements) includes the
 11 primary site certificate application requirements (see Section III. *Application*
 12 *Requirements* of this Project Order).

13

14 **OAR Chapter 345, Division 22** (Council Standards for Siting Facilities) includes most of
 15 the regulatory standards by which the EFSC must evaluate the proposed facility. In
 16 addressing each of the Division 21 application requirements, the applicant shall refer to
 17 the Division 22 standard to which the requirement relates to ensure the ASC is
 18 responsive to the standards by which the Council must evaluate it.

19

1 **OAR Chapter 345, Division 24** (Specific Standards for Siting Facilities) includes additional
2 standards for specific types of EFSC applications. In addressing the Division 21
3 application requirements, the ASC shall refer to the Division 24 standards that apply to
4 the proposed facility to ensure the ASC is responsive to these standards. The Division 24
5 standard that applies to the proposed facility is OAR 345-024-0090, Siting Standards for
6 Transmission Lines.

7
8 **OAR Chapter 345, Division 25** (Site Certificate Conditions) includes the mandatory
9 conditions that EFSC must apply to all site certificates, as well as applicable site-specific
10 and monitoring conditions. Note that per the mandatory condition included at OAR 345-
11 025-0006(10), the Council will include as conditions in the site certificate, if issued, all
12 representations of mitigation made in the ASC and supporting record that the Council
13 deems to be binding commitments made by the applicant.

14
15 **OAR Chapter 345, Division 26** (Construction and Operation Rules for Facilities) includes
16 the compliance plan requirements that will apply if the Council issues a site certificate
17 for the proposed facility. In addressing the Division 21 application requirements, the
18 applicant shall refer to the compliance plan requirements, described in OAR 345-026-
19 0048, and reporting requirements, described in OAR 345-026-0080. Note that, if a site
20 certificate is issued, the certificate holder must also comply with additional
21 construction- and operation-related regulations that may apply to the proposed facility
22 but that may not be covered by the site certificate, per ORS 469.401(4).

23 24 **III. APPLICATION REQUIREMENTS**

25
26 The applicant must submit information required under OAR 345-021-0000, including, for all
27 state and local government agency permit approvals that the applicant proposes to be included
28 in and governed by the site certificate, the submittal of information that would otherwise be
29 required by the state or local government agency in an application for such permit, license or
30 certificate [OAR 345-021-0000(6)]. The applicant shall also submit copies of the applications for
31 federally-delegated permits that are needed for construction or operation of the proposed
32 facility [OAR 345-021-0000(7)]. OAR 345-021-0010(1) identifies the required contents of an
33 ASC. Each of the paragraphs below indicates which provision(s) of OAR 345-021-0010(1)(a) –
34 (dd) apply to the proposed facility. The ASC shall also include the information described in OAR
35 345-021-0010(3).

36 37 **(a) Exhibit A – General Information about the Applicant**

38
39 **Applicable Paragraphs:** All paragraphs apply except (C), (E), (F), and (G)

40
41 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]

42
43 **Discussion:** Note that paragraph (B) calls for a list of “participating persons, other than
44 individuals.” Please note the definition of “Person” in ORS 469.300(21): “Person” means an

1 individual, partnership, joint venture, private or public corporation, association, firm, public
2 service company, political subdivision, municipal corporation, government agency, people’s
3 utility district, or any other entity, public or private, however organized. Please also note that
4 the applicant is required to notify the Department of any change in the identity or ownership of
5 the applicant prior to the change. This notification requirement continues to apply until the
6 Council issues a final order on the ASC.

7
8 **(b) Exhibit B – General Information about the Proposed Facility**

9
10 **Applicable Paragraphs:** All paragraphs apply except (A)(vi), (A)(vii), (A)(viii), and (E)(iv).
11 Paragraph (D) only applies if the proposed transmission line meets the definition of an energy
12 facility at ORS 469.300(11)(a)(C).

13
14 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]

15
16 **Discussion:** The description of the proposed facility in the ASC will form the basis for the
17 description of the facility in the site certificate. The applicant would be required to build the
18 facility “substantially as described” in the site certificate, if approved and issued by Council
19 (OAR 345-025-0006(3)(a)). The description should include details of facility construction,
20 including primary activities and any phasing (if the applicant proposes to pursue or reserve the
21 option of a phased construction approach); and details of routine operations and maintenance
22 activities. The ASC shall also describe all related or supporting facilities, including any structure
23 constructed or substantially modified solely to serve the proposed facility. If the applicant
24 requests Council review and approval of flexibility to site proposed facility components
25 anywhere within the site boundary, the applicant must evaluate impacts of siting facility
26 components anywhere within the entirety of the site boundary (i.e., desktop and field surveys
27 must include the entire site boundary area; impact assessment must be based on maximum
28 impact facility layout option within the site boundary).

29
30 **(c) Exhibit C – Location**

31
32 **Applicable Paragraphs:** All paragraphs apply.

33
34 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]

35
36 **Discussion:** Maps shall indicate the “site boundary” as defined in OAR 345-001-0010(54),
37 including any proposed transmission line routes and corridors for which the applicant seeks
38 Council approval. If the applicant seeks flexibility to site facility components anywhere within
39 the site boundary, please identify in maps and include an evaluation to support the facility
40 “micrositing area,” to be consistent with the intent of a “micrositing corridor” (OAR 345-001-
41 0010(32)). Maps shall provide enough information for property owners potentially affected by
42 the proposed facility to determine whether their property is within or adjacent to property on
43 which the site boundary is located. Major roads shall be accurately named. The Department
44 notes that the applicant has already shared GIS data showing the site boundary for the

1 proposed facility. The Department requests GIS data showing the proposed facility layout and
2 micrositing corridors (if any), as well as an updated site boundary shapefile if any changes to
3 the site boundary have occurred between the NOI and the submittal of the preliminary ASC
4 (pASC).

5
6 **(d) Exhibit D – Organizational Expertise**

7
8 **Applicable Paragraphs:** All paragraphs apply.

9
10 **Related Council and Other Standards:** Organizational Expertise [OAR 345-022-0010]

11
12 **Discussion:** The Council’s review for the Organizational Expertise standard includes the
13 applicant’s ability to construct, operate, and retire the proposed facility in compliance with
14 Council standards and conditions of the site certificate; and, in a manner that protects public
15 health and safety. Please address safety programs or plans developed by the applicant for
16 wildfire response at the site, and potential safety risks from operation of the battery energy
17 storage system (thermal runaway events, etc.) and fire control systems that would minimize
18 and control such risk. Please note that Exhibit D requires that if the applicant relies upon
19 mitigation to meet any applicable Council standard, that the applicant provide evidence (i.e.,
20 detailed description of mitigation projects) that it can successfully complete such proposed
21 mitigation.

22
23 **(e) Exhibit E – Permits**

24
25 **Applicable Paragraphs:** All paragraphs apply.

26
27 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]

28
29 **Discussion:** Exhibit E shall describe and discuss all permits that the applicant proposes to be
30 included in and governed by the site certificate, as well as state and local permits that are
31 related to the siting, construction, or operation of the proposed facility but are proposed by the
32 applicant to not be included in and governed by the site certificate. Exhibit E shall also describe
33 required federal and federally-delegated permits. For federally-delegated permits needed for
34 construction or operation, the applicant must submit a copy of the permit application to the
35 Department, as required under OAR 345-021-0010(1)(e)(F)(ii).

36
37 Although the Council does not have jurisdiction over federally-delegated permits, the Council
38 may rely on the determinations of compliance and the conditions in federally-delegated
39 permits in evaluating the application for compliance with Council standards.

40
41 Table 2 lists permits that may be required for the facility. Please see the discussion that follows
42 this table for additional information.

