

BEFORE THE
OREGON ENERGY FACILITY SITING COUNCIL

In the Matter of the Application for Site Certificate)	
for Wagon Trail Solar Project)	SECOND AMENDED
)	PROJECT ORDER

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

ISSUANCE DATES

Project Order	March 23, 2021
First Amended Project Order	August 17, 2021
Second Amended Project Order	November 2, 2022

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1 **Acronyms and Abbreviations**

ACDP	Air Contaminant Discharge Permit
ASC	Application for Site Certificate
Applicant	Wheatridge East Wind, LLC
DEQ	Oregon Department of Environmental Quality
DSL	Oregon Department of State Lands
EFSC or Council	Energy Facility Siting Council
EFU	Exclusive Farm Use
EPA	United States Environmental Protection Agency
GW	Gigawatts
GWh	Gigawatt hours
kV	Kilovolts
LCDC	Oregon Land Conservation and Development Commission
LLC	Limited Liability Company
MW	Megawatts
NOI	Notice of Intent to File an Application for Site Certificate
NPDES	National Pollutant Discharge Elimination System
OAR	Oregon Administrative Rule
ODA	Oregon Department of Agriculture
ODF	Oregon Department of Forestry
ODOE or Department	Oregon Department of Energy
ODOT	Oregon Department of Transportation
ODFW	Oregon Department of Fish and Wildlife
ORS	Oregon Revised Statute
Parent Company	NextEra Energy Resources, LLC
pASC	Preliminary Application for Site Certificate
SHPO	Oregon State Historic Preservation Office
WPCF Permit	Water Pollution Control Facilities General Permit

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I. INTRODUCTION

The Oregon Department of Energy (Department) received a Notice of Intent (NOI) on November 3, 2020 by Wheatridge East Wind, LLC (applicant), a wholly owned subsidiary of NextEra Energy Resources, LLC, for the proposed Wagon Trail Solar Project (proposed facility). On March 23, 2021, the Department issued a Project Order for the proposed facility in accordance with Oregon Administrative Rule (OAR) 345-015-0160. Due to modifications of the proposed facility, the applicant submitted an amended NOI on June 11, 2021. The amended NOI was submitted in accordance with OAR 345-020-0006, with the purpose of notifying the Department and the Energy Facility Siting Council of (EFSC or Council) that the applicant intends to apply for a site certificate for the proposed facility. The amended NOI provides information about the proposed site and characteristics for the proposed facility and includes the required contents under OAR 345-020-0011(1). The Department issues this amended Project Order for the proposed facility in accordance with Oregon Administrative Rule (OAR) 345-015-0160.

The proposed facility is a solar photovoltaic energy generation facility with a nominal generating capacity of up to 500 megawatts, is anticipated to occupy approximately 3,641 acres of private land within a site boundary of 7,450 acres, all of which is zoned for Exclusive Farm Use by Morrow County.^{12 3} Proposed related and supporting facilities to the energy facility would consist of a distributive battery storage system, collector substations, 230-kV transmission lines, operations and maintenance (O&M) building, meteorological (met) towers, access roads and security infrastructure, and temporary construction areas. The proposed energy facility and its related or supporting facilities are referred to as the proposed facility.

Following review of an NOI, Oregon Revised Statute (ORS) 469.330(3) and OAR 345-015-0160 require the Department to issue a Project Order to the applicant establishing the application requirements for the proposed facility. Accordingly, the Department issues this amended Project Order establishing the requirements for the site certificate application for the Wagon Trail Solar Project. As provided in ORS 469.330(4), this is not a final order and the Department or the Council may amend this Project Order at any time.

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

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

² The original proposal included an approximately 5,957 acres (9.3 sq. miles) site boundary.

³ The August 2022 pASC Exhibit C indicates that the site boundary would include approximately 7,450 acres, which is an increase of 111 acres from what was represented in the June 2021 amended NOI.

