

OREGON DEPARTMENT OF ENERGY

Statutes, Administrative Rules and Other)
Requirements Applicable to the Application for Site) **PROJECT ORDER**
Certificate for **West End Solar Project**)

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

February 10, 2022

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41

1 **I. INTRODUCTION**

2
3 The Oregon Department of Energy (Department) issues this Project Order for the proposed
4 West End Solar Project (proposed facility) in accordance with OAR 345-015-0160 and OAR 345-
5 015-0300(3).

6
7 The proposed facility includes up to 100 megawatts (MW) of solar photovoltaic energy
8 generation components and would use or occupy up to 324 acres on Exclusive Farm Use (EFU)
9 zoned land, including approximately 238 acres of high-value farmland under ORS 195.300(10)(f)
10 in Umatilla County. Related or supporting facilities include a 70 MW lithium-ion energy storage
11 system, collector substation and switchyard substation located within a 15 acre area, an
12 Operation and Maintenance (O&M) enclosure located near the substations, access roads and
13 construction staging area. The entire site boundary would be enclosed in a 10-foot perimeter
14 fence. The proposed facility site would be located entirely in northwestern Umatilla County,
15 approximately one mile east of the city limits of Hermiston, Oregon and one mile north of the
16 city limits of Stanfield, Oregon.

17
18 ORS 469.401(4) provides that a site certificate issued by the Energy Facility Siting Council (EFSC
19 or Council) does not govern certain matters. This Project Order identifies only those matters
20 that could be included in and governed by the site certificate, if issued by Council, and as
21 applicable to issuance of the site certificate for the proposed facility pursuant to ORS
22 469.503(3). Throughout this Project Order, the definitions in ORS 469.300 and OAR 345-001-
23 0010 apply, except where otherwise stated or where the context indicates otherwise. The
24 Project Order is not a final order.¹

25
26 **(a) Request for Expedited Review**

27
28 At the request of an applicant and in accordance with ORS 469.370(10) and OAR 345-015-
29 0300(4), Council shall allow expedited processing of an application for a site certificate (ASC) for
30 a small-capacity energy facility as defined at ORS 469.370(10).² In addition, a facility qualifying
31 for expedited review must not include a gas pipeline or electric transmission line that, by itself,
32 would be under Council jurisdiction. The applicant is not proposing a grid interconnection
33 transmission line because the proposed facility would connect to one of three exiting
34 transmission lines adjacent to or overlapping the facility site.

35
36 On December 4, 2020, the Department received a Request for Expedited Review for Small
37 Capacity Facilities from EE West End Solar, LLC (applicant), a wholly owned subsidiary of Eurus
38 Energy America Corporation. On December 17, 2020 the Department notified the applicant that
39 the information submitted with the Request for Expedited Review satisfied the requirements of

¹ OAR 345-015-0160(4).

² ORS 469.370(10) states, "At the request of the applicant, the council shall allow expedited processing of an application for a site certificate for an energy facility with an average electric generating capacity of less than 100 megawatts."

1 OAR 345-015-0300(2), and therefore the Council granted the expedited review processing for
2 the proposed facility application. In the Request for Expedited Review, the applicant
3 represented the proposed facility’s peak generating capacity as approximately 45 MW.³
4

5 Pursuant to ORS 469.300(4), “average electric generating capacity” for non-wind and non-
6 geothermal facilities is defined as “the peak generating capacity of the facility divided by 1.00”.
7 As such, the average electric generating capacity of the West End Solar Project, as stated in the
8 Request for Expedited Review, would be 45 MW. As this is under 100 MW, the facility is eligible
9 for expedited review for small capacity facilities. As discussed below, in the pASC, the applicant
10 identified that the proposed facility generation capacity was up to, but not to exceed, 100 MW.
11

12 Under the expedited review process, an applicant is not required to submit a Notice of Intent
13 (NOI) and initiates the siting process through submission of a preliminary ASC (pASC) based on
14 the requirements described in OAR 345-021-0010.⁴ Aside from these procedural differences,
15 the expedited review process for a small capacity facility is in all other respects the same as for
16 review of ASCs under the non-expedited process.
17

18 **(b) Preliminary Application and Project Order**
19

20 The applicant submitted the pASC and payment under ORS 469.350 and ORS 469.421 on
21 November 5, 2021. Thereafter, and in compliance with OAR 345-021-0050(1), the Department
22 prepared a memorandum to reviewing agencies and compiled a distribution list, including all
23 reviewing agencies identified and defined in OAR 345-001-0010(51). In accordance with ORS
24 469.350(2) and OAR 345-021-0050, on November 18, 2021 the Department sent the
25 memorandum and a copy of the pASC via link to download an electronic version of the pASC to
26 each of the reviewing agencies and Special Advisory Group (SAG) listed in Table 1 below.⁵ As
27 stated above, for a facility process under the Council’s expedited review rules, there is not an
28 NOI phase, therefore there is not a public comment period on the NOI.
29

30 The applicant submitted a pASC based on the requirements described in OAR 345-021-0010
31 and as described at OAR 345-015-0300(3). The Department’s review of an approved expedited
32 small capacity facility is in all other respects the same as for review of other site certificate
33 applications. Under OAR 345-015-0300(3) and OAR 345-015-0160(1). After the pASC is filed
34 with the Department, the Department must issue a Project Order for the proposed facility. The
35 Department issued the Project Order on February 10, 2022.
36

³ In the pASC, the applicant clarified that it seeks micrositing flexibility within the site boundary to utilize technology that would produce up to but not exceeding 100 megawatts of alternating current.

⁴ ORS 469.370(10), 345-015-0160(1), and OAR 345-015-0300(3).

⁵ Pursuant to ORS 469.480(1), Council must designate as a Special Advisory Group (SAG) the governing body of any local government within whose jurisdiction the facility is proposed to be located. At the November 19, 2021 Council meeting, the Council appointed the Umatilla County Board of Commissioners as the Special Advisory Groups to assist in the application review for the proposed facility.

1 ORS 469.401(4) provides that a site certificate issued by the Council does not govern certain
2 matters. Therefore, the Project Order identifies only those matters that could be included in
3 and governed by the site certificate, if issued by Council, and as applicable to issuance of the
4 site certificate for the proposed facility pursuant to ORS 469.503(3). This Project Order
5 establishes the application information requirements listed under OAR 345-015-0160(1).
6 Because there is not a NOI and associated public comment period or informational meeting, the
7 Department has not received any comments or concerns from the public about the proposed
8 facility, therefore the provisions in of OAR 345-015-0160(1)(g), are not included in this Project
9 Order.⁶ Under OAR 345-015-0160(1)(e), the Project Order may require the applicant to submit
10 any other data and information that must be included in the ASC to allow the Council to
11 determine whether the proposed facility would comply with applicable statutes, administrative
12 rules and local government ordinances.

13
14 The Project Order is not a final order and can be amended at any time by Council or the
15 Department.⁷

⁶ OAR 345-015-0160(1)(g) Public concerns that address matters within the jurisdiction of the Council that the applicant shall consider and discuss in the application for a site certificate, based on comments the Department has received in writing or at any informational meeting held under OAR 345-015-0130.

⁷ OAR 345-015-0160(3) and (4).

1
2

Table 1. Preliminary Application for Site Certificate Agency Distribution List

State Agencies	
<ul style="list-style-type: none"> • Oregon Department of Environmental Quality • 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 Transportation • Oregon Water Resources Department 	<ul style="list-style-type: none"> • Oregon Department of Forestry • Oregon Public Utilities Commission • Oregon Parks and Recreation 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"> • Confederated Tribes of the Umatilla Indian Reservation 	<ul style="list-style-type: none"> • Confederated Tribes of the Warm Springs
Special Advisory Group	
<ul style="list-style-type: none"> • Umatilla County Board of Commissioners 	
Local Jurisdiction for Public Services	
<ul style="list-style-type: none"> • City of Hermiston • City of Umatilla 	<ul style="list-style-type: none"> • City of Echo • City of Stanfield
Other Reviewing Agencies	
<ul style="list-style-type: none"> • Northwest Power Planning Council 	

3

II. EFSC REGULATORY FRAMEWORK

4

5
6 Issuance of a site certificate and an amended site certificate is governed by the statutory
7 requirements in ORS 469.300 *et seq.* and administrative rules in OAR Chapter 345. The
8 following divisions of OAR Chapter 345 include rules related to application requirements,
9 Council’s review of an application for site certificate (ASC), and requirements for construction,
10 operation, and retirement of an approved facility:

11

12 **OAR Chapter 345, Division 21** (Site Certificate Application Requirements) includes the
13 primary site certificate application requirements. See Section III of this Project Order for
14 specific information related to the site certificate application requirements for the
15 proposed facility.

16

17 **OAR Chapter 345, Division 22** (Council Standards for Siting Facilities) includes most of
18 the regulatory standards by which Council must evaluate the proposed facility. In
19 addressing each of the Division 21 application requirements, the applicant shall refer to

1 the Division 22 standard to which the requirement relates to ensure the application is
2 responsive to the standards by which the Council must evaluate it.