Table 2: Potentially Required Permits

Permit Name/Description	EFSC Jurisdictional	Federally Delegated – Information required for Completeness Determination Only	Not EFSC Jurisdictional Per ORS 469.401(4) – Information about Permit Necessary for Information Purposes Only Per OAR 345-021-0010(1)(e)(A)&(B)
Oregon DEQ Basic Air Contaminant Discharge Permit		X ¹	
Oregon DEQ National Pollution Discharge Elimination System Construction Storm Water 1200-C permit		X ¹	
Oregon DEQ NPDES Storm Water and Mine Dewatering Discharge 1200-A permit		X ¹	
Oregon DEQ Clean Water Act Section 401 Water Quality Certification ³	--	--	--
Fish Passage Plan Approval	X		
Removal-Fill Permit	X		
Onsite Sewage Disposal Construction-Installation Permit	X ¹		
Water Pollution Control Facilities (WPCF) General Permit 1000	X ¹		
WPCF General Permit 1700-B ²	X ²		
Ground Water Permit	X		
Surface Water Permit	X		
Water Right Transfer	X		
Limited License	X		
ODOT Oversize Load Movement Permit/Load Registration			X
ODOT Access Management Permit			X

Table 2: Potentially Required Permits

Permit Name/Description	EFSC Jurisdictional	Federally Delegated – Information required for Completeness Determination Only	Not EFSC Jurisdictional Per ORS 469.401(4) – Information about Permit Necessary for Information Purposes Only Per OAR 345-021-0010(1)(e)(A)&(B)
ODOT Permit to Occupy or Perform Operations Upon a State Highway			X
SHPO Archaeological Permit			X
Klamath County Conditional Use Permit	X		
Klamath County Driveway and Road Approach Permit			X
Klamath County Right-of-Way Permit			X
Klamath County Building Permit			X
¹ Unless obtained by third-party; see Third-Party Permits discussion. ² Currently expired; please see the following discussion. ³ State permit that would not be included in or governed by the site certificate. Please see the following discussion.			

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Federal Approvals

Tax lot data for those properties within 500 feet of the property which is the subject of the application indicate that that the facility crosses land owned by the United States of America. The Klamath County Assessor data set does not specify which branch of government owns the “United States” properties. Klamath County indicated that notification to United States properties typically is directed to Bureau of Land Management (BLM), U.S. Forest Service (USFS), Bureau of Reclamation (BOR), and U.S. Army Corps of Engineers (USACE). BLM, BOR, and USACE each submitted comments on the NOI indicating that one or more federal approvals may be required from these agencies. In addition, the Oregon Department of Aviation (ODA) commented on the NOI that the facility may require airspace analysis by the FAA (as well as ODA). The U.S. Navy commented on the NOI that the proposed facility may need to be evaluated against military utilized airspace.

This is not intended to be a comprehensive list of federal agencies or a complete list of necessary federal approvals. The applicant must meet all applicable federal requirements. Federal approvals are not included in or governed by an EFSC site certificate.

1 **Federally-delegated Permits**

2
3 ***Oregon Department of Environmental Quality – Air Quality Division***

4 **Statute and Rule References**

- 5 • OAR Chapter 340, Division 216

6 **Permits**

- 7 • Basic Air Contaminant Discharge Permit (ACDP)
- 8 ○ Information needed for completeness (unless obtained by third-party; see Third-
- 9 Party Permits discussion) but not EFSC jurisdictional

10 **Discussion**

11 The United States Environmental Protection Agency (EPA) has delegated authority to the

12 Oregon Department of Environmental Quality (DEQ) to administer air quality under the Clean

13 Air Act. As described in the August 2020 NOI, a mobile concrete batch plant may be utilized

14 during proposed facility construction, with permits obtained by the batch plant owner or the

15 applicant’s third-party contractor. The mobile concrete batch plant would require a Basic Air

16 Contaminant Discharge Permit (ACDP). A Basic ACDP authorizes operation of a concrete

17 manufacturing plant that produces more than 5,000 but less than 25,000 cubic yards per year

18 output. ACDPs for mobile, temporary concrete batch plants are associated with the equipment

19 itself. The requirements of OAR 345-021-0000(6) would apply to this federally-delegated

20 permit. If the applicant’s third-party contractor would instead obtain the ACDP, the

21 requirements described in the Third-Party Permits section below would apply.

22

23 ***Oregon Department of Environmental Quality — Water Quality Division***

24 **Statute and Rule References**

- 25 • ORS Chapter 468B (Water Quality)
- 26 • OAR Chapter 340, Division 45 (Regulations Pertaining To NPDES and WPCF Permits)

27 **Permits**

- 28 • National Pollution Discharge Elimination System (NPDES) Construction Storm Water
- 29 1200-C permit
- 30 ○ Information needed for completeness (unless obtained by third-party; see Third-
- 31 Party Permits discussion) but not EFSC-jurisdictional
- 32 • NPDES Storm Water and Mine Dewatering Discharge 1200-A permit
- 33 ○ Information needed for completeness (unless obtained by third-party; see Third-
- 34 Party Permits discussion) but not EFSC-jurisdictional

35 **Discussion**

36 The EPA has delegated authority to DEQ to issue NPDES Storm Water Discharge permits for

37 construction and operation activities. Based upon the information in the NOI, a NPDES 1200-C

1 permit would be required for facility construction. In accordance with OAR 345-021-0000(6),
2 the applicant must submit to the Department one copy of all applications for federally-
3 delegated permits (including the NPDES permit), or provide a schedule of the date by which the
4 applicant intends to submit the application. Note that the Department will not be able to find
5 the application for site certificate complete before receiving a copy of the NPDES permit
6 application and a letter or other indication from the DEQ. The DEQ response must state that the
7 agency has received a permit application from the applicant and provide an estimated date
8 when the agency will complete its review and issue a permit decision. The applicant may
9 incorporate this information into Exhibit I (Soils) or Exhibit BB (Other Information) of the ASC.

10
11 Disposal of concrete batch plant wash water (if a temporary batch plant is necessary) would
12 require either an NPDES 1200-A permit or a WPCF General Permit 1000. If the batch plant was
13 to discharge stormwater from a point source to surface water or to a conveyance system that
14 discharges to surface water, the plant would require an NPDES 1200-A permit. The
15 requirements of OAR 345-021-0000(6) (described in the preceding paragraph) would apply to
16 the NPDES 1200-A permit. If the applicant's third-party contractor would instead obtain the
17 NPDES 1200-A permit, the requirements described in the Third-Party Permits section below
18 would apply. Alternatively, if the batch plant would be located within a construction staging
19 yard for which the applicant would seek coverage under an NPDES 1200-C permit described
20 above, the applicant may seek coverage for the batch plant under the same NPDES 1200-C
21 permit.

22 If the batch plant would not discharge to surface waters, a WPCF General Permit 1000 would
23 instead be required to dispose of process wastewater and stormwater by recirculation,
24 evaporation, and/or controlled seepage (see the State Permits discussion below).

25 **State Permits**

26 ***Oregon Department of Fish and Wildlife***

27 **Statute and Rule References**

- 28 • ORS 509.580 through 509.910
- 29 • OAR 635, Division 412 (related to Fish Passage)

30 **Permit**

- 31 • Fish Passage Plan Approval
- 32 ○ EFSC jurisdictional

1 **Discussion**

2 OAR Chapter 635, Division 412 (Fish Passage) requires upstream and downstream fish passage
3 at all existing or new artificial obstructions in Oregon waters in which migratory native fish are
4 currently or have historically been present, except under certain clearly defined circumstances.
5 A fish passage plan that complies with OAR Chapter 635, Division 412 shall be included in
6 Exhibit BB of the application, and Fish Passage Plan approval is to be included in and governed
7 by the site certificate, unless the applicant demonstrates that the design and location of the
8 proposed facility would not trigger this requirement.