1
2 On November 25, 2020, ODOE issued a public notice of the NOI to the EFSC mailing list and to
3 adjacent property owners as defined at OAR 345-020-0011(1)(f). ODOE also published the
4 notice in the East Oregonian newspaper that ran on November 26, 2020, and in the Heppner
5 Gazette which ran on November 25, 2020. The public notice included information regarding the
6 proposed facility and the EFSC review process; announced that a virtual public informational
7 meeting would be held on January 7, 2021; and established January 22, 2021 as the public
8 comment deadline on the NOI. The Department and applicant held the virtual public
9 informational meeting on January 7, 2021.

10
11 Pursuant to ORS 469.480(1), EFSC must designate as a Special Advisory Group the governing
12 body of any local government within whose jurisdiction the facility is proposed to be located. At
13 the November 19-20, 2020 EFSC meeting, the Council appointed the Morrow County Board of
14 Commissioners as the Special Advisory Group (SAG).⁴

15
16 In compliance with OAR 345-021-0050(1), the Department prepared a memorandum
17 requesting comments from the reviewing agencies identified under OAR 345-001-0010. In
18 accordance with ORS 469.350(2) and OAR 345-020-0040, on December 21, 2020, the
19 Department sent the memorandum and hyperlink for electronic access to the NOI to each of
20 the reviewing agencies listed in Table 1 below. The Department requested comments from
21 reviewing agencies on or before January 22, 2021.

22
23 At the close of the comment period, the Department received 10 reviewing agency comments,
24 and no public comments. As discussed in Section V. Comments on the Notice of Intent, and in
25 accordance with OAR 345-015-0140, the Department sent the applicant a copy of each
26 reviewing agency comment letter received for their review and consideration in preparing the
27 application for site certificate.

28
29 At the close of the Amended NOI comment period, the Department received six comments
30 from reviewing agencies, and one from a member of the public. In accordance with OAR 345-
31 015-0140, the Department sent the applicant a copy of each reviewing agency comment letter
32 received, and the single comment from a member of the public, for their review and
33 consideration in preparing the application for site certificate.

34
35 Section II of this Project Order outlines the EFSC regulatory framework and references the main
36 statutes and rules that govern the EFSC review process [per OAR 345-015-0160(1)]. Section III
37 discusses the application content requirements under OAR 345-021-0010. Section IV specifies
38 the impact assessment analysis areas for the proposed facility. Section V incorporates by
39 reference comments received from reviewing agencies and the public that address matters
40 within the jurisdiction of the Council that the applicant must consider and discuss in the
41 application for a site certificate. Section VI provides the expiration date of the NOI, and Section

⁴ Pursuant to ORS 469.480, the governing body of a local government within whose jurisdiction the facility is proposed to be located shall be designated by EFSC as a “special advisory group.”

VII discusses Project Order amendments and the requirements for the Department to find the application for site certificate complete. Section VIII describes the applicant's duty to comply with applicable requirements.

State Agencies	
<ul style="list-style-type: none"> • Oregon Department of Agriculture • Oregon Department of Aviation • Oregon Department of Environmental Quality • Oregon Department of Fish and Wildlife • Oregon Department of Forestry • Oregon Department of Geology and Mineral Industries 	<ul style="list-style-type: none"> • Oregon Department of Land Conservation and Development • Oregon Department of State Lands • Oregon Department of Transportation • Oregon Office of State Fire Marshal • Oregon Public Utility Commission • Oregon State Historic Preservation Office • Oregon Water Resources Department
Native American Tribes	
<ul style="list-style-type: none"> • Burns Paiute Tribe • Confederated Tribes of the Umatilla Indian Reservation • Confederated Tribes of Warm Springs 	
Special Advisory Group	
<ul style="list-style-type: none"> • Morrow County Board of Commissioners/Planning Department 	
Affected Local Governments	
<ul style="list-style-type: none"> • City of Boardman • City of Heppner • City of Lone 	<ul style="list-style-type: none"> • Town of Lexington • Umatilla County
Federal/Other Reviewing Agencies	
<ul style="list-style-type: none"> • Northwest Power and Conservation Council • US Department of Navy • US Fish and Wildlife Service 	

II. EFSC REGULATORY FRAMEWORK

Issuance of a site certificate is governed by ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992 and OAR chapter 345. The following divisions of OAR chapter 345 include rules related to application requirements, EFSC review of an application for site certificate (ASC), and construction and operation of an approved facility:

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

OAR Chapter 345, Division 22 (Council Standards for Siting Facilities) includes most of the

regulatory standards by which EFSC must evaluate the proposed facility. In addressing each of the Division 21 application requirements, the applicant shall refer to the Division 22 standard to which the requirement relates to ensure the application is responsive to the standards by which the Council must evaluate it.