3
4 **OAR Chapter 345, Division 24** (Specific Standards for Siting Facilities) includes additional
5 standards for specific types of EFSC applications. In addressing the Division 21
6 application requirements, the application shall refer to the Division 24 standards that
7 apply to the proposed facility to ensure the application is responsive to these standards.
8 At this time, the only potentially applicable Division 24 standard is OAR 345-024-0090,
9 Siting Standards for Transmission Lines.

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

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

26 27 **III. APPLICATION REQUIREMENTS**

28
29 The applicant must submit information required under OAR 345-021-0000, including, for all
30 state and local government agency permit approvals that the applicant proposes to be included
31 in and governed by the site certificate, the submittal of information that would otherwise be
32 required by the state or local government agency in an application for such permit, license or
33 certificate [OAR 345-021-0000(6)].⁸ The applicant shall also submit copies of the applications for
34 federally-delegated permits that are needed for construction or operation of the proposed
35 facility [OAR 345-021-0000(7)]. OAR 345-021-0010(1) identifies the required contents of an
36 ASC. Each of the paragraphs below indicates which provision(s) of OAR 345-021-0010(1)(a) –
37 (dd) apply to the proposed facility. The ASC shall also include a table of contents for each
38 exhibit, as described in OAR 345-021-0010(3).
39

⁸ It is noted that under 345-015-0190(5), the Department may find that the application is complete without requiring the applicant to submit all information described under OAR 345-021-0000 and 345-021-0010.

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

2
3 **Applicable Paragraphs:** All paragraphs apply except (C), (E), (F), and (G)

4
5 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]

6
7 **Discussion:** Note that paragraph (B) calls for a list of “participating persons, other than
8 individuals.” Please note the definition of “Person” in ORS 469.300(21): “Person” means an
9 individual, partnership, joint venture, private or public corporation, association, firm, public
10 service company, political subdivision, municipal corporation, government agency, people’s
11 utility district, or any other entity, public or private, however organized. Please also note that
12 the applicant is required to notify the Department of any change in the identity or ownership of
13 the applicant prior to the change. This notification requirement continues to apply until the
14 Council issues a final order on the ASC.

15
16 **(b) Exhibit B – General Information about the Proposed Facility**

17
18 **Applicable Paragraphs:** All paragraphs apply except (A)(vi), (A)(vii), (A)(viii), and (E)(iv).
19 Paragraph (D) only applies if the proposed transmission line meets the definition of an energy
20 facility at ORS 469.300(11)(a)(C).

21
22 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]

23
24 **Discussion:** The description of the proposed facility in the ASC will form the basis for the
25 description of the facility in the site certificate. The applicant would be required to build the
26 facility “substantially as described” in the site certificate, if approved and issued by Council
27 (OAR 345-025-0006(3)(a)). The description should include details of facility construction,
28 including primary activities and any phasing. If the applicant proposes to pursue or reserve the
29 option of a phased construction approach, Exhibit B should include a detailed discussion of the
30 phasing and how phasing is proposed (e.g., by facility component, acreage, etc.). Exhibit B
31 should also include details of activities associated with routine operations and maintenance
32 activities. The ASC shall include detailed descriptions of major components, structures and
33 systems, including a description of the size (including maximum height), type and configuration
34 of equipment used to generate electricity and similar descriptions for all related or supporting
35 facilities as defined under ORS 469.300(24), including any structure (including roads)
36 constructed or substantially modified solely to serve the proposed facility. The ASC shall also
37 include detailed descriptions of equipment and systems for spill containment and fire
38 prevention and control.

39
40 If the applicant requests Council review and approval of flexibility to site proposed facility
41 components anywhere within the site boundary or seeks approval of a micrositing area, the
42 applicant must evaluate maximum impacts of siting facility components anywhere within the
43 entirety of the site boundary or established micrositing area (i.e., desktop and/or field surveys
44 must include the entire site boundary or micrositing area, if different; impact assessment must

1 be based on maximum impact facility layout option within the site boundary or micrositing
2 area, if different).

3
4 **(c) Exhibit C – Location**

5
6 **Applicable Paragraphs:** All paragraphs apply.

7
8 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]

9
10 **Discussion:** Maps shall indicate the “site boundary” as defined in OAR 345-001-0010(54),
11 including any proposed transmission line routes and corridors for which the applicant seeks
12 Council approval. If the applicant seeks flexibility to site facility components anywhere within
13 the site boundary or an established micrositing area, please identify in maps and include an
14 evaluation to support the facility “micrositing area,” to be consistent with the intent of a
15 “micrositing corridor” (OAR 345-001-0010(32)). Maps shall provide enough information for
16 property owners potentially affected by the proposed facility to determine whether their
17 property is within or adjacent to property on which the site boundary is located. Maps shall
18 identify cities and towns, important landmarks and topographic features, using a scale of 1 inch
19 = 2000 feet or smaller when necessary to show detail. Major roads shall be accurately named
20 and roads adjacent to the facility should also be accurately identified.

21
22 The Department requests GIS data showing the proposed facility layout and micrositing
23 areas/corridors (if any), as well as an updated site boundary shapefiles if any changes to the site
24 boundary occurs during the review of the pASC.

25
26 **(d) Exhibit D – Organizational Expertise**

27
28 **Applicable Paragraphs:** All paragraphs apply.

29
30 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000];
31 Organizational Expertise [OAR 345-022-0010]; Retirement and Financial Assurance [OAR 345-
32 022-0050]

33
34 **Discussion:** The Council’s review for the Organizational Expertise standard includes the
35 applicant’s ability to construct, operate, and retire the proposed facility in compliance with
36 Council standards and conditions of the site certificate; and, in a manner that protects public
37 health and safety.

1 Exhibit D shall include an evaluation of the applicant’s compliance history within a reasonable
2 timeframe (e.g. last 5- 10 years). Applicant shall describe whether it is has received citations
3 and the status of resolution of those citations. For constructed and operational facilities of the
4 applicant, provide contact names, website links or communication materials developed for
5 those projects to afford the Department the ability to evaluate applicant’s ability to construct
6 and operate similar facilities.

7
8 Please address and provide drafts of safety programs or plans developed by the applicant for
9 wildfire, emergency and spill response at the site. Please note that Exhibit D requires that if the
10 applicant relies upon mitigation to meet any applicable Council standard, that the applicant
11 provide evidence (i.e., detailed description of mitigation projects) that it can successfully
12 complete such proposed mitigation. Provide contact names or status reports of long-term
13 mitigation to afford the Department the ability to evaluate applicant’s ability implement
14 mitigation/comply with requirements.

15
16 **(e) Exhibit E – Permits**

17
18 **Applicable Paragraphs:** All paragraphs apply.

19
20 **Related Council and Other Standards:** Organizational Expertise [OAR 345-022-0010]

21
22 **Discussion:** Exhibit E shall describe and discuss all permits that the applicant proposes to be
23 included in and governed by the site certificate, as well as state and local permits that are
24 related to the siting, construction, or operation of the proposed facility but are identified as
25 those not to be included in and governed by the site certificate. Exhibit E shall also describe
26 required federal and federally-delegated permits. For federally-delegated permits needed for
27 construction or operation, the applicant must submit a copy of the permit application to the
28 Department, as required under OAR 345-021-0010(1)(e)(F)(ii).

29
30 Although the Council does not have jurisdiction over federally-delegated permits, the Council
31 may rely on the determinations of compliance and the conditions in federally-delegated
32 permits in evaluating the application for compliance with Council standards.

33 Table 2 lists permits that may be required for the proposed facility. Please see the discussion
34 that follows this table for additional information.