9
10 ***Oregon Department of State Lands***

11 **Statute and Rule References**

- 12 • ORS 196.795-.990 (Removal of Material, Filling)
- 13 • OAR Chapter 141, Division 85 (Administrative Rules Governing the Issuance and
14 Enforcement of Removal-Fill Authorizations Within Waters of Oregon Including
15 Wetlands)

16 **Permit**

- 17 • Removal-Fill Permit
 - 18 ○ EFSC jurisdictional

19 **Discussion**

20 A removal-fill permit is required if any removal or fill activities occur in streams designated as
21 Essential Indigenous Anadromous Salmonid Habitat or 50 cubic yards or more of material is
22 removed, filled or altered within a jurisdictional water of the state [OAR 141-085-0520(2) and
23 (5)]. Removal-fill permits are state permits under Council jurisdiction.

24 The applicant must conduct a wetland delineation, to be sent to Department of State Lands
25 (DSL) for concurrence, according to OAR Chapter 141, Division 90 rules. The wetland
26 delineation determines the location of “waters of this state,” as defined in OAR 141-085-
27 0510(91), within the analysis area. Depending upon facility impacts to “waters of this state” a
28 removal-fill permit may be necessary, and the application for site certificate should include
29 information establishing whether a removal-fill permit is required. If a removal-fill permit is
30 required, the application for site certificate should include a concurred delineation from DSL
31 and a complete application for an individual permit which demonstrates consistency with ORS
32 196.825(1) and provides enough information for considerations under ORS 196.825(3). The
33 individual permit application must demonstrate independent utility for the portion of the
34 facility that is within EFSC jurisdiction, minimization of impacts to water resources, and best use
35 of waters of the state. The applicant should consult directly with DSL regarding the applicable
36 regulations.

37 A Compensatory Wetland Mitigation Plan which meets the requirements of OAR 141-085-0680
38 through OAR 141-085-0715 must be provided to replace all lost functions and values previously
39 provided by the impacted wetlands and waterways.

1 If the facility requires any dredge or fill of waters of the United States, the applicant must
2 submit to the Department one copy of an application for a Section 404 permit, in accordance
3 with OAR 345-021-0000(6), and a Section 401 Water Quality Certificate must be granted by
4 DEQ before a Section 404 may be issued. The DSL (removal-fill permit) and the Corps (Section
5 404 permit) use a joint application form. As discussed previously with regard to Exhibit E and
6 federally-delegated permits, the applicant must provide a letter or other indication from the
7 Corps stating that the agency received a permit application from the applicant, identifying any
8 additional information the agency is likely to need from the applicant based on the agency's
9 review of the application, and an estimated date for when the agency will complete its review
10 and issue a permit decision.

11 The Council does not have jurisdiction over the Section 404 permit, but the Council may rely on
12 the determinations of compliance and the conditions in the permit in making its determination
13 about whether other standards and requirements under the Council's jurisdiction are met.
14

15 ***Oregon Department of Environmental Quality***

16 **Statute and Rule References**

- 17 • ORS Chapter 454 (Sewage Treatment and Disposal Systems)
- 18 • ORS Chapter 468B (Water Quality)
- 19 • OAR Chapter 340, Division 45 (Regulations Pertaining To NPDES and WPCF Permits)
- 20 • OAR Chapter 340, Division 71 (Onsite Wastewater Treatment Systems)
- 21 • OAR Chapter 340, Division 48 (Certification of Compliance with Water Quality
22 Requirements and Standards)

23 **Permits**

- 24 • Onsite Sewage Disposal Construction-Installation Permit
 - 25 ○ EFSC-jurisdictional unless obtained by third-party; see Third-Party Permits
26 discussion
- 27 • Water Pollution Control Facilities (WPCF) General Permit 1000
 - 28 ○ EFSC-jurisdictional unless obtained by third-party; see Third-Party Permits
29 discussion
- 30 • WPCF General Permit 1700-B (currently expired; see the below discussion)
- 31 • Clean Water Act Section 401 Water Quality Certification
 - 32 ○ This permit would not be included in or governed by the site certificate

1 **Discussion**

2 Facilities with an on-site sewage disposal system must obtain a Construction-Installation Permit
3 before construction of the disposal system. As described in NOI, during operation the facility's
4 operations and maintenance building would discharge sanitary waste (in the form of domestic
5 wastewater) to a licensed on-site septic system with a daily sewage flow of fewer than 2,500
6 gallons. The Applicant indicates in the NOI that its third-party contractor would obtain the
7 necessary Construction-Installation Permit directly from DEQ; this permit is therefore related to
8 the siting and operation of the proposed facility but would not be included in and governed by
9 the site certificate (see the Third-Party Permits discussion below).

10
11 Disposal of concrete batch plant wash water (if a temporary batch plant is necessary) would
12 require either a WPCF General Permit 1000 or an NPDES permit. Concrete batch plants that
13 dispose of process wastewater and stormwater by recirculation, evaporation, and/or controlled
14 seepage with no discharge to surface waters require a WPCF General Permit 1000. A WPCF
15 General Permit 1000 is a state permit under Council jurisdiction. If the applicant's third-party
16 contractor would obtain the necessary WPCF General Permit 1000 directly from DEQ, this
17 permit would be related to the siting and operation of the proposed facility but would not be
18 included in and governed by the site certificate (see the Third-Party Permits discussion below).

19
20 If the batch plant was to instead discharge stormwater from a point source to surface water or
21 to a conveyance system that discharges to surface water, the plant would require an NPDES
22 1200-A permit or coverage under the NPDES 1200-C permit for the construction yard in which it
23 would be located (as discussed under the federally-delegated permits discussion of this Project
24 Order).

25
26 In the NOI the applicant indicates that the solar modules may be washed once or twice
27 annually and the wash water would be released to the ground and allowed to evaporate and
28 infiltrate. The applicant states that either the applicant or the third-party contractor who would
29 conduct solar module washing activities would seek coverage under the WPCF General Permit
30 1700-B (Vehicle and equipment wash water) from DEQ following completion of construction
31 and before initiating any washing activities. On December 10, 2020 DEQ informed ODOE that
32 the WPCF General Permit 1700-B, which provided coverage for vehicle, equipment, building,
33 and pavement cleaning activities that discharge wash water by means of evaporation, seepage
34 and/or irrigation, is expired and administratively extended for current registrants. DEQ did not
35 have a timeline for when a renewed permit will be available to new applicants. However, DEQ
36 has determined that a WPCF General Permit 1700-B is not required for solar array washing
37 activities that would not result in discharge to surface waters, storm sewers, or dry wells, and
38 that would not use acids, bases, metal brighteners, steam, or heated water. The use of
39 biodegradable, phosphate-free cleaners with cold water is allowed. However, cleaning only
40 with cold water is recommended. Chemicals, soaps or detergents must be used sparingly. The
41 applicant or its third-party contractor should seek guidance from DEQ prior to conducting solar
42 module washing activities.

43

1 If a Section 404 Permit is needed from the Corps for the discharge of dredge or fill material in
2 waters of the United States, a Section 401 Water Quality Certificate must be granted by DEQ
3 before a Section 404 permit may be issued. This approval would not be included in or governed
4 by the site certificate.

5

6 ***Oregon Water Resources Department***

7 **Statute and Rule References**

- 8 • ORS 537.110-.330 (Appropriation under 1909 Act; Limited Licenses)
- 9 • ORS 537.505-.795 and ORS 537.992 (collectively, Ground Water Act of 1955)
- 10 • ORS 540.505-.589 (Changes in Use of Water; Transfer of Water Rights; Exchange)
- 11 • OAR Chapter 690, Division 10 (Appropriation and Use of Ground Water)
- 12 • OAR Chapter 690, Division 310 (Water Right Application Processing)
- 13 • OAR Chapter 690, Division 320 (Water Right Permits),
- 14 • OAR Chapter 690, Division 340 (Water Use Authorizations)
- 15 • OAR Chapter 690, Division 380 (Water Right Transfers)
- 16 • OAR Chapter 690, Division 385 (District Water Right Transfers)

17 **Permits**

- 18 • Ground water permit
 - 19 ○ EFSC jurisdictional
- 20 • Surface water permit
 - 21 ○ EFSC jurisdictional
- 22 • Water right transfer
 - 23 ○ EFSC jurisdictional
- 24 • Limited License
 - 25 ○ EFSC jurisdictional

26 **Discussion**

27 The August 2020 NOI states that the applicant intends to obtain water for facility construction
28 and operation from an existing source with a valid water right, such as an offsite municipal or
29 commercial source. If the applicant is unable to obtain sufficient water from an existing source
30 with a valid water right, the applicant indicates that they would obtain a water right permit or
31 use authorization directly from OWRD.