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

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

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

III. APPLICATION REQUIREMENTS

The applicant must submit information required under OAR 345-021-0000, including, for all state and local government agency permit approvals that the applicant proposes to be included in and governed by the site certificate, the submittal of information that would otherwise be required by the state or local government agency in an application for such permit, license, or certificate [OAR 345-021-0000(6)].⁵

The applicant must submit copies of the applications for federally delegated permits that are needed for construction or operation of the proposed facility [OAR 345-021-0000(7)].

OAR 345-021-0010(1) identifies the required contents of an ASC. Each of the paragraphs below indicates which provisions of OAR 345-021-0010(1) apply to the proposed facility.

The ASC shall also include a table of contents for each exhibit, as described in OAR 345-021-

⁵ Under OAR 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.

0010(3).

(a) Exhibit A – General Information about the Applicant and Participating Persons

Applicable Paragraphs: OAR 345-021-0010(1)(a)(A), (B), (D), and (H)

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

Discussion: OAR 345-021-0010(1)(a)(A) and (B) apply to all applicants. Because Applicant is organized and registered with the Oregon Secretary of State as a Domestic Limited Liability Company, paragraphs (C), (E), (F), and (G) do not apply.

Under OAR 345-021-0010(1)(a)(A), Exhibit A must identify the legal name and address of the Applicant and any co-owners of the proposed facility. The Application must provide the name, mailing address, email address and telephone number of at least one contact person for the Applicant, and if there is a contact person other than the applicant, the name, title, mailing address, email address and telephone number of that person. The NOI identifies Wheatridge East Wind, LLC as the Applicant. Applicant should describe any changes in the legal name or entity of the Applicant in Exhibit A.

Under OAR 345-021-0010(1)(a)(B), Exhibit A must identify any participating entities other than the applicant, including but not limited to the parent company of the applicant and any persons upon whom the applicant will rely for third-party permits or approvals related to the facility, and, if known, other persons upon whom the applicant will rely in meeting any facility standard adopted by the Council.⁶

Under OAR 345-021-0010(1)(a)(D), Exhibit A must identify the legal name and business address of each of the applicant's full or partial owners. The NOI identifies NextEra Energy Resources, LLC, as the parent company for the applicant. Exhibit A must either verify that NextEra Energy Resources, LLC, continues to be the Sole Member of Wheatridge East Wind, LLC, or provide an updated list identifying all LLC members. In addition, Exhibit A should explain the relationship between NextEra Energy Resources, LLC, a subsidiary of Next Era Energy, NextEra Energy, and Wheatridge East Wind, LLC and provide copies of legal documents to support the responsibilities and liabilities, or lack thereof, for each entity related to the ASC and site certificate.

The applicant must notify the Department of any change in the identity or ownership of the applicant prior to the change. This notification requirement continues to apply until the Council issues its Final Order on the ASC.

Under OAR 345-0010(1)(a)(H), Exhibit A must identify the full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the

⁶ OAR 345-021-0010(1)(b)(B) requires a list of "participating persons, other than individuals." As defined in ORS 469.300(21), "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, people's utility district, or any other entity, public or private, however organized.

application, the date and place of Wheatridge East Wind, LLC's formation, and a copy of its articles of organization and its authorization for submitting the application. Because Wheatridge East Wind, LLC's is registered in Oregon as a Domestic Limited Liability Company, sub-paragraph (H)(iv) does not apply.