Table 2: Potentially Required Permits for EFSC Energy Facilities and the Proposed Facility

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)
State Permits			
Oregon DEQ Basic Air Contaminant Discharge Permit (Batch Plant)		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 ⁴		X ⁴
Removal-Fill Permit	X		
Onsite Sewage Disposal Construction-Installation Permit			X ¹
Water Pollution Control Facilities (WPCF) General Permit 1000			X ¹
Ground Water Permit	X		
Surface Water Permit	X		
Water Right Transfer	X		
Limited Water Use License	X		
ODOT Oversize Load Movement Permit/Load Registration			X
ODOT Access Management Permit			X
ODOT Permit to Occupy or Perform Operations Upon a State Highway			X
SHPO Archaeological Permit	X ⁴		X ⁴
ODA Aeronautical Study of Obstruction Standards	X		
Local Permits			
Umatilla County Conditional Use and Zoning Permit	X		

Table 2: Potentially Required Permits for EFSC Energy Facilities and the Proposed Facility

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)
Umatilla County Installation of Utilities on County and Public Roads Permit and Construction of Road Approaches and Private Road Crossings Permit			X
Umatilla County Building Permit			X
Federal Approvals			
National Environmental Policy Act Compliance (interconnection to BPA transmission system)			X
FAA Notice of Proposed Construction or Alteration (Form 7460-1)		X	
<p>¹ Unless obtained by third-party; see Third-Party Permits discussion.</p> <p>² Currently expired; please see the following discussion.</p> <p>³ State permit that would not be included in or governed by the site certificate. Please see the following discussion.</p> <p>⁴ The Department notes that some state permits may be under EFSC jurisdiction if proposed by the applicant in the ASC, including an ODFW Fish Passage Approval and SHPO Archaeological Permit.</p>			

1

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
7 **Permits**

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

11
12 **Discussion:** The United States Environmental Protection Agency (EPA) has delegated authority

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

14 Clean Air Act. Basic Air Contaminant Discharge Permit would be required for a mobile batch

15 plant. A Basic ACDP authorizes operation of a concrete manufacturing plant that produces more

16 than 5,000 but less than 25,000 cubic yards per year output. ACDPs for mobile, temporary

17 concrete batch plants are associated with the equipment itself. The requirements of OAR 345-

18 021-0000(6) would apply to this federally-delegated permit. If the applicant’s third-party

19 contractor would obtain the ACDP, the requirements described in the Third-Party Permits

20 section below would apply.

21
22 ***Oregon Department of Environmental Quality – Water Quality Division***

23 **Statute and Rule References**

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

26
27 **Permits**

- 28 • National Pollution Discharge Elimination System (NPDES) Construction Stormwater
- 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 Stormwater 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
36 **Discussion:** The EPA has delegated authority to DEQ to issue NPDES Stormwater Discharge

37 permits for construction and operation activities. Based upon the information in the pASC, a

38 NPDES 1200-C permit would be required for facility construction. In accordance with OAR 345-

39 021-0000(6), the applicant must submit to the Department one copy of all applications for

40 federally-delegated permits (including the NPDES permit). Note that the Department will not be

41 able to find the application for site certificate complete before receiving a copy of the NPDES

42 permit application and a letter or other indication from DEQ. The DEQ response must state that

43 the agency has received a permit application from the applicant and provide an estimated date

1 when the agency will complete its review and issue a permit decision. The applicant may
2 incorporate this information into Exhibit I (Soils) or Exhibit BB (Other Information) of the ASC.

3
4 Disposal of concrete batch plant wash water (if a temporary batch plant is necessary) would
5 require either an NPDES 1200-A permit or a WPCF General Permit 1000. If a batch plant was to
6 discharge stormwater from a point source to surface water or to a conveyance system that
7 discharges to surface water, the plant would require an NPDES 1200-A permit. The
8 requirements of OAR 345-021-0000(6) (described in the preceding paragraph) would apply to
9 the NPDES 1200-A permit. If the applicant's third-party contractor would instead obtain the
10 NPDES 1200-A permit, the requirements described in the Third-Party Permits section below
11 would apply. Alternatively, if a batch plant would be located within a construction staging yard
12 for which the applicant would seek coverage under an NPDES 1200-C permit described above,
13 the applicant may seek coverage for a batch plant under the same NPDES 1200-C permit.
14 If a batch plant would not discharge to surface waters, a WPCF General Permit 1000 would
15 instead be required to dispose of process wastewater and stormwater by recirculation,
16 evaporation, and/or controlled see page (see the State Permits discussion below).

17 18 **State Approvals**

19 ***Oregon Department of Aviation***

20 **Statute and Rule References**

- 21 • ORS 836.530 and 836.535
- 22 • OAR Chapter 738, Division 070 (Physical Hazards to Air Navigation)

23 24 **Approval**

- 25 • Determination of No Hazard to Air Navigation
 - 26 ○ EFSC Jurisdictional

27 28 **Discussion**

29 ORS 836.530 authorizes the Oregon Department of Aviation to define physical hazards to air
30 navigation and determine whether specific types or classes of objects or structures constitute
31 hazards. The standards and procedures for determining when a structure or object constitutes
32 a physical hazard to air navigation are found in OAR Chapter 738, Division 070.

33
34 The applicant must identify the distance and direction of the micrositing corridor from the
35 following airports:

- 36
37 • Eastern Oregon Regional Airport at Pendleton (PDT)
- 38 • Hermiston Municipal (HRI)
- 39 • Lexington (9S9)
- 40 • Boardman (M50)
- 41 • West Buttercreek (OL02)

1 In addition, applicant must provide the preliminary latitude, longitude, height above mean sea
2 level, and height above ground level for any proposed facility components that would exceed
3 200 ft in height above ground level or would be:

- 4 • within 20,000 ft of an airport listed above and would exceed a 100:1 surface from any
5 point on the runway of each airport with at least one runway more than 3,200 ft.
- 6 • within 10,000 ft of an airport listed above and would exceeds a 50:1 surface from any
7 point on the runway of each airport with its longest runway no more than 3,200 ft.
- 8 • within 5,000 ft of a public use heliport and would exceed a 25:1 surface from each
9 heliport.

10
11 The applicant must include the requested data using FAA Form 7460-1 or in another format
12 that is approved by the Department. The applicant may also provide a supplemental analysis of
13 why it believes the proposed facility components would not exceed the obstruction standards
14 in OAR 738-070-0100 or, if the applicant believes the components would exceed the standards,
15 why they would not constitute a hazard to air navigation. This information may be provided as
16 part of one or more of the following exhibits: Exhibit E, Exhibit U, Exhibit BB, and Exhibit CC.
17 Satisfaction of this requirement does not relieve the applicant of its responsibility to comply
18 with any regulations and requirements of the Federal Aviation Administration under 14 CFR
19 Part 77.

20 21 **State Permits**

22 23 ***Oregon Department of Fish and Wildlife***

24 **Statute and Rule References**

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

27 28 **Permit**

- 29 • Fish Passage Plan Approval
 - 30 ○ EFSC jurisdictional

31
32 **Discussion:** OAR Chapter 635, Division 412 (Fish Passage) requires upstream and downstream
33 fish passage at all existing or new artificial obstructions in Oregon waters in which migratory
34 native fish are currently or have historically been present, except under certain clearly defined
35 circumstances. A fish passage plan that complies with OAR Chapter 635, Division 412 shall be
36 included in Exhibit BB of the application, and Fish Passage Plan approval is to be included in and
37 governed by the site certificate, unless the applicant demonstrates that the design and location
38 of the proposed facility would not trigger this requirement.

39 40 ***Oregon Department of State Lands***

41 **Statute and Rule References**

- 42 • ORS 196.795-990 (Removal of Material, Filling)

- OAR Chapter 141, Division 85 (Administrative Rules Governing the Issuance and Enforcement of Removal-Fill Authorizations Within Waters of Oregon Including Wetlands)

Permit

- Removal-Fill Permit
 - EFSC jurisdictional

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

If a desktop analysis indicates the likelihood of wetlands or waters of the state being present onsite, the applicant must conduct a wetland delineation, to be sent to Department of State Lands (DSL) for concurrence, according to OAR Chapter 141, Division 90 rules. A wetland delineation determines the presence and location of “waters of this state,” as defined in OAR 141-085-0510(91), within the analysis area. A determination from DSL could also confirm if wetlands or waters of the state are not present on site. Depending upon facility impacts to “waters of this state,” if present, a removal-fill permit may be necessary, and the application for site certificate should include information establishing whether a removal-fill permit is required. If a removal-fill permit is required, the ASC shall include a concurred delineation from DSL and a complete application for an individual permit which demonstrates consistency with ORS 196.825(1), and provides enough information for determinations and considerations under ORS 196.825(3) and OAR 141-085-0565.

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

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

1 **Oregon Department of Environmental Quality**

2 **Statute and Rule References**

- 3 • ORS Chapter 454 (Sewage Treatment and Disposal Systems)
- 4 • ORS Chapter 468B (Water Quality)
- 5 • OAR Chapter 340, Division 45 (Regulations Pertaining to NPDES and WPCF Permits)
- 6 • OAR Chapter 340, Division 71 (Onsite Wastewater Treatment Systems)
- 7 • OAR Chapter 340, Division 48 (Certification of Compliance with Water Quality
- 8 Requirements and Standards)

9

10 **Permits**

- 11 • Onsite Sewage Disposal Construction-Installation Permit
 - 12 ○ EFSC-jurisdictional unless obtained by third-party; see Third-Party Permits
 - 13 discussion
- 14 • Water Pollution Control Facilities (WPCF) General Permit 1000
 - 15 ○ EFSC-jurisdictional unless obtained by third-party; see Third-Party Permits
 - 16 discussion
- 17 • WPCF General Permit 1700-B (DEQ Expired/Not Required for Panel Washing)
- 18 • Clean Water Act Section 401 Water Quality Certification
 - 19 ○ This permit would not be included in or governed by the site certificate
 - 20

21 **Discussion:** Facilities with an on-site sewage disposal system must obtain a Construction-

22 Installation Permit before construction for licensed on-site septic system with a daily sewage

23 flow of fewer than 2,500 gallons during operation.