1
2 OAR 345-021-0010(1)(o)(F) requires that if a facility needs a groundwater permit, surface water
3 permit, or water right transfer, that a decision on authorizing such a permit or transfer rests
4 with the Council. Please note that because limited licenses are for the use or storage of ground
5 water or surface water, a decision on authorizing OWRD to issue a limited license also rests
6 with the Council.

7
8 If the applicant constructed and operated an on-site well that would use less than 5,000 gallons
9 per day, the well would be exempt from OWRD permit requirements. Pursuant to OAR 690-
10 215-0080, the landowner may be required to install totalizing flowmeters or dedicated
11 measuring tubes on a well exempted by ORS 537.545 (Exempt uses).

12
13 ***Oregon Department of Transportation***

14 **Statute and Rule References**

- 15 • ORS 818.030 (Exemptions from Weight Limitations)
- 16 • OAR Chapter 734, Division 82 (Variance Permits Issued for Non-Divisible Loads and Road
17 Use Assessment Fees)
- 18 • OAR Chapter 734, Division 51 (Highway Approaches, Access Control, Spacing Standards,
19 and Medians)
- 20 • OAR Chapter 734, Division 55 (Pole Lines, Buried Cables, and Miscellaneous Operations)

21 **Permits**

- 22 • Oversize Load Movement Permit/Load Registration
 - 23 ○ Not EFSC jurisdictional and no additional information needed for the ASC
- 24 • Access Management Permit
 - 25 ○ Not EFSC jurisdictional and no additional information needed for the ASC
- 26 • Permit to Occupy or Perform Operations Upon a State Highway
 - 27 ○ Not EFSC jurisdictional and no additional information needed for the ASC

28 **Discussion:** Various permits from Oregon Department of Transportation (ODOT) may be
29 required prior to construction of the facility. Access from Oregon state highways would require
30 an access permit. Utility installations within the right-of-way of a state highway in Oregon
31 require an Occupy or Perform Operations upon a State Highway permit. Movement of large
32 equipment and materials could require an Oversize Load Movement permit. These permits are
33 not related to facility siting and are not included in or governed by the site certificate. The
34 applicant or its contractor must secure any applicable ODOT permits directly from ODOT,
35 independent of the site certificate process.

36

1 **State Historic Preservation Office**

2 **Statute and Rule References**

- 3 • ORS Chapter 97, 358, and 390;
- 4 • OAR Chapter 736, Division 51

5 **Permits**

- 6 • Archaeological Permit
 - 7 ○ Not EFSC jurisdictional and no additional information needed for the ASC

8 **Discussion**

9 Per ORS 390.235 and 358.920 a person may not excavate or alter a known archaeological site
10 on public or private lands, or make an exploratory excavation on public lands to determine the
11 presence of an archaeological site, or remove from public or private lands any material of an
12 archaeological, historical, prehistoric or anthropological nature without first obtaining a permit
13 issued by the State Historic Preservation Office (SHPO). An Archaeology Permit is needed for
14 any excavation or artifact recovery within a known archaeological site on non-federal public
15 lands and private lands in Oregon. This permit is also needed for any subsurface investigation
16 on non-federal public lands. It is important to note that a “known site” is one that any
17 individual is aware of, or that is documented with the state or any other institution.

18
19 During facility construction, if a previously unidentified archaeological site is discovered, all
20 construction will cease and the applicant will report the finding to SHPO and ODOE
21 immediately. In that instance, the permit may be required based on SHPO’s determination. This
22 permit would not be included in and governed by the site certificate.

23
24 SHPO issues Archaeological Permits in accordance with ORS 390.235 and OAR 736-051-0000
25 through 0090. Archaeological Permits have a 30-day review period, require tribal consultation
26 during review, and must meet SHPO standards.

27
28 **Local Permits**

29 **Land Use Ordinance References**

- 30 • Klamath County Land Development Code
- 31 • Klamath County Comprehensive Plan

1 **Permits**

- 2 • Conditional Use Permit
 - 3 ○ EFSC jurisdictional
- 4 • Driveway and Road Approach Permit
 - 5 ○ Not EFSC jurisdictional and no additional information needed for the ASC
- 6 • Right-of-Way Permit
 - 7 ○ Not EFSC jurisdictional and no additional information needed for the ASC
- 8 • Building Permit
 - 9 ○ Not EFSC jurisdictional and no additional information needed for the ASC

10 **Discussion:** As stated in the NOI, the applicant requests that EFSC determine compliance with
11 the substantive criteria of the Klamath County Comprehensive Plan and Klamath County Land
12 Development Code under ORS 469.504(1)(b). The conditional use permit would be included in
13 and governed by the site certificate. The driveway and road approach permit, right-of-way
14 permit, and building permit would not be included in or governed by the site certificate.

15
16 **Third-Party Permits**

17 As noted in the NOI, the applicant may rely upon third-party permits for access to resources
18 necessary for facility construction and operation. If the applicant relies upon a state or local
19 government permit issued to a third party that is related to the siting of the proposed facility,
20 the applicant must identify each third-party permit, and, for each, include evidence that the
21 applicant has, or has a reasonable likelihood of entering into, a contract or other agreement
22 with the third party for access to the resource or service to be secured by that permit; evidence
23 that the third party has or, has a reasonable likelihood of obtaining, the necessary permit; and,
24 an assessment of the impact of the proposed facility on any permits that a third party has
25 obtained and on which the applicant relies to comply with any applicable Council standard
26 (OAR 345-021-0010(1)(e)(E)).

27
28 If the applicant relies on a federally-delegated permit issued to a third party that is related to
29 the siting of the proposed facility, the applicant must identify the third-party permit and include
30 evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or
31 other agreement with the third party for access to the resource or service to be secured by that
32 permit. The applicant must provide evidence that the responsible agency has received the
33 permit application, and provide the estimated date when the responsible agency will complete
34 its review and issue a permit decision (OAR 345-021-0010(1)(e)(F)).

35
36 In accordance with OAR 345-022-0010(4), if the applicant relies on a permit or approval issued
37 to a third party and the third party does not have the necessary permit or approval at the time
38 the Council issues the site certificate, the Council may issue the site certificate subject to the
39 condition that the certificate holder shall not commence construction or operation as

1 appropriate until the third party has obtained the necessary permit or approval and the
2 applicant has a contract or other arrangement for access to the resource or service secured by
3 that permit or approval.

4
5 **(f) Exhibit F – Property Owners**

6
7 **Applicable Paragraphs:** Paragraph (C) of the rule applies.

8 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]

9 **Discussion:** As the proposed facility would be located entirely within the Exclusive Farm Use and
10 Forestry zones, OAR 345-020-0010(1)(f)(C) applies and requires notice to property owners
11 within 500 feet of the property which is the subject of the ASC (i.e., 500 feet from the property
12 boundary of the property on which the site boundary is located). The Council requires notice to
13 all owners of record (as shown on the most recent property tax assessment roll) within the
14 specified distance from the property on which the site boundary is located. In order to ensure
15 notifications are provided using an up-to-date property owner list, Exhibit F in the pASC should
16 indicate that, pursuant to direction by the Department, the property owner list will be
17 generated just prior to the Department’s determination of ASC completeness and in
18 coordination with Department staff.