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

Applicable Paragraphs: OAR 345-021-0010(1)(b)(A)(i) through (vi), (B), (C), (E) and (F).

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

Discussion: Exhibit B must provide information about the proposed facility, construction schedule and temporary disturbances of the site. OAR 345-021-0010(1)(b)(A)(i) to (vi), (B), (C), and (F) are applicable to applications for all types of energy facilities. OAR 345-021-0010(1)(b)(A)(vi) through (viii), (D), and (E)(iv) are not applicable to the proposed facility.

Under OAR 345-021-0010(1)(b)(A) through (C), Exhibit B must include a description of the facility that includes, at a minimum:

- The nominal electric generating capacity and the average electrical generating capacity of the proposed solar photovoltaic power generating
- A detailed description of all major components, structures and systems that will be part of the proposed facility, including the capacity, dimensions, type, and configuration of equipment used to generate, store, transmit, or transport electricity, and the dimensions and configurations of any other related or supporting facilities, including but not limited to roads, storage facilities, fences, or other structures.⁷
- A site plan and general arrangement of buildings, equipment, and structures, including any proposed temporary laydown or staging areas and any proposed micrositing corridors proposed by the applicant. Note that if the applicant seeks flexibility to site proposed facility components anywhere within the site boundary, or seeks approval of a micrositing corridor, the applicant must evaluate impacts to resources within the entire site boundary or micrositing corridor based on maximum the impact facility layout option within the site boundary or micrositing area, if different.
- Identification and description of all fuel and chemical storage facilities, including structures and systems for spill containment
- Equipment and systems for fire prevention and control in any system components, including water tanks, internal fire suppression systems, and access and egress points for fire responders.

The description above should be as complete and accurate as possible as the information provided will form the basis for the description of the facility in the site certificate, if approved by the Council. OAR 345-025-0006(3)(a) provides that all site certificates must contain conditions requiring certificate holders to design, construct, operate and retire the facility

⁷ ORS 469.300(13) "Related or supporting facilities" means any structure, proposed by the applicant, to be constructed or substantially modified in connection with the construction of an energy facility, including associated transmission lines, reservoirs, storage facilities, intake structure, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures.

substantially as described in the site certificate.

Under OAR 345-021-0010(1)(b)(F), Exhibit B must include a construction schedule including a description of all primary construction activities that will be performed at the site and the estimated timing of those activities. “Construction activities” include all work performed at the site, excluding surveying, exploration, or other activities to define or characterize the site. For the purposes of the ORS 469.320 and 469.370(12), construction of the facility begins when the cost of all construction activities performed at the site exceed \$250,000. The construction schedule included in Exhibit B must describe any construction activities that have been or will be performed at the site prior to issuance of the site certificate and an estimate of the cost of that work. The construction schedule should also specify the date by which applicant proposes to begin construction of the facility and the date by which the applicant proposes to complete construction activities. If the applicant proposes to construct the facility in phases, the construction schedule should describe the timing of construction activities for each phase.

Exhibit B must also describe routine operations and maintenance activities that will be performed during operation of the facility, including any anticipated need to replace or repower facility components, and the expected timeline for decommissioning the facility, if any.

(c) Exhibit C – Location

Applicable Paragraphs: All paragraphs apply.

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

Discussion: Exhibit C must include information about the proposed facility site.

Under OAR 345-021-0010(1)(c)(A) and (C), Exhibit C must include maps indicating the “site boundary”, including any proposed transmission line routes and corridors for which the applicant seeks Council approval, and all areas that might be temporarily disturbed during construction of the facility in relation to major roads, water bodies, cities and towns, important landmarks, and topographic features. Exhibit C must also include a map showing the approximate locations of any other energy generation facilities that are known to the applicant to be permitted at the state or local level within 10 miles of the proposed site boundary. Maps must provide enough information for property owners potentially affected by the proposed facility to determine whether their property is within or adjacent to property on which the site boundary is located. Major roads must be accurately named. If the applicant seeks flexibility to site facility components anywhere within the site boundary or an established micrositing area, please identify in maps and include an evaluation to support the facility “micrositing area,” to be consistent with the intent of a “micrositing corridor” (OAR 345-001-0010(32)).