24

25 If a temporary batch plant is necessary, disposal of concrete batch plant wash water would

26 require either a Water Pollution Control Facilities (WPCF) General Permit 1000 or a NPDES

27 permit. Concrete batch plants that dispose of process wastewater and stormwater by

28 recirculation, evaporation, and/or controlled seepage with no discharge to surface waters

29 require a WPCF General Permit 1000. A WPCF General Permit 1000 is a state permit under

30 Council jurisdiction. If the applicant's third-party contractor would obtain the necessary WPCF

31 General Permit 1000 directly from DEQ, this permit would be related to the siting and operation

32 of the proposed facility but would not be included in and governed by the site certificate (see

33 the Third-Party Permits discussion below). If a batch plant was to instead discharge stormwater

34 from a point source to surface water or to a conveyance system that discharges to surface

35 water, a plant would require an NPDES 1200-A permit or coverage under the NPDES 1200-C

36 permit for the construction yard in which it would be located (as discussed under the federally-

37 delegated permits discussion of this Project Order).

38

39 In the pASC the applicant indicates that the solar modules may be washed once or twice

40 annually and the wash water would be released to the ground and allowed to evaporate and

41 infiltrate. DEQ indicated to the Department that a WPCF General Permit 1700-B is not required

42 for solar array washing activities that would not result in discharge to surface waters, storm

43 sewers, or dry wells, and that would not use acids, bases, metal brighteners, steam, or heated

1 water. The use of biodegradable, phosphate-free cleaners with cold water is allowed. However,
2 cleaning only with cold water is recommended. Chemicals, soaps or detergents must be used
3 sparingly. The applicant or its third-party contractor should seek guidance from DEQ prior to
4 conducting solar module washing activities.

5
6 If a Section 404 Permit is needed from the Corps for the discharge of dredge or fill material in
7 waters of the United States, a Section 401 Water Quality Certificate must be granted by DEQ
8 before a Section 404 permit may be issued. This approval would not be included in or governed
9 by the site certificate.

10
11 ***Oregon Water Resources Department***
12 **Statute and Rule References**

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

22
23 **Permits**

- 24 • Ground water permit
 - 25 ○ EFSC jurisdictional
- 26 • Surface water permit
 - 27 ○ EFSC jurisdictional
- 28 • Water right transfer
 - 29 ○ EFSC jurisdictional
- 30 • Limited License
 - 31 ○ EFSC jurisdictional

32
33 **Discussion:** Under OAR 345-022-0000(1)(b), the Council must determine whether the proposed
34 facility would comply with all other Oregon statutes and administrative rules identified in this
35 Project Order, including those administered by OWRD listed above. OAR 345-021-0010(1)(o)(F)
36 requires that if a proposed facility needs a groundwater permit, surface water permit, or water
37 right transfer, that a decision on authorizing such a permit rests with the Council. Please note
38 that because limited licenses are for the use or storage of ground water or surface water, a
39 decision on authorizing OWRD to issue a limited license also rests with the Council.

40
41 Please see Section III(o), Exhibit O - Water Use, for additional discussion and application
42 requirements. As noted in the pASC, the applicant or its contractor intends to obtain water for
43 facility construction and operation from the City of Hermiston, under an existing municipal

1 water right. If a proposed water source is not sufficient, an alternative offsite source would
2 need to be considered, or water will be obtained from a new onsite well to be permitted under
3 a limited water use license and used during operations. If water for construction and operation
4 is not available from permitted sources, the applicant or its contractor would need to obtain
5 the necessary water right permit or use authorization directly from the Oregon Water
6 Resources Department (OWRD). However, as stated in this section, water use permits are state
7 permits under EFSC jurisdiction and must be included in and governed by the site certificate. If
8 needed, a water right permit must be processed through the EFSC review process and cannot
9 be independently secured by the applicant from OWRD.

10
11 During operations, the applicant intends to have water trucked in for solar panel washing from
12 City of Hermiston under an existing municipal water right. If the applicant proposes to construct
13 and operate an on-site well(s) that, together, would use less than 5,000 gallons per day, the
14 well would be exempt from OWRD permit requirements. Pursuant to OAR 690-215-0080, the
15 landowner may be required to install totalizing flowmeters or dedicated measuring tubes on a
16 well exempted by ORS 537.545 (Exempt uses). A Limited License would be required if the well
17 would provide more than 5,000 gallons of water per day, and would be included and governed
18 by the site certificate.

19
20 ***Oregon Department of Transportation***
21 **Statute and Rule References**

- 22 • ORS 818.030 (Exemptions from Weight Limitations)
- 23 • OAR Chapter 734, Division 82 (Variance Permits Issued for Non-Divisible Loads and Road
24 Use Assessment Fees)
- 25 • OAR Chapter 734, Division 51 (Highway Approaches, Access Control, Spacing Standards,
26 and Medians)
- 27 • OAR Chapter 734, Division 55 (Pole Lines, Buried Cables, and Miscellaneous Operations)

28
29 **Permits**

- 30 • Oversize Load Movement Permit/Load Registration
 - 31 ○ Not EFSC jurisdictional and no additional information needed for the ASC
- 32 • Access Management Permit
 - 33 ○ Not EFSC jurisdictional and no additional information needed for the ASC
- 34 • Permit to Occupy or Perform Operations Upon a State Highway
 - 35 ○ Not EFSC jurisdictional and no additional information needed for the ASC

36
37 **Discussion:** Various permits from Oregon Department of Transportation (ODOT) may be
38 required prior to construction of the facility. Access from Oregon state highways would require
39 an access permit. Utility installations within the right-of-way of a state highway in Oregon
40 require an Occupy or Perform Operations upon a State Highway permit. Movement of
41 construction cranes and other large equipment and materials could also require an Oversize
42 Load Movement permit. These permits are not related to facility siting and are not included in

1 or governed by the site certificate. The applicant or its contractor must secure any applicable
2 ODOT permits directly from ODOT, independent of the site certificate process.

3
4 ***State Historic Preservation Office***

5 **Statute and Rule References**

- 6 • ORS Chapter 97, 358, and 390;
- 7 • OAR Chapter 736, Division 51

8
9 **Permits**

- 10 • Archaeological Permit
 - 11 ○ May be EFSC jurisdictional if proposed in in ASC; if so, then ASC materials
 - 12 required

13
14 **Discussion:** Per ORS 390.235 and 358.920 a person may not excavate or alter a known
15 archaeological site on public or private lands, or make an exploratory excavation on public lands
16 to determine the presence of an archaeological site, or remove from public or private lands any
17 material of an archaeological, historical, prehistoric or anthropological nature without first
18 obtaining a permit issued by the State Historic Preservation Office (SHPO). An Archaeological
19 Permit is needed for any excavation or artifact recovery within a known archaeological site on
20 non-federal public lands and private lands in Oregon. This permit is also needed for any
21 subsurface investigation on non-federal public lands. It is important to note that a “known site”
22 is one that any individual is aware of, or that is documented with the state or any other
23 institution. SHPO Archaeological Permits have a 30-day review period, require tribal
24 consultation during review, and must meet SHPO standards.

25
26 During facility construction, if a previously unidentified archaeological site is discovered, all
27 construction will cease and the applicant will report the finding to SHPO and the Department
28 immediately. In that instance, the permit may be required based on SHPO’s determination. This
29 permit would not be included in and governed by the site certificate.

30
31 SHPO issues Archaeological Permits in accordance with ORS 390.235 and OAR 736-051-0000
32 through 0090. If an applicant proposes the SHPO Archaeological permits in the ASC to be
33 governed by the site certificate, the SHPO permit information requirement would apply to the
34 ASC. If an applicant proposes a SHPO Archaeological Permit to be included and governed by the
35 site certificate, advance coordination with the Department and SHPO is recommended.

36
37 **Local Permits**

38
39 **Land Use Ordinance References**

- 40 • Umatilla County Development Code (UCDC)
- 41 • Umatilla County Comprehensive Plan

42
43 **Permits**

- 1 • Umatilla County Conditional Use Permit
- 2 • Umatilla County Zoning Permit, per affected taxlot
- 3 • Umatilla County Right-of-Way Permit (if applicable)

4
5 **Discussion:** The proposed facility is located in Umatilla County and EFSC appointed the County
6 as a Special Advisory Group (SAG) to assist in the review of the proposed facility. The applicant
7 requests that EFSC determine compliance with the substantive criteria of the Umatilla County
8 Comprehensive Plan and Umatilla County Development Code (UCDC) under ORS 469.504(1)(b).
9 The Umatilla County conditional use permit would be included in and governed by the site
10 certificate. Any Umatilla County Right-of-Way Permit would not be included in or governed by
11 the site certificate. In an initial comment letter on the pASC from the SAG, the SAG identified
12 the applicable substantive criteria that applies to the facility. The SAG also stated that prior to
13 land development or construction of structures in Umatilla County a zoning permit must be
14 secured for each parcel (tax lot) as outlined in UCDC 152.612 (D) and defined in UCDC 152.003.