19
20 The property owner notification list must be accompanied by maps that include the site
21 boundary, the tax lots on which the site boundary is located, the buffered area surrounding the
22 tax lots on which the site boundary is located consistent with the OAR 345-021-0010(1)(f)(C) site
23 distance requirement, and the properties/tax lots that are within the applicable distances. Maps
24 shall correspond to the property owner list, be legible, and clearly identify tax lot ID numbers as
25 well as adjacent road names.

26
27 **(g) Exhibit G – Materials Analysis**

28
29 **Applicable Paragraphs:** All paragraphs apply.

30 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]; Soil
31 Protection [OAR 345-022-0022]

32 **Discussion:** The applicant shall include in the ASC any proposed fuel storage areas, vehicle
33 maintenance areas, or other areas that will be utilized for activities that could store hazardous
34 materials, including potential battery storage facilities. The applicant shall identify the expected
35 storage locations and quantities of hazardous and non-hazardous materials expected to be
36 used during construction and operation of the proposed facility.

37
38 **(h) Exhibit H – Geologic and Soil Stability**

39
40 **Applicable Paragraphs:** All paragraphs apply

41 **Related Council and Other Standards:** Structural Standard [OAR 345-022-0020]

1 **Discussion:** The Oregon Department of Geology and Mineral Industries (DOGAMI) provides
2 technical review and recommendations on compliance with the Council’s Structural Standard.
3 DOGAMI submitted comments on the NOI providing an overview of potential seismic or other
4 geologic hazards related to siting the facility. In accordance with OAR 345-021-0010(1)(h)(B),
5 the applicant must consult with DOGAMI, and must provide a summary of this consultation,
6 regarding the appropriate methodology and scope of the seismic hazards and geology and soil-
7 related hazards assessments, and the appropriate site-specific geotechnical work that must be
8 performed for the ASC.

9
10 A geologic report included in Exhibit H shall meet the Oregon State Board of Geologist
11 Examiners geologic report guidelines, as determined based on consultation with DOGAMI.

12
13 As described in the Structural Standard at OAR 345-022-0020(2), the Council may not impose
14 the Structural Standard to approve or deny an ASC for a proposed facility that would produce
15 power from solar energy, though the Council may apply the requirements of OAR 345-022-
16 0020(1) to impose conditions on a site certificate issued for such a facility.

17
18 **(i) Exhibit I – Soils**

19
20 **Applicable Paragraphs:** All paragraphs apply.

21 **Related Council and Other Standards:** Soil Protection [OAR 345-022-0022]

22 **Discussion:** This exhibit shall identify the major soil types and include a description of current
23 and historical (if distinct from current) land uses that require or depend on productive soils. The
24 applicant shall include information describing the impact of construction and operation of the
25 proposed facility on soil conditions in the analysis area, including potential impacts to soils on
26 adjacent properties. The application can cross-reference any applicable information related to
27 the federally-delegated NPDES 1200-C permit application. An erosion and sediment control
28 plan must be provided for review if the applicant will rely upon the erosion and sediment
29 control plan to meet the Soil Protection standard. Please note that an erosion and sediment
30 control plan that meets the NPDES 1200-C requirements may not necessarily be sufficient to
31 meet the EFSC Soil Protection standard.

32
33 **(j) Exhibit J – Waters of the State and Removal-Fill**

34
35 **Applicable Paragraphs:** All paragraphs apply.

36 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000];
37 Removal of Material, Filling [ORS 196.795-.990]; Administrative Rules Governing the Issuance
38 and Enforcement of Removal-Fill Authorizations Within Waters of Oregon Including Wetlands
39 [OAR Chapter 141, Division 85]

40 **Discussion:** Per Exhibit J requirement, the ASC shall include a description of all areas within the
41 site boundary that might be waters of this state and a map(s) showing the location of these
42 features. Based on the NOI, ODOE understands that several wetlands and waterbodies exist

1 within the site boundary. DSL commented on the NOI that if regulated wetlands or waters are
2 identified, a wetland delineation must be conducted and submitted to DSL for review and
3 approval. If impacts to waters of this state cannot be avoided and DSL determines that a
4 removal-fill permit is necessary for the proposed facility, the information required for Council to
5 make a decision on the removal-fill permit application must be included in the ASC. Wetland
6 delineation reports and removal-fill permit application materials can be sent directly by the
7 applicant to DSL; however, please note that all materials as well as DSL's concurrence with the
8 wetland delineation must also be submitted to the Department as part of the ASC. The
9 Department will work closely with DSL in review of the removal-fill permit application, if
10 applicable. For EFSC-jurisdictional facilities, authorization of a removal-fill permit is an EFSC
11 decision; should a permit be issued, DSL will maintain the ongoing responsibility for compliance
12 with any associated permit conditions.

13
14 **(k) Exhibit K – Land Use**

15
16 **Applicable Paragraphs:** Paragraphs (A),(C), and (D) of the rule apply.

17 **Related Council and Other Standards:** Land Use [OAR 345-022-0030]

18 **Discussion:** The Council's Land Use standard requires an evaluation for compliance with the
19 statewide planning goals. Under 469.504(1), the applicant may establish compliance with the
20 applicable statewide planning goals either by obtaining local land use approval under ORS
21 469.504(1)(a) or by obtaining Council approval under ORS 469.504(1)(b). The applicant has
22 indicated in the NOI that it has elected to seek a Council determination of compliance under
23 ORS 469.504(1)(b). Within Exhibit K, since the applicant has elected to obtain a Council
24 determination on land use under ORS 469.504(1)(b), paragraphs A, C and D of OAR 345-021-
25 0010(1)(k) apply; paragraph B does not apply.

26
27 The facility would be located within the Exclusive Farm Use and Forestry zones in Klamath
28 County. Pursuant to ORS 469.480 and in preparation for review of the proposed facility, at its
29 September 25, 2020 EFSC meeting, the Council appointed the Klamath County Board of
30 Commissioners as a Special Advisory Group (SAG). As provided in ORS 469.401(3), if the Council
31 issues a site certificate, Klamath County would be bound to issue all required permits and other
32 land use approvals, subject to the conditions set forth in the site certificate, that are included in
33 and governed by the site certificate. The applicant shall discuss each of the applicable
34 substantive criteria from the Klamath County Comprehensive Plan and Klamath County Land
35 Development Code, and shall demonstrate how the proposed facility complies with those
36 criteria. The SAG provided information about the applicable substantive criteria in a comment
37 letter on the NOI. If the proposed facility does not comply with one or more of the applicable
38 substantive criteria, the applicant must demonstrate that the proposed facility nevertheless
39 complies with the applicable statewide planning goals or that an exception to a goal is justified
40 under ORS 469.504(2) and OAR 345-022-0030(4).

41
42 Exhibit K shall also provide evidence that the proposed facility would comply with any directly-
43 applicable Land Conservation and Development Commission (LCDC) administrative rules and

1 statutory requirements related to the proposed facility, including ORS 215.283 and 215.274.
2 Exhibit K shall provide evidence that the proposed facility would comply with the applicable
3 administrative rules at OAR 660-033-0130(38) related to development of solar power
4 generation facilities; the applicable administrative rules at OAR 660, Division 6 related to uses
5 within forest lands; as well as rules related to associated transmission lines to energy
6 generating facilities. Please note that in May 2019 LCDC adopted permanent amendments to
7 OAR 660-033-0130(38).

8
9 The proposed facility may require both a Goal 3 exception and a Goal 4 exception. The Council's
10 goal exception process is described at OAR 345-022-0030(4). A goal exception is necessarily
11 based on site-specific issues and reasons; as such, the applicant must provide site-specific
12 evidence that the proposed facility should be granted a goal exception. The applicant should
13 address comments by reviewing agencies, the SAG, and stakeholder groups about impacts to
14 agriculture in the context of the Goal 3 exception request.

15
16 Exhibit K shall also include an evaluation of consistency with relevant requirements imposed
17 under the applicable land management plan(s) adopted by the federal agency or agencies with
18 jurisdiction over the federal lands crossed by the site boundary.