Under OAR 345-021-0010(1)(c)(C), Exhibit C must also include a narrative description of the proposed energy facility site, the proposed site of each related or supporting facility and areas of temporary disturbance, including the total land area (in acres) within the proposed site boundary, the total area of permanent disturbance, and the total area of temporary disturbance.

(d) Exhibit D – Organizational Expertise

Applicable Paragraphs: All paragraphs apply.

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

Discussion: Exhibit D must include information about the organizational expertise of the applicant to construct and operate the proposed facility, providing evidence to support a finding that the applicant has the ability to construct, operate, and retire the proposed facility in compliance with Council standards and conditions of the site certificate; and, in a manner that protects public health and safety. If the Applicant will rely on the organizational expertise or financial capability of its parent company to construct and operate the proposed facility, the Parent Company must guarantee performance of the Applicant's obligations under the site certificate and must indemnify the Council against costs and expenses it may incur as a result of the enforcement of the Site Certificate. The Applicant must coordinate with the Department to obtain the appropriate form and content of this guarantee.

Under OAR 345-021-0010(1)(d)(A), Exhibit D must describe the applicant's previous experience, if any, in constructing and operating solar photovoltaic power generation facilities or other similar facilities. The description should include, at a minimum, the size, location, and date of commercial operation for any facilities upon which applicant wishes to rely as evidence of organizational expertise.

Under OAR 345-021-0010(1)(d)(B) and (C), Exhibit D must describe the qualifications of the applicant's personnel who will be responsible for constructing and operating the facility, and the qualifications of any architect, engineer, major component vendor, or prime contractor upon whom the applicant will rely in constructing and operating the facility, to the extent that the identities of such persons are known when the application is submitted.

Under OAR 345-021-0010(1)(d)(D), Exhibit D must include an evaluation of the applicant's compliance history that describes whether it or any other participating entities have received regulatory citations in any jurisdiction in the past 10 years and the status of resolution of those citations.

Under OAR 345-021-0010(1)(d)(G), Exhibit D must include evidence that the applicant can successfully complete any mitigation proposed to demonstrate compliance with any applicable Council standards, including a description of past experience with other projects and the qualifications, experience, and contact information of personnel upon whom the applicant will rely, to the extent that the identities of such persons are known at the date of submittal. The applicant must provide evidence that past mitigation projects required as part of a land use approval or other permitting process were completed successfully, such as final reports submitted to the permitting agency. Please also provide drafts of safety programs or plans developed by the applicant for wildfire, emergency, and spill response at the site and any fire control systems if those plans are not included in another exhibit.

(e) Exhibit E – Permits

Applicable Paragraphs: All paragraphs apply.

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

Discussion: Under OAR 345-021-0010(1)(e)(A) and (B), Exhibit E must identify all federal, state, and local government permits related to the siting of the proposed facility. For each permit, Exhibit E must include:

- A description of the permit and the reasons the permit is needed.
- A legal citation of the statute, rule or ordinance governing the permit.
- The name, mailing address, email address and telephone number of the agency or office responsible for the permit.
- The applicant's analysis of whether the permit should or should not be included in and governed by the site certificate.

The applicant's analysis of whether the permit should or should not be included in and governed by the site certificate.

Under OAR 345-021-0010(1)(e)(C) for any state or local government agency permits, licenses or certificates that are proposed to be included in and governed by the site certificate, Exhibit E must also provide evidence to support findings by the Council that construction and operation of the proposed facility will comply with the statutes, rules, and standards applicable to the permit. Information about any required removal-fill or water rights permits should be provided in Exhibits J and O, respectively. If the applicant will rely on a contractor or third party to obtain a required state or local permit, license or certificate that will be governed by the site certificate, Exhibit E must also include the information required by OAR 345-021-0010(1)(e)(E).