15
16 **Third-Party Permits**

17
18 **Discussion:** As noted in the pASC, the applicant may rely upon third-party permits for access to
19 resources necessary for facility construction and operation. If the applicant relies upon a state
20 or local government permit issued to a third party that is related to the siting of the proposed
21 facility, the applicant must identify each third-party permit, and, for each, include evidence that
22 the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement
23 with the third party for access to the resource or service to be secured by that permit; evidence
24 that the third party has or, has a reasonable likelihood of obtaining, the necessary permit; and,
25 an assessment of the impact of the proposed facility on any permits that a third party has
26 obtained and on which the applicant relies to comply with any applicable Council standard
27 (OAR 345-021-0010(1)(e)(E)). Any permits obtained by a third-party related to resources
28 necessary for construction or operation of the facility must be identified in the pASC. In
29 particular, permits for resources necessary for construction, such as rock/concrete and water,
30 must be identified. Resources necessary for operation, such as an interconnection agreement
31 with BPA or UEC must be identified. These third-party permits and agreements must also
32 include evidence that the applicant either has, or has a reasonable likelihood of entering into, a
33 contract or other agreement with the third party for access to the resource or service to be
34 secured by that permit.

35
36 If the applicant relies on a federally-delegated permit issued to a third party that is related to
37 the siting of the proposed facility, the applicant must identify the third-party permit and include
38 evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or
39 other agreement with the third party for access to the resource or service to be secured by that
40 permit. The applicant must provide evidence that the responsible agency has received the

1 permit application, and provide the estimated date when the responsible agency will complete
2 its review and issue a permit decision (OAR 345-021-0010(1)(e)(F)).

3
4 In accordance with OAR 345-022-0010(4), if the applicant relies on a permit or approval issued
5 to a third party and the third party does not have the necessary permit or approval at the time
6 the Council issues the site certificate, the Council may issue the site certificate subject to the
7 condition that the certificate holder shall not commence construction or operation as
8 appropriate until the third party has obtained the necessary permit or approval and the
9 applicant has a contract or other arrangement for access to the resource or service secured by
10 that permit or approval.

11
12 **(f) Exhibit F – Property Owners**

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

15
16 **Related Council and Other Standards:** Noticing Requirements under OAR 345 Division 15

17
18 **Discussion:** As the proposed facility would be located in an Exclusive Farm Use zone, OAR 345-
19 020-0010(1)(f)(A) applies and requires notice to property owners;

20
21 (iii) Within 500 feet of the property which is the subject of the application, where the
22 property is within a farm or forest zone;

23
24 The Council requires notice to all owners of record (as shown on the most recent property tax
25 assessment roll obtained from the affected county) within the specified distance from the
26 property on which the site boundary is located. In order to ensure notifications are provided
27 using an up-to-date property owner list, Exhibit F in the pASC should indicate that, pursuant to
28 direction by the Department, the property owner list will be generated just prior to the
29 Department’s determination of ASC completeness and in coordination with Department staff.
30 The property owner notification list should be provided in Excel and PDF format, with the Excel
31 version as received from the county, and must be accompanied by maps that include the site
32 boundary, the tax lots on which the site boundary is located, the buffered area surrounding the
33 tax lots on which the site boundary is located consistent with the OAR 345-021-0010(1)(f)(A) site
34 distance requirement, and the properties/tax lots that are within the applicable distances. Maps
35 shall correspond to the property owner list, be legible, and clearly identify tax lot ID numbers as
36 well as adjacent road names. The Department requests that evidence be provided to document
37 the date the property owner information was obtained from the county.

1 **(g) Exhibit G – Materials Analysis**

2
3 **Applicable Paragraphs:** All paragraphs apply.

4
5 **Related Council and Other Standards:** Organizational Expertise [OAR 345-022-0010]; Soil
6 Protection [OAR 345-022-0022]; Retirement and Financial Assurance [OAR 345-022-0050]

7
8 **Discussion:** Exhibit G shall include a detailed inventory of the quantities of industrial materials
9 flowing into and out of the proposed facility during construction and operation and should
10 ensure that this information is consistent with other Exhibits that describe the materials and
11 equipment used during construction and operation. The applicant shall include in the
12 application any proposed fuel storage areas, vehicle maintenance areas, or other areas that will
13 be utilized for activities that could store hazardous materials. The applicant shall identify the
14 expected storage locations and quantities of hazardous and non-hazardous materials expected
15 to be used during construction and operation of the facility. Exhibit G shall include copies of
16 plans the applicant proposes to manage hazardous and non-hazardous materials during
17 construction and operation.

18
19 **(h) Exhibit H – Geologic and Soil Stability**

20
21 **Applicable Paragraphs:** All paragraphs apply

22
23 **Related Council and Other Standards:** Structural Standard [OAR 345-022-0020]; Soil Protection
24 [OAR 345-022-0022]

25
26 **Discussion:** The Oregon Department of Geology and Mineral Industries (DOGAMI) provides
27 technical review and recommendations on compliance with the Council’s Structural Standard. In
28 accordance with OAR 345-021-0010(1)(h)(B), the applicant consulted with DOGAMI and
29 provided a summary of the consultation in the pASC. The summary must address the
30 appropriate methodology and scope of the seismic hazards and geology and soil-related hazards
31 assessments, and the appropriate site-specific geotechnical work that must be performed for
32 the ASC. The consultation shall identify all assumptions applicant intends to utilize in its
33 evaluation of OAR 345-022-0020 (e.g., site class design, site-specific probabilistic hazard
34 assessment, etc).

35
36 A geologic report included in Exhibit H shall meet the Oregon State Board of Geologist
37 Examiners geologic report guidelines, as determined based on consultation with DOGAMI.

38
39 As described in the Structural Standard at OAR 345-022-0020(2), the Council may not impose
40 the Structural Standard to approve or deny an ASC for a proposed facility that would produce
41 power from solar energy, though the Council may apply the requirements of OAR 345-022-
42 0020(1) to impose conditions on a site certificate issued for such a facility.

1 **(i) Exhibit I – Soils**

2
3 **Applicable Paragraphs:** All paragraphs apply.

4
5 **Related Council and Other Standards:** Soil Protection [OAR 345-022-0022]; Structural Standard
6 [OAR 345-022-0020]

7
8 **Discussion:** This exhibit shall identify the major soil types and include a description of current
9 and historical (if distinct from current) land uses that require or depend on productive soils. If
10 applicant utilizes NRCS web-soil survey data to evaluate wind and water erosion potential at the
11 proposed facility site, Exhibit I shall include accurate references and hyperlinks to source data.
12 The applicant shall include information describing the impact of construction and operation of
13 the proposed facility on soil conditions in the analysis area, including potential impacts to soils
14 on adjacent properties. The application can cross-reference any applicable information related
15 to the federally-delegated NPDES 1200-C permit application. An erosion and sediment control
16 plan must be provided for review if the applicant will rely upon the erosion and sediment
17 control plan to meet the Soil Protection standard. Please note that an erosion and sediment
18 control plan that meets the NPDES 1200-C requirements may not necessarily be sufficient to
19 meet the EFSC Soil Protection standard. See Section III(e), *Exhibit E – Permits*, for additional
20 discussion of federally-delegated permits.

21
22 **(j) Exhibit J – Waters of the State and Removal-Fill**

23
24 **Applicable Paragraphs:** All paragraphs apply.

25
26 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000];
27 Removal of Material, Filling [ORS 196.795-.990]; Administrative Rules Governing the Issuance
28 and Enforcement of Removal-Fill Authorizations Within Waters of Oregon Including Wetlands
29 [OAR Chapter 141, Division 85]

30
31 **Discussion:** Per Exhibit J requirement, the ASC shall include a description of all areas within the
32 site boundary that might be waters of the state and a map(s) showing the location of these
33 features. Based on pASC Exhibit J, the applicant provides an assessment of the site that
34 indicates there is not the presence of wetland or waters of the state. If there are wetlands or
35 waters of the state and impacts cannot be avoided and the Oregon Department of State Lands
36 (DSL) determines that a removal-fill permit is necessary for the proposed facility, the
37 information required for Council to make a decision on the removal-fill permit application must
38 be included in the ASC. Wetland delineation reports and removal-fill permit application
39 materials can be sent directly by the applicant to DSL; however, please note that all materials as
40 well as DSL’s concurrence with the wetland delineation must also be submitted to the
41 Department as part of ASC Exhibit J. The Department will work closely with DSL in review of the
42 removal-fill permit application, if applicable. If a removal-fill permit is necessary for the
43 proposed facility, a DSL draft removal-fill permit with draft conditions, must be submitted to
44 the Department by DSL to be included as an attachment to the draft proposed order. For EFSC-

1 jurisdictional facilities, authorization of a removal-fill permit is an EFSC decision; should a
2 permit be issued, the Department and DSL would maintain dual responsibility for compliance
3 with any associated permit conditions. See Section III(e), *Exhibit E – Permits*, for additional
4 discussion of state permits.