19
20 **(l) Exhibit L – Protected Areas**

21
22 **Applicable Paragraphs:** All paragraphs apply.

23 **Related Council and Other Standards:** Protected Areas [OAR 345-022-0040]

24 **Discussion:** The ASC must address potential impacts to protected areas identified in OAR 345-
25 022-0040 within the analysis area. Please note that compliance with the DEQ noise rules
26 (Exhibit X) does not correlate to compliance with the noise assessment considered in the
27 Protected Areas standard. Particularly, while construction noise is exempt from the DEQ noise
28 rules, construction noise must be considered under the Protected Areas standard. However,
29 information developed to demonstrate compliance with the DEQ noise rules (such as noise
30 modeling) can be used in the assessment under the Protected Areas standard. A visual impact
31 assessment is required as part of Exhibit L; while no specific methodology is required by EFSC
32 rule, the applicant must submit evidence adequate to demonstrate how potential impacts from
33 the proposed facility would not be likely to result in potentially significant, adverse impacts
34 under the Protected Areas standard. Visual simulations or other visual representations are not
35 required but can provide important evidence for use by the Department and Council in
36 understanding the potential visual impact of the proposed facility to Protected Areas.

37
38 **(m) Exhibit M – Financial Capability**

39
40 **Applicable Paragraphs:** All paragraphs apply.

41 **Related Council and Other Standards:** Retirement and Financial Assurance [OAR 345-022-0050]

1 **Discussion:** The ASC shall include information about the applicant’s financial capability,
2 including the applicant’s legal authority to construct and operate the proposed facility without
3 violating its bond indenture provisions, articles of incorporation, common stock covenants, or
4 similar agreements. To find that the proposed facility satisfies the Retirement and Financial
5 Assurance standard (OAR 345-022-0050(2)), the Council must find that the applicant has a
6 reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory
7 to the Council to restore the site to a useful, non-hazardous condition. The ASC shall include the
8 type and amount of the applicant’s proposed bond or letter of credit to satisfy the
9 requirements of OAR 345-022-0050.

10
11 **(n) Exhibit N – Non-Generating Facility Need**

12
13 **Applicable Paragraphs:** Exhibit N does not apply because the proposed facility is not a
14 nongenerating facility.

15
16 **(o) Exhibit O – Water Use**

17
18 **Applicable Paragraphs:** All paragraphs apply except (D).

19 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]; OAR
20 690, Divisions 310 and 380 (Water Resources Department permitting requirements)

21 **Discussion:** Exhibit O of the ASC must describe water use during construction and operation of
22 the proposed facility. The ASC must identify the sources of water to be used and include an
23 estimate of the amount of water the facility will need during construction and operation from
24 each source under annual average and worst-case conditions. Exhibit O shall specify the final
25 disposition of all wastewater and describe and quantify water loss from the facility site.

26
27 If the proposed facility does not need a groundwater permit, a surface water permit, or a water
28 right transfer, Exhibit O shall include an explanation as to why such a permit or transfer is not
29 required for construction and operation of the proposed facility, as required by paragraph (E). If
30 such a permit is necessary, the ASC shall include the evidence and application materials to
31 support a determination by Council that OWRD should issue such a permit.

32
33 **(p) Exhibit P – Fish and Wildlife Habitat**

34
35 **Applicable Paragraphs:** All paragraphs apply.

36 **Related Council and Other Standards:** Fish and Wildlife Habitat [OAR 345-022-0060]

37 **Discussion:**
38 ODFW commented on the NOI about potential impacts to big game winter range habitat, state
39 sensitive species, and raptor nests. ODFW requested that the application address these
40 potential impacts and provide a vegetation map verified by on-site ground-truthing; a detailed
41 plan for monitoring and treatment of invasive and noxious plant species; a detailed habitat
42 mitigation plan; and a revegetation plan.

1 The applicant shall consult with ODFW in developing the ASC materials. Exhibit P shall include
2 analysis of how the evidence provided supports a finding by the Council that the proposed
3 facility meets the Council’s Fish and Wildlife Habitat standard. OAR 345-021-0010(1)(p)
4 provides that Exhibit P must include a description of biological and botanical surveys performed
5 that support the information in this exhibit, including a discussion of the timing and scope of
6 each survey. Exhibit P must also provide baseline surveys of all state sensitive species that may
7 be present in the analysis area performed according to a protocol approved by the Department
8 and ODFW.

9
10 Oregon Fish and Wildlife Habitat Mitigation Policy (OAR Chapter 635, Division 415) classifies six
11 habitat categories and establishes a mitigation goal for each category. The applicant must
12 identify the appropriate habitat category for all areas affected by the proposed facility and
13 provide the basis for each category designation. The habitat classification is subject to the
14 Department and ODFW review. A map showing the different habitat categories is required
15 under sub-paragraph (C) of OAR 345-021-0010(1)(p), and inclusion of vegetation classes within
16 the map is recommended. The map must be of sufficient scale to show details. Exhibit P must
17 include tables depicting the estimated temporary and permanent impacts, broken down by
18 habitat categories and subtype.

19
20 The applicant must show how it would comply with the habitat mitigation goals and standards
21 by appropriate monitoring and mitigation, including measures proposed by the applicant to
22 avoid, reduce, or mitigate adverse impacts on habitat and state sensitive species. This
23 information shall be incorporated into a proposed Revegetation and Noxious Weed Control
24 Plan and a proposed Habitat Mitigation Plan (HMP) as attachments to Exhibit P. Exhibit P and
25 the HMP must clearly demonstrate how the applicant will provide mitigation, including
26 compensatory mitigation, in accordance with the Council’s standard. This includes identifying in
27 the HMP the location of a specific habitat mitigation area that could be used to provide
28 compensatory mitigation, as well as ecological uplift mitigation actions that could be
29 implemented at the habitat mitigation area to provide the appropriate mitigation. The HMP
30 shall include results of a desktop or field-level survey assessing the habitat categories of the
31 habitat mitigation area. The HMP shall describe the mechanism, or mechanism options, for
32 acquiring the legal right to maintain and enhance the habitat mitigation area. The HMP shall
33 include draft success criteria for the proposed ecological uplift actions, and describe a process
34 for evaluating monitoring and reference site locations, prior to construction. This information is
35 required for the Department to find the application complete.

36
37 **(q) Exhibit Q – Threatened and Endangered Species**

38
39 **Applicable Paragraphs:** All paragraphs apply.

40 **Related Council and Other Standards:** Threatened and Endangered Species [OAR 345-022-
41 0070]

42 **Discussion:** The ASC shall include a list of state-listed endangered and threatened species that
43 have potential to occur in the analysis area. The applicant shall identify these species based on

1 a review of literature, consultation with knowledgeable individuals, and reference to the list of
2 species maintained by the Oregon Biodiversity Information Center.

3
4 For state-listed threatened or endangered plant species, field surveys are required for any
5 species that may occur within the analysis area and may potentially be impacted by the facility.
6 The applicant shall consult with ODFW and Oregon Department of Agriculture Native Plant
7 Conservation Program, if applicable, regarding field survey methods, appropriate survey
8 seasons, qualifications of field survey personnel, and the information to be included in a field
9 survey report.

10
11 **(r) Exhibit R – Scenic Resources**

12
13 **Applicable Paragraphs:** All paragraphs apply.

14 **Related Council and Other Standards:** Scenic Resources [OAR 345-022-0080]

15 **Discussion:** The ASC shall include an analysis of significant potential impacts of the proposed
16 facility on scenic resources identified as significant or important in local land use plans, tribal
17 land management plans and federal land management plans for any lands located within the
18 analysis area. For the purposes of Exhibit R, “local” land use plans include state, county, and city
19 planning documents or inventories. For any significant or important scenic resources identified
20 in a local, tribal or federal land management plan, the applicant shall include in the ASC an
21 evaluation of the proposed facility’s consistency or compliance with any development or land
22 use criteria included in the land management plan for the identified resource. The applicant
23 shall also describe the measures it proposes to avoid, reduce, or otherwise mitigate any
24 significant adverse impacts to these scenic resources. A visual impact assessment is required as
25 part of Exhibit R; while no specific methodology is required by EFSC rule, the applicant must
26 submit evidence adequate to demonstrate why the proposed facility is compliance with the
27 Scenic Resources standard. Visual simulations or other visual representations are not required
28 but can provide important evidence for use by the Department and Council in understanding
29 the potential visual impact of the proposed facility to Scenic Resources.