Although the Council does not have jurisdiction over federally delegated permits, the Council may rely on the determinations of compliance and the conditions in federally delegated permits in evaluating the application for compliance with Council standards. Under OAR 345-021-0010(1)(e)(D), Exhibit E must include evidence that the responsible agency for any federally delegated permitted program has received a permit application. The applicant must provide the estimated date when the responsible agency will complete its review and issue a permit decision. If the applicant will rely on a contractor or third party to obtain a required state or local permit, license or certificate that will be governed by the site certificate, Exhibit E must also include the information required by OAR 345-021-0010(1)(e)(F).

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

Table 1: Potentially Required Permits

Permit Name/Description	EFSC Jurisdictional	Federally Delegated – Information required for Completeness Determination Only	Not EFSC Jurisdictional Per ORS 469.401(4) – Information about Permit Necessary for Information Purposes Only Per OAR 345-021-0010(1)(e)(A) &(B)
Oregon DEQ Basic Air Contaminant Discharge Permit		X ¹	
Oregon DEQ National Pollution Discharge Elimination System Construction Storm Water 1200-C permit		X ¹	
Oregon DEQ NPDES Storm Water and Mine Dewatering Discharge 1200-A permit		X ¹	
Oregon DEQ Clean Water Act Section 401 Water Quality Certification		X	
Removal-Fill Permit	X		
Onsite Sewage Disposal Construction-Installation Permit	X ¹		
Water Pollution Control Facilities (WPCF) General Permit 1000	X ¹		
WPCF General Permit 1700-B	X		
Water Right Permit or Water Use Authorization	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

Table 1: Potentially Required Permits

Permit Name/Description	EFSC Jurisdictional	Federally Delegated – Information required for Completeness Determination Only	Not EFSC Jurisdictional Per ORS 469.401(4) – Information about Permit Necessary for Information Purposes Only Per OAR 345-021-0010(1)(e)(A) &(B)
SHPO Archaeological Permit	X ²		X ²
Morrow County Conditional Use Permit	X		
Morrow County Utility Crossing Permit and Access Approach Site Permit			X
Morrow County Build on Right-of- Way Permit			X
¹ Unless obtained by third-party; see Third-Party Permits discussion. ² The Department notes that a SHPO Archaeological Permit may be under EFSC jurisdiction if proposed by the applicant in the ASC.			

Federally Delegated Permits***Oregon Department of Environmental Quality – Air Quality Division*****Statute and Rule References**

- OAR Chapter 340, Division 216

Permits

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

Discussion: The United States Environmental Protection Agency (EPA) has delegated authority to the Oregon Department of Environmental Quality (DEQ) to administer air quality under the Clean Air Act. A Basic ACDP authorizes operation of a concrete manufacturing plant that produces more than 5,000 but less than 25,000 cubic yards per year output. ACDPs for mobile, temporary concrete batch plants are associated with the equipment itself. The requirements of OAR 345-021-0000(6) would apply to this federally delegated permit. If the applicant's third-party contractor would instead obtain the ACDP, the requirements described in the Third-Party Permits section below would apply.

Oregon Department of Environmental Quality – Water Quality Division**Statute and Rule References**

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

Permits

- National Pollution Discharge Elimination System (NPDES) Construction Stormwater 1200-C permit
 - Information needed for completeness (unless obtained by third-party; see Third-Party Permits discussion) but not EFSC-jurisdictional
- NPDES Stormwater and Mine Dewatering Discharge 1200-A permit
 - Information needed for completeness (unless obtained by third-party; see Third-Party Permits discussion) but not EFSC-jurisdictional

Discussion: The EPA has delegated authority to DEQ to issue NPDES Stormwater Discharge permits for construction and operation activities. Based upon the information in the NOI, a NPDES 1200-C permit would be required for facility construction. In accordance with OAR 345-021-0000(6), the applicant must submit to the Department one copy of all applications for federally delegated permits (including the NPDES permit) or provide a schedule of the date by which the applicant intends to submit the application. Note that the Department will not be able to find the application for site certificate complete before receiving a copy of the NPDES permit application and a letter or other indication from DEQ. The DEQ response must state that the agency has received a permit application from the applicant and provide an estimated date when the agency will complete its review and issue a permit decision. The applicant may incorporate this information into Exhibit I (Soils) or Exhibit BB (Other Information) of the ASC.