5
6 **(k) Exhibit K – Land Use**

7
8 **Applicable Paragraphs:** Paragraphs (A) and (C) of the rule apply.

9
10 **Related Council and Other Standards:** Land Use [OAR 345-022-0030]; Public Services [OAR 345-
11 022-0110];

12
13 **Discussion:** The Council’s Land Use standard requires an evaluation for compliance with the
14 statewide planning goals. Under ORS 469.504(1), the applicant may establish compliance with
15 the applicable statewide planning goals either by obtaining local land use approval under ORS
16 469.504(1)(a) or by obtaining Council approval under ORS 469.504(1)(b). The applicant
17 indicated in its Request for Expedited Review and pASC that it has elected to seek a Council
18 determination of compliance under ORS 469.504(1)(b). Within Exhibit K, since the applicant has
19 elected to obtain a Council determination on land use under ORS 469.504(1)(b), paragraphs A
20 and C of OAR 345-021-0010(1)(k) apply; paragraph B does not apply.

21
22 The facility would be located within the Exclusive Farm Use zone in Umatilla County. Pursuant
23 ORS 469.480(1), Council must designate as a Special Advisory Group (SAG) the governing body
24 of any local government within whose jurisdiction the facility is proposed to be located. At the
25 November 19, 2021 Council meeting, the Council appointed the Umatilla County Board of
26 Commissioners as the Special Advisory Groups to assist in the application review for the
27 proposed facility. As provided in ORS 469.401(3), if the Council issues a site certificate, Umatilla
28 County would be bound to issue all required permits and other land use approvals, subject to
29 the conditions set forth in the site certificate, that are included in and governed by the site
30 certificate. The applicant shall discuss each of the applicable substantive criteria from the
31 Umatilla County Comprehensive Plan, Umatilla County Development Code, and shall
32 demonstrate how the proposed facility complies with those criteria. The Umatilla County SAG
33 provided information about the applicable substantive criteria in a comment letter on the 2021
34 pASC. If the proposed facility does not comply with one or more of the applicable substantive
35 criteria, the applicant must demonstrate that the proposed facility nevertheless complies with
36 the applicable statewide planning goals or that an exception to Statewide Planning Goal 3 is
37 justified under ORS 469.504(2) and OAR 345-022-0030(4).

38
39 Exhibit K shall also provide evidence that the proposed facility would comply with any directly-
40 applicable Land Conservation and Development Commission (LCDC) administrative rules and
41 statutory requirements related to the proposed facility, including ORS 215.283 and 215.274.
42 Exhibit K shall provide evidence that the proposed facility would comply with the applicable
43 administrative rules at OAR 660-033-0130(38) related to development of solar power
44 generation facilities, as well as rules related to associated transmission lines to energy

1 generating facilities. Please note that in May 2019 LCDC adopted permanent amendments to
2 OAR 660-033-0130(38).

3
4 The proposed facility would require a Goal 3 exception. The Council’s goal exception process is
5 described at OAR 345-022-0030(4). A Goal 3 exception is necessarily based on site-specific
6 issues and reasons; as such, the applicant must provide site-specific evidence of the how the
7 proposed solar array location supports the evaluation of the Goal 3 exception. Reasons that
8 evaluate impacts to agriculture should include relevant information about the value of the
9 proposed site boundary area to the local agricultural community, including historic (last 10
10 years) agricultural revenue and number of workers and other agricultural resources/activities
11 which rely upon the impacted land. Reasons that support a local economic benefit should
12 provide specific and detailed information about how the proposed facility would provide
13 economic benefits which differ from any other type of development. The applicant should
14 address comments by reviewing agencies, the SAG, and stakeholder groups about impacts to
15 agriculture in the context of the Goal 3 exception request. The Department strongly
16 recommends the review and inclusion in Exhibit K of the items discussed in the Memo sent to
17 the applicant on October 19, 2021 titled; *Reasons Exception Requests for Statewide Planning*
18 *Goal 3, Agricultural Lands, for Proposed Solar Photovoltaic Energy Facilities*. See also Section
19 III(e), *Exhibit E – Permits*, for additional discussion of local permits.

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

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

24
25 **Related Council and Other Standards:** Protected Areas [OAR 345-022-0040]

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

40
41 **(m) Exhibit M – Financial Capability**

42
43 **Applicable Paragraphs:** All paragraphs apply.

1 **Related Council and Other Standards:** Retirement and Financial Assurance [OAR 345-022-
2 0050]; Organizational Expertise [OAR 345-022-0010]

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

13
14 **(n) Exhibit N – Non-Generating Facility Need**

15
16 **Applicable Paragraphs:** Exhibit N does not apply because the proposed facility is not a
17 nongenerating facility for which the applicant must demonstrate need for the facility.

18
19 **(o) Exhibit O – Water Use**

20
21 **Applicable Paragraphs:** All paragraphs apply except (D).

22
23 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]; OAR
24 690, Divisions 310 and 380 (Water Resources Department permitting requirements)

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

32
33 If the proposed facility does not need a groundwater permit, a surface water permit, or a water
34 right transfer, Exhibit O shall include an explanation as to why such a permit or transfer is not
35 required for construction and operation of the proposed facility, as required by paragraph (E). If
36 the applicant relies upon a municipal or quasi municipal water right from a municipality or
37 water district, the Department recommends providing the water right information to
38 determine if it is an appropriate use under the water right for the municipality.

1 The Department also recommends the municipality or water district provide varication of the
2 water right and ability to provide water for construction and/or operation of the proposed
3 facility. If a groundwater permit, a surface water permit, or a water right transfer is necessary,
4 the ASC shall include the evidence and application materials to support a determination by
5 Council that OWRD should issue such a permit. See Section III(e) Exhibit E – *Permits*, for a
6 discussion of OWRD permits and Section III(u) – *Public Services*, for information requirements
7 related to water service providers.

8
9 **(p) Exhibit P – Fish and Wildlife Habitat**

10
11 **Applicable Paragraphs:** All paragraphs apply.

12
13 **Related Council and Other Standards:** Fish and Wildlife Habitat [OAR 345-022-0060]

14
15 **Discussion:** The applicant shall and has been in ongoing consultation with Oregon Department
16 of Fish and Wildlife (ODFW) in developing the ASC materials. Exhibit P shall include analysis of
17 how the evidence provided supports a finding by the Council that the proposed facility meets
18 the Council’s Fish and Wildlife Habitat standard. OAR 345-021-0010(1)(p) provides that Exhibit
19 P must include a description of biological and botanical surveys performed that support the
20 information in this exhibit, including a discussion of the timing and scope of each survey. Exhibit
21 P must also provide baseline surveys of all state sensitive species that may be present in the
22 analysis area performed according to a protocol approved by the Department and ODFW.

23
24 Oregon Fish and Wildlife Habitat Mitigation Policy (OAR Chapter 635, Division 415) classifies six
25 habitat categories and establishes a mitigation goal for each category. The applicant must
26 identify the appropriate habitat category for all areas affected by the proposed facility and
27 provide the basis for each category designation. The habitat classification is subject to the
28 Department and ODFW review. A map showing the different habitat categories within the
29 analysis area is required under sub-paragraph (C) of OAR 345-021-0010(1)(p), and inclusion of
30 vegetation classes within the map is recommended. The map must be of sufficient scale to
31 show details. Exhibit P must include tables depicting the estimated temporary and permanent
32 impacts, broken down by habitat categories and subtype.

33
34 The applicant must show how it would comply with the habitat mitigation goals and standards
35 by appropriate monitoring and mitigation, including measures proposed by the applicant to
36 avoid, reduce, and/or mitigate adverse impacts to habitat and state sensitive species. This
37 information shall be incorporated into a proposed Revegetation and Noxious Weed Control
38 Plan and a proposed Habitat Mitigation Plan (HMP) as attachments to Exhibit P. Exhibit P and
39 the HMP must clearly demonstrate how the applicant will provide mitigation, including
40 compensatory mitigation, in accordance with the Council’s standard. This includes identifying in
41 the HMP the location of a specific habitat mitigation area that could be used to provide
42 compensatory mitigation, as well as ecological uplift mitigation actions that could be
43 implemented at the habitat mitigation area to provide the appropriate mitigation. The HMP
44 shall include results of a desktop or field-level survey assessing the habitat categories of the

1 habitat mitigation area. The HMP shall describe the mechanism, or mechanism options, for
2 acquiring the legal right to maintain and enhance the habitat mitigation area. The HMP shall
3 include draft success criteria for the proposed ecological uplift actions, and describe a process
4 for evaluating monitoring and reference site locations, prior to construction. This information is
5 required for the Department to find the application complete. It is recommended that the
6 applicant provide a copy of any agreement or other similar documentation from landowner or
7 land management entity that demonstrates a likelihood of securing an easement or legal rights
8 to the proposed habitat mitigation area for which the HMP would apply.