30
31 **(s) Exhibit S – Historic, Cultural and Archaeological Resources**

32
33 **Applicable Paragraphs:** All paragraphs apply.³

34 **Related Council and Other Standards:** Historic, Cultural, and Archaeological Resources [OAR
35 345-022-0090]

36 **Discussion:** SHPO provided a comment on the NOI specific to historic, built resources. SHPO
37 stated that there may be standing structures near the proposed facility, and requested that all
38 standing structures be identified, and those that are over 50 years old be evaluated for
39 eligibility for listing on the National Register of Historic Places.

³ Information concerning the location of archaeological sites or objects may be exempt from public disclosure under ORS 192.501(11). Specific location information about cultural resources should not be included in the text of

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The ASC shall include the survey methodology, survey areas, and the results of all surveys conducted for historic, cultural, and archaeological resources, as well as an analysis of any significant adverse impacts anticipated and proposed mitigation measures. The applicant should work closely with the State Historic Preservation Office (SHPO) to understand the report formatting and submission requirements, and to receive guidance on any survey protocols.

It is recommended that the applicant continue to discuss the proposed facility with the Klamath Tribes. The Confederated Tribes of Warm Springs and the Burns Paiute Tribe commented on the NOI that they defer to the Klamath Tribes for review of the proposed facility.

As described in the Historic, Cultural, and Archaeological Resources standard at OAR 345-022-0090(2), the Council may issue a site certificate for a facility that would produce power from solar energy without making the findings of the Historic, Cultural, and Archaeological Resources standard at OAR 345-022-0090(1), though the Council may apply the requirements of OAR 345-022-0090(1) to impose conditions on a site certificate issued for such a facility.

(t) Exhibit T – Recreation

Applicable Paragraphs: All paragraphs apply.

Related Council and Other Standards: Recreation [OAR 345-022-0100]

Discussion: The ASC shall analyze the importance of recreational opportunities in the analysis area using the factors listed in OAR 345-022-0100(1), discuss any significant potential adverse impacts to important recreational opportunities, and describe measures proposed to avoid, minimize or mitigate those impacts. Please list all recreational opportunities in the analysis area and provide the applicant’s analysis of whether those recreational opportunities are considered “important” or not. As described under the Protected Areas standard section above, please note that compliance with the DEQ noise rules (Exhibit X) does not correlate to compliance with the noise assessment considered in the Recreation standard. Particularly, while construction noise is exempt from the DEQ noise rules, construction noise must be considered under the Recreation standard. However, information developed to demonstrate compliance with the DEQ noise rules (such as noise modeling) can be used in the assessment under the Recreation standard. A visual impact assessment is required as part of Exhibit T; while no specific methodology is required by EFSC rule, the applicant must submit evidence adequate to demonstrate how the proposed facility would comply with the Recreation standard. Visual simulations or other visual representations are not required but can provide important evidence for use by the Department and Council in understanding the potential visual impact of the proposed facility to important recreational opportunities.

application for a site certificate. Such information, including archaeological survey reports, should be provided confidentially under separate cover in hard copy format only after consultation with the Department. Confidential material shall also be provided directly to SHPO, following guidance from the Department and SHPO. Please contact the Department to discuss current practices regarding treatment and submittal of confidential material.

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(u) Exhibit U – Public Services

Applicable Paragraphs: All paragraphs apply.

Related Council and Other Standards: Public Services [OAR 345-022-0110]

Discussion: The ASC shall provide information related to the proposed facility’s potential impacts to the ability of public and private providers within the analysis area to provide: sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools (OAR 345-022-0110). Applications for site certificate typically include letters from local public services providers, including local fire departments and police departments, to demonstrate that the proposed facility would not cause a significant adverse impact on the ability of those providers to provide their services, in accordance with the Public Services standard. It is recommended that letters obtained from public service providers include analysis indicating that their level of service would not be impacted. In other words, letters obtained from water service providers should include an evaluation of permit limits and historical demand to demonstrate that it can meet proposed facility needs. Letters from fire service providers should explain how resources used by the facility, in the event of a fire-related issue, would not impact their ability to provide fire emergency response, rather than a conclusory statement without supporting analysis demonstrating a clear understanding of the facility.

The analysis should address potential impacts to the Langell Valley Irrigation District, Horsefly Irrigation District, and U.S. Bureau of Reclamation’s ability to provide water within the analysis area. Please see the comments submitted by these entities on the NOI.

As described in the Public Services standard at OAR 345-022-0110(2), the Council may issue a site certificate for a facility that would produce power from solar energy without making the findings of the Public Services standard at OAR 345-022-0110(1), though the Council may apply the requirements of OAR 345-022-0110(1) to impose conditions on a site certificate issued for such a facility.

(v) Exhibit V – Solid Waste and Wastewater

Applicable Paragraphs: All paragraphs apply

Related Council and Other Standards: Waste Minimization [OAR 345-022-0120]; Public Services [OAR 345-022-0110]

Discussion: To support a finding by the Council as required by OAR 345-022-0120, the ASC shall provide information about the applicant’s plans to minimize the generation of solid waste and wastewater in the construction and operation of the facility, and to recycle or reuse solid waste and wastewater. Information in Exhibit V may be incorporated by reference in Exhibit U’s discussion of impacts to solid waste and wastewater service providers.

1 As described in the Waste Minimization standard at OAR 345-022-0120(2), the Council may
2 issue a site certificate for a facility that would produce power from solar energy without making
3 the findings of the Waste Minimization standard at OAR 345-022-0120(1), though the Council
4 may apply the requirements of OAR 345-022-0120(1) to impose conditions on a site certificate
5 issued for such a facility.

6
7 **(w) Exhibit W – Facility Retirement**

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9 **Applicable Paragraphs:** All paragraphs apply.

10 **Related Council and Other Standards:** Retirement and Financial Assurance [OAR 345-022-0050]

11 **Discussion:** The ASC shall provide an estimate of the total and unit retirement costs per task
12 and actions necessary for facility decommissioning, including a detailed explanation,
13 assumptions, and justification of the methodology it uses to estimate site restoration costs. The
14 Council’s Retirement and Financial Assurance standard requires evidence that the amount
15 estimated for facility decommissioning is sufficient for restoration of the site to a useful,
16 nonhazardous condition. If the applicant would like to reserve the option to construct the
17 facility in phases, to the extent possible the applicant should provide sufficient cost estimating
18 detail to enable the bond or letter of credit amount to be adjusted based on phase.

19
20 **(x) Exhibit X – Noise**

21
22 **Applicable Paragraphs:** All paragraphs apply.

23 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]; DEQ
24 Noise Control Regulations [ORS 467.020 and ORS 467.030; OAR 340, Division 35]

25 **Discussion:** The ASC shall contain a noise analysis and information to support a Council finding
26 that the proposed facility would comply with applicable DEQ noise control standards in OAR
27 340-035-0035. The applicant shall include ambient noise monitoring results to support the
28 evaluation of compliance with the ambient antidegradation standard. The number of ambient
29 monitoring sites shall be sufficient to reasonably represent the ambient noise conditions at
30 noise sensitive receptor locations in closest proximity to the proposed site. Ambient noise
31 monitoring shall also be conducted to determine ambient conditions at noise sensitive receptor
32 locations in closest proximity to the proposed 500 kV transmission line. The analysis shall
33 evaluate maximum noise levels from all noise-generating equipment during construction and
34 operation. Operational noise shall be evaluated from both stationary sources (e.g. substation
35 transformers, inverters/transformer units, battery storage system HVAC and inverters) and
36 corona noise from the transmission line.