9
10 **(q) Exhibit Q – Threatened and Endangered Species**

11
12 **Applicable Paragraphs:** All paragraphs apply.

13
14 **Related Council and Other Standards:** Threatened and Endangered Species [OAR 345-022-
15 0070]

16
17 **Discussion:** The ASC shall include a list of state-listed endangered and threatened species that
18 have potential to occur in the analysis area, which as discussed in Section IV., *Analysis Area* is
19 the site boundary and 5 miles from the site boundary. The applicant shall identify these species
20 based on a review of literature, consultation with knowledgeable individuals, and reference to
21 the list of species maintained by the Oregon Biodiversity Information Center.

22
23 For state-listed threatened or endangered plant species, field surveys are required for any
24 species that may occur within the analysis area and may potentially be impacted by the facility.
25 The applicant shall consult with ODFW and Oregon Department of Agriculture (ODA) Native
26 Plant Conservation Program, if applicable, regarding field survey methods, appropriate survey
27 seasons, qualifications of field survey personnel, and the information to be included in a field
28 survey report.

29
30 **(r) Exhibit R – Scenic Resources**

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

33
34 **Related Council and Other Standards:** Scenic Resources [OAR 345-022-0080]

35
36 **Discussion:** The ASC shall include an analysis of potential impacts of the proposed facility on
37 scenic resources identified as significant or important in local land use plans, tribal land
38 management plans and federal land management plans for any lands located within the
39 analysis area. For the purposes of Exhibit R, “local” land use plans include state, county, and city
40 planning documents or inventories. For any significant or important scenic resources identified
41 in a local, tribal or federal land management plan, the applicant shall include in the ASC an
42 evaluation of the proposed facility’s consistency or compliance with any development or land
43 use criteria included in the land management plan for the identified resource. ASC Exhibit R
44 shall include a **copy of the portion(s)** of the management plan that identifies the resource as

1 significant or important. The applicant shall also describe the measures it proposes to avoid,
2 reduce, or otherwise mitigate any significant adverse impacts to these scenic resources. A visual
3 impact assessment is required as part of Exhibit R; while no specific methodology is required by
4 EFSC rule, the applicant must submit evidence adequate to demonstrate why the proposed
5 facility is in compliance with the Scenic Resources standard. Visual simulations or other visual
6 representations are not required but can provide important evidence for use by the
7 Department and Council in understanding the potential visual impact of the proposed facility to
8 Scenic Resources.

9
10 **(s) Exhibit S – Historic, Cultural and Archaeological Resources**

11
12 **Applicable Paragraphs:** All paragraphs apply.⁹

13
14 **Related Council and Other Standards:** Historic, Cultural, and Archaeological Resources [OAR
15 345-022-0090]

16
17 **Discussion:** The ASC shall include a discussion of the survey methodology used to identify and
18 evaluate potentially impacted historic, cultural and archaeological resources. Survey
19 methodologies should include an evaluation of desktop studies and literature review and a
20 discussion of field studies conducted according to current State Historic Preservation (SHPO)
21 Guidelines or a basis and discussion of how and why methodologies differed from SHPO
22 guidance. The applicant should work closely with the SHPO and the Department to understand
23 the report formatting and submission requirements, and to receive guidance on any survey
24 protocols.

25
26 Exhibit S shall discuss survey areas, and the results of all surveys conducted for historic, cultural,
27 and archaeological resources, as well as an analysis of any significant adverse impacts
28 anticipated and proposed mitigation measures. Exhibit S materials shall include an inventory,
29 impact assessment, and proposed mitigation measures (if applicable) for potential impacts to
30 historic, cultural or archaeological resources that have been listed on, or would likely be listed
31 on the National Register of Historic Places (NRHP), which includes a full evaluation of all NRHP
32 criterion (A-D). The ASC shall also include an evaluation (including potential impacts, avoidance
33 and minimization measures, and mitigation, as appropriate), of archaeological objects, as
34 defined in ORS 358.905(1)(a), or archaeological sites, as defined in 358.905(1)(c) on private
35 land, and archaeological sites, as defined in ORS 358.905(1)(c) on public land, as applicable.
36

⁹ 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 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.

1 It is recommended that the applicant continue to work closely with the Confederated Tribes of
2 the Umatilla Indian Reservation and the Confederated Tribes of the Ward Springs.

3
4 As described in the Historic, Cultural, and Archaeological Resources standard at OAR 345-022-
5 0090(2), the Council may issue a site certificate for a facility that would produce power from
6 solar energy without making the findings of the Historic, Cultural, and Archaeological Resources
7 standard at OAR 345-022-0090(1), though the Council may apply the requirements of OAR 345-
8 022-0090(1) to impose conditions in a site certificate issued for such a facility.

9
10 **(t) Exhibit T – Recreation**

11
12 **Applicable Paragraphs:** All paragraphs apply.

13
14 **Related Council and Other Standards:** Recreation [OAR 345-022-0100]

15
16 **Discussion:** The ASC shall analyze the importance of recreational opportunities in the analysis
17 area using the factors listed in OAR 345-022-0100(1), discuss any significant potential adverse
18 impacts to important recreational opportunities, and describe measures proposed to avoid,
19 minimize or mitigate those impacts. Please list all recreational opportunities in the analysis area
20 and provide the applicant’s analysis of whether those recreational opportunities are
21 recommended as “important” or not. The importance of recreational opportunities is assessed
22 based on five factors outlined in the standard: special designation or management, degree of
23 demand, outstanding or unusual qualities, availability or rareness, and irreplaceability or
24 irretrievability of the recreational opportunity. Provide references including data sources and
25 hyperlinks to data sources which were reviewed to evaluate factors.

26
27 A visual impact assessment is required as part of Exhibit T; while no specific methodology is
28 required by EFSC rule, the applicant must submit evidence adequate to demonstrate how the
29 proposed facility would comply with the Recreation standard. Visual simulations or other visual
30 representations are not required but can provide important evidence for use by the
31 Department and Council in understanding the potential visual impact of the proposed facility to
32 important recreational opportunities. As described under the Protected Areas standard section
33 above, please note that compliance with the DEQ noise rules (Exhibit X) does not correlate to
34 compliance with the noise assessment considered in the Recreation standard. Particularly,
35 while construction noise is exempt from the DEQ noise rules, construction noise must be
36 considered under the Recreation standard. However, information developed to demonstrate
37 compliance with the DEQ noise rules (such as noise modeling) can be used in the assessment
38 under the Recreation standard.

39
40 **(u) Exhibit U – Public Services**

41
42 **Applicable Paragraphs:** All paragraphs apply.

1 **Related Council and Other Standards:** Public Services [OAR 345-022-0110]; Land Use [OAR 345-
2 022-0030]

3
4 **Discussion:** The ASC shall provide information related to the proposed facility’s potential
5 impacts to the ability of public and private providers within the analysis area to provide: sewers
6 and sewage treatment, water, storm water drainage, solid waste management, housing, air and
7 vehicular and air traffic safety, police and fire protection, health care and schools (OAR 345-
8 022-0110). Exhibit U should include letters from local public services providers to demonstrate
9 that the proposed facility would not cause a significant adverse impact on the ability of those
10 providers to provide their services, in accordance with the Public Services standard. Letters
11 obtained from public service providers should include analysis indicating that their level of
12 service would not be impacted and should explain how resources used by the facility would not
13 impact their ability to provide services, rather than conclusory statements without supporting
14 analysis or a demonstration of the potential facility impacts. For instance, letters obtained from
15 water service providers should include an evaluation of permit limits, permit or water right
16 numbers, type of water use, and historical demand to demonstrate that it can meet proposed
17 facility needs. Letters from fire service providers should explain how resources used by the
18 facility, in the event of a fire-related issue, would not impact their ability to provide fire
19 emergency response and a reason for such a statement. Letters from public works departments
20 and the SAG should demonstrate an understanding of proposed facility road use, including
21 maximum number of vehicle miles travelled and vehicle weight, and confirmation of whether
22 the use would impact local roads.

23
24 Based on the information in the pASC, is it recommended that the applicant provide letters
25 from the following public and private service providers that may be impacted by the proposed
26 facility, if applicable:

- 27
28
- Local fire department,
 - Police department,
 - Public works department,
 - Cities of Stanfield, Echo, Hermiston, and Umatilla
 - Sewer and sewage treatment providers,
 - Water service providers, including municipal water providers
 - Solid waste providers
- 34

35
36 As described in the Public Services standard at OAR 345-022-0110(2), the Council may issue a
37 site certificate for a facility that would produce power from solar energy without making the
38 findings of the Public Services standard at OAR 345-022-0110(1), though the Council may apply
39 the requirements of OAR 345-022-0110(1) to impose conditions on a site certificate issued for
40 such a facility.