37
38 **(y) Exhibit Y – Carbon Dioxide Emissions**

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40 **Applicable Paragraphs:** Exhibit Y does not apply because the proposed facility is not a base load
41 gas plant, a non-base load power plant, or a non-generating energy facility that emits carbon
42 dioxide.

1 **(z) Exhibit Z – Cooling Tower Impacts**

2
3 **Applicable Paragraphs:** Exhibit Z does not apply because the proposed facility would not
4 include an evaporative cooling tower.

5
6 **(aa) Exhibit AA – Electric and Magnetic Fields**

7
8 **Applicable Paragraphs:** All paragraphs apply.

9 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]

10 **Discussion:** As the proposed facility would have a transmission line as a related and supporting
11 facility, the provisions of Exhibit AA apply.

12
13 **(bb) Exhibit BB – Other Information**

14
15 **Related Council Standard:** General Standard of Review [OAR 345-022-0000]

16 **Discussion:** Include information in Exhibit BB related to the following:

17
18 Compliance with the ODFW Fish Passage rules will be included in and governed by the site
19 certificate. Provide evidence in this exhibit of the facility’s compliance with the applicable Fish
20 Passage rules at OAR Chapter 635, Division 412.

21
22 **(cc) Exhibit CC – Other Law**

23
24 **Related Council Standard:** General Standard of Review [OAR 345-022-0000]

25 All requirements apply.

26
27 **(dd) Exhibit DD – Specific Standards**

28
29 **Applicable Paragraphs:** Paragraph (C) applies.

30 **Related Council and Other Standards:** Specific Standards for Transmission Lines [OAR 345-024-
31 0090]

32 The Council applies specific standards for transmission lines under its jurisdiction in OAR 345-
33 024-0090. The applicant should provide analysis regarding compliance with OAR 345-024-0090
34 in Exhibit DD or refer to Exhibit AA as appropriate.

35
36 **IV. ANALYSIS AREAS FOR THE PROPOSED FACILITY**

37
38 The analysis areas are the areas that the applicant must study for potential impacts from the
39 construction and operation of the proposed facility. Some of the analysis areas described in this
40 Project Order do not limit the applicant’s responsibility to assess the potential impacts of the
41 facility. They are the areas in which significant adverse impacts from the proposed facility are
42 likely to occur. **Please Note:** If significant impacts associated with the applicable Council

1 standards⁴ could occur beyond the analysis areas described here, then the applicant must
 2 assess those impacts in the ASC and show how the facility would comply with the applicable
 3 standard with regard to the larger area where impacts could occur.

4
 5 For all potential impacts, the analysis area includes all the area within the site boundary, as
 6 defined in OAR 345-001-0010(59) as well as any additional distances beyond the site boundary
 7 described in Table 3, *Analysis Areas* below. The ASC must specifically describe the site boundary
 8 and provide a map showing the proposed site boundary, including all related and supporting
 9 facilities. The minimum required analysis areas are presented in Table 3, *Analysis Areas*. Please
 10 note that the analysis area for Public Services impacts must include Klamath Falls, given that
 11 the NOI indicates that several public services may be needed from Klamath Falls, including
 12 housing, traffic safety, police protection, and health care.

13

Table 3: Analysis Areas

Affected Standard or Resource	Exhibit	Analysis Area
Structural Standard	Exh. H	The area within the site boundary, notwithstanding the distances related to an assessment of seismic hazards required by OAR 345-021-0010(1)(h) and any additions to the analysis area as determined through applicant consultation with DOGAMI.
Soil Protection	Exh. I	The area within the site boundary.
Wetlands	Exh. J	The area within the site boundary.
Land Use	Exh. K	The area within and extending 0.5 mile from the site boundary.
Protected Areas	Exh. L	The area within and extending 20 miles from the site boundary.
Fish and Wildlife Habitat	Exh. P	The area within and extending 0.5 mile from the site boundary.
Threatened and Endangered Species	Exh. Q	The area within and extending 5 miles from the site boundary.
Scenic Resources	Exh. R	The area within and extending 10 miles from the site boundary.
Historic, Cultural and Archaeological Resources	Exh. S	The area within the site boundary. If aboveground resources, including Traditional Cultural Properties or Historic Properties of Religions and Cultural Significance to Indian Tribes, were identified within 1-mile of the site boundary during the desktop review, the analysis area shall include the area within and extending 1-mile from the site boundary.
Recreation	Exh. T	The area within and extending 5 miles from the site boundary.
Public Services	Exh. U	The area within and extending 10 miles from the site boundary, as well as the area extending 20 miles from the closest portion of the site boundary to Klamath Falls.
Noise Control Regulation	Exh. X	The area within and extending 1-mile from the site boundary.

⁴ OAR 345-022-0080 - Scenic Resources, OAR 345-022-0100 – Recreation, and OAR 345-022-0110 - Public Services directly reference the analysis area as described in the Project Order.

Table 3: Analysis Areas

Affected Standard or Resource	Exhibit	Analysis Area
<p>Notes:</p> <p>1. The applicant should note that analysis areas defined in this Project Order are to be used for the assessment of impacts to the associated resource. The applicant is not required to perform comprehensive field surveys of the entire analysis area if another method of impact assessment is suitable. However, the Department reserves the right to require field surveys if it is determined that a different method of analysis is insufficient to provide the level of information necessary to find the application complete. It is recommended that the Department be consulted if the applicant wishes to propose alternative methods of analysis than field surveys.</p>		

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V. COMMENTS ON THE NOTICE OF INTENT

The Department received 7 verbal comments from members of the public at the October 13, 2020 NOI informational meeting. In addition, during the course of the comment period, the Department received 18 comments from government entities, 6 comments from stakeholder groups, and 89 comments from members of the public. These comments were provided under separate cover to the applicant and are incorporated by reference in this order. Within each applicable exhibit of the ASC, the applicant shall address those concerns raised by reviewing agencies that are within the jurisdiction of the Council.

VI. EXPIRATION DATE OF THE NOTICE OF INTENT

In accordance with OAR 345-020-0060, the Bonanza Energy Facility NOI will expire two years after the date of submittal, on August 7, 2022, unless the applicant submits a petition to Council to extend the expiration date. Such a petition must be submitted no less than 45 days before the NOI expiration date. If the Council finds that the extension petition shows good cause, it may extend the NOI expiration date by up to one year.

VII. PROJECT ORDER AMENDMENT AND APPLICATION COMPLETENESS

The Council or the Department may amend this Project Order at any time [OAR 345-015-0160(3)]. Amendment may include changes to the analysis areas. To issue a site certificate, the Council must determine that the proposed facility complies with Oregon statutes and administrative rules identified in the Project Order, as amended, as applicable to the issuance of a site certificate for the proposed facility (ORS 469.503(3)).

Under OAR 345-015-0190(5), when the Department determines the ASC contains adequate information for the Council to make findings or impose conditions on all applicable Council standards, the Department will issue a determination of completeness on the ASC. The Department may determine that the ASC is complete without requiring the applicant to submit all information described under OAR 345-021-0000 and -0010. In accordance with OAR 345-015-0190(9), after a determination that an ASC is complete, the Department may require

1 additional information from the applicant if the Department identifies a need for that
2 information during its continued review of the ASC.

3

4 **VIII. APPLICABILITY AND DUTY TO COMPLY**

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6 Failure to include an applicable statute, rule, ordinance, permit or other requirement in this
7 Project Order does not render that statute, rule, ordinance, permit or other requirement
8 inapplicable, nor in any way relieve applicant from the duty to comply with the same.

1 **OREGON DEPARTMENT OF ENERGY**

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5 Todd R. Cornett, Assistant Director, Siting Division

6 Energy Facility Siting Division

7 Oregon Department of Energy

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9 Date of Issuance: December 18, 2020