41
42 **(v) Exhibit V – Solid Waste and Wastewater**

1 **Applicable Paragraphs:** All paragraphs apply

2

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

5

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

11

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

17

18 **(w) Exhibit W – Facility Retirement**

19

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

21

22 **Related Council and Other Standards:** Retirement and Financial Assurance [OAR 345-022-
23 0050]; Organizational Expertise [OAR 345-022-0010]

24

25 **Discussion:** The ASC shall provide an estimate of the total and unit retirement costs per task
26 and action necessary for facility decommissioning, including a detailed explanation,
27 assumptions, and justification of the methodology it uses to estimate site restoration costs. It is
28 recommended that the applicant explain or provide the qualifications and experience of the
29 individual that prepared the estimate to support the Department’s evaluation of whether the
30 methods and assumptions are reasonable. The Council’s Retirement and Financial Assurance
31 standard requires evidence that the amount estimated for facility decommissioning is sufficient
32 for restoration of the site to a useful, nonhazardous condition; and that the applicant has a
33 reasonable likelihood of obtaining a bond or letter of credit in the amount identified for facility
34 decommissioning. If applicant chooses to provide a comfort letter from a financial institution as
35 evidence to support Council’s review of this requirement, the letter should refer to the
36 applicant, be on letterhead, and accurately reference, at a minimum, the dollar amount (in
37 relevant quarter and year) of the decommissioning amount. If the applicant would like to
38 reserve the option to construct the facility in phases, to the extent possible the applicant should
39 provide sufficient cost estimating detail to enable the bond or letter of credit amount to be
40 adjusted based on phase.

41

42 **(x) Exhibit X – Noise**

43

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

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

Discussion: The ASC shall contain a noise analysis and information to support a Council finding that the proposed facility would comply with applicable DEQ noise control standards in OAR 340-035-0035. The applicant shall include ambient noise monitoring results to support the evaluation of compliance with the ambient antidegradation standard. OAR 340-035-0035(3) provides that sound measurement procedures shall conform to those procedures which are adopted by the Commission and set forth in Sound Measurement Procedures Manual (NPCS-1), or to such other procedures as are approved in writing by the Department. If the applicant’s sound measurement procedures differ from the NPCS-1, please provide a discussion and basis for the variation. For instance, the number of ambient monitoring sites shall be sufficient to reasonably represent the ambient noise conditions at noise sensitive receptor locations in closest proximity to the proposed site. Ambient noise monitoring shall also be conducted to determine ambient conditions at noise sensitive receptor locations in closest proximity to any proposed transmission line. The analysis shall evaluate maximum noise levels from all noise-generating equipment during construction and operation. Operational noise shall be evaluated from all stationary sources (e.g. substation transformers, inverters/transformer units, any HVAC systems, and inverters) and corona noise from any proposed transmission line.

(y) Exhibit Y – Carbon Dioxide Emissions

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

(z) Exhibit Z – Cooling Tower Impacts

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

(aa) Exhibit AA – Electric and Magnetic Fields

Applicable Paragraphs: All paragraphs apply.

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

Discussion: If the proposed facility has a transmission line proposed as a related or supporting facility, the provisions of Exhibit AA would apply.

1 **(bb) Exhibit BB – Other Information**

2
3 **Related Council Standard:** General Standard of Review [OAR 345-022-0000]

- 4
5 • ORS 569.390 Owner or Occupant to Eradicate Weeds: Each person, firm or corporation
6 owning or occupying land within the district shall destroy or prevent the seeding on
7 such land of any noxious weed within the meaning of ORS 569.360 to 569.495 in
8 accordance with the declaration of the county court any by the use of the best means at
9 hand and within a time declared reasonable and set by the court, except that no weed
10 declared noxious shall be permitted to produce seed. (see also ORS 569.445)
- 11 • OAR 340-208-0210 Requirements for Fugitive Emissions: No person may cause or permit
12 any materials to be handled, transported, or stored; or a building, its appurtenances, or
13 a road to be used, constructed, altered, repaired or demolished; or any equipment to be
14 operated, without taking reasonable precautions to prevent particulate matter from
15 becoming airborne. (see a – g)

16
17 **Discussion:** To address DEQ’s fugitive dust regulations, it is recommended that a Dust
18 Monitoring and Mitigation Plan be submitted; the applicant should address whether the plan
19 applies to construction, operation or both. To address ODA’s state weed statutes, it is
20 recommended that a Noxious Weed Control Plan be submitted, addressing both state and
21 county listed noxious weeds, to apply prior to and during construction, and operations.

22
23 **(cc) Exhibit CC – Other Law**

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

26
27 **Discussion:** All requirements apply.

28
29 **(dd) Exhibit DD – Specific Standards**

30
31 **Applicable Paragraphs:** Paragraph (C) applies.

32
33 **Related Council and Other Standards:** Specific Standards for Transmission Lines [OAR 345-024-
34 0090].

35
36 **Discussion:** The Council applies specific standards for transmission lines under its jurisdiction in
37 OAR 345-024-0090. The applicant should provide analysis regarding compliance with OAR 345-
38 024-0090 in Exhibit DD or refer to Exhibit AA, as appropriate.

39
40 **IV. ANALYSIS AREAS FOR THE PROPOSED FACILITY**

41
42 The analysis areas are the areas that the applicant must study for potential impacts from the
43 construction and operation of the proposed facility. The extent of the study of potential
44 impacts may include both literature review and field surveys; analysis areas, especially those

1 that extend beyond the site boundary and in circumstances where the site boundary differs
 2 from the applicant’s proposed micrositing corridors/areas, do not equate to a requirement to
 3 conduct field surveys for the entirety of the area. The scope and methods of study within the
 4 analysis area shall be consistent with agency guidance, as applicable, and as proposed, with
 5 sufficient justification, by the applicant.
 6

7 Under an expedited review, for the purposes of submitting the pASC, the analysis areas are the
 8 study areas as defined in OAR 345-001-0010, unless the applicant requests an exception in the
 9 Request for Expedited Review and the Department approves the exception.¹⁰ In the Request for
 10 Expedited Review, the applicant did not request an exceptions to any of the analysis areas. In
 11 determining the application and study requirements to be included in the Project Order, the
 12 Department considered the size and type of the proposed facility and significant potential
 13 impacts of the proposed facility and designates the analysis areas consistent with applicable
 14 rules in Table 3, below.¹¹ **Please Note:** If significant impacts associated with the applicable
 15 Council standards¹² could occur beyond the analysis areas described here, then the applicant
 16 must assess those impacts in the ASC and show how the facility would comply with the
 17 applicable standard with regard to the larger area where impacts could occur.
 18

19 For all potential impacts, at a minimum, the analysis area includes all the area within the site
 20 boundary, as defined in OAR 345-001-0010(59). The analysis areas are presented in Table 3,
 21 *Analysis Areas*.
 22

Table 3: Analysis Areas¹

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).
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. For aboveground resources, including Built Environment, Traditional Cultural Properties or Historic Properties of Religions and Cultural Significance to

¹⁰ OAR 345-015-0300(3).

¹¹ OAR 345-015-0160(2).

¹² 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 Areas¹

Affected Standard or Resource	Exhibit	Analysis Area
		Indian Tribes, the analysis area is 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.
Noise Control Regulation	Exh. X	The area within and extending 1-mile from the site boundary.
<p>Notes:</p> <ol style="list-style-type: none"> 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. 		

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V. COMMENTS FROM REVIEWING AGENCIES

As of the date of the issuance of this Project Order, the Department received comments on the pASC the following reviewing agencies:

- The Confederated Tribes of the Umatilla Indian Reservation (CTUIR)
- City of Hermiston
- Oregon Department of Aviation
- The Oregon Department of Geology and Mineral Industries (DOGAMI)
- Oregon Department of Fish and Wildlife (ODFW)
- Oregon State Historic Preservation Office (SHPO)

Coordination with reviewing agencies is ongoing. Additional comments from reviewing agencies during the review of the pASC and ASC are anticipated. All of the reviewing agency comments have been and will be provided under separate cover to the applicant. The applicant shall address the concerns and respond to information requests from reviewing agencies (that are under the jurisdiction of the Council) within the applicable exhibit of the pASC.

VI. 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)).

1 Under OAR 345-015-0190(5), when the Department determines the ASC contains adequate
2 information for the Council to make findings or impose conditions on all applicable Council
3 standards, the Department will issue a determination of completeness on the ASC. The
4 Department may determine that the ASC is complete without requiring the applicant to submit
5 all information described under OAR 345-021-0000 and -0010. In accordance with OAR 345-
6 015-0190(9), after a determination that an ASC is complete, the Department may require
7 additional information from the applicant if additional information is needed during its
8 continued review of the ASC.

9

10 **VII. APPLICABILITY AND DUTY TO COMPLY**

11

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

15

16 **OREGON DEPARTMENT OF ENERGY**

17

18



19

20

Todd R. Cornett, Assistant Director, Siting Division
21 Oregon Department of Energy

22

23 Date of Issuance: February 10, 2022