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

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

State Permits

Oregon Department of State Lands

Statute and Rule References

- 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. 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. The wetland delineation determines the location of “waters of this state,” as defined in OAR 141-085-0510(91), within the analysis area. Depending upon facility impacts to “waters of this state” 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 the 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.

Oregon Department of Environmental Quality

Statute and Rule References

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

Permits

- Onsite Sewage Disposal Construction-Installation Permit
 - EFSC-jurisdictional unless obtained by third-party; see Third-Party Permits

discussion

- Water Pollution Control Facilities (WPCF) General Permit 1000
 - EFSC-jurisdictional unless obtained by third-party; see Third-Party Permits discussion
- WPCF General Permit 1700-B (DEQ Expired/Not Required for Panel Washing)
- Clean Water Act Section 401 Water Quality Certification
 - This permit would not be included in or governed by the site certificate

Discussion: Facilities with an on-site sewage disposal system must obtain a Construction-Installation Permit before construction. If the applicant will construct an on-site septic system, the applicant or its third-party contractor would be required to obtain a Construction-Installation Permit. Such a permit would be governed by and included in the site certificate unless obtained by a third-party permitter (see the Third-Party Permits discussion below.)

If a temporary batch plant is necessary, disposal of concrete batch plant wash water would require either a Water Pollution Control Facilities (WPCF) General Permit 1000 or a NPDES permit. Concrete batch plants that dispose of process wastewater and stormwater by recirculation, evaporation, and/or controlled seepage with no discharge to surface waters require a WPCF General Permit 1000. A WPCF General Permit 1000 is a state permit under Council jurisdiction. If the applicant's third-party contractor would obtain the necessary WPCF General Permit 1000 directly from DEQ, this permit would be related to the siting and operation of the proposed facility but would not be included in and governed by the site certificate (see the Third-Party Permits discussion below). If the batch plant was to instead discharge stormwater from a point source to surface water or to a conveyance system that discharges to surface water, the plant would require an NPDES 1200-A permit or coverage under the NPDES 1200-C permit for the construction yard in which it would be located (as discussed under the federally delegated permits discussion of this Project Order).

Disposal of solar panel wash water would require a WPCF 1700-B permit. The NOI indicates that either the Applicant or a third-party contractor who will conduct the solar panel washing activities may seek coverage under the WPCF-1700-B permit from ODEQ following completion of construction and before initiating any washing activities. DEQ has indicated to the Department that a WPCF General Permit 1700-B is not required for solar array washing activities that would not result in discharge to surface waters, storm sewers, or dry wells, and that would not use acids, bases, metal brighteners, steam, or heated water. The use of biodegradable, phosphate-free cleaners with cold water is allowed. However, cleaning only with cold water is recommended. Chemicals, soaps, or detergents must be used sparingly. The applicant or its third-party contractor should seek guidance from DEQ prior to conducting solar module washing activities. A WPCF 1700-B and WPCF General Permit 1000 are state permits under Council jurisdiction. If the applicant's third-party contractor would obtain the necessary WPCF 1700-B permit directly from DEQ, this permit would not be included in and governed by the site certificate (see the Third-Party Permits discussion below).

If a Section 404 Permit is needed from the Corps for the discharge of dredge or fill material in waters of the United States, a Section 401 Water Quality Certificate must be granted by DEQ

before a Section 404 permit may be issued. This approval would not be included in or governed by the site certificate.

Oregon Water Resources Department

Statute and Rule References

- ORS 537.110-.330 (Appropriation under 1909 Act; Limited Licenses)
- ORS 537.505-.795 and ORS 537.992 (collectively, Ground Water Act of 1955)
- ORS 537.992 (Civil Penalties)
- ORS 540.505-.589 (Changes in Use of Water; Transfer of Water Rights; Exchange)
- OAR Chapter 690, Division 310 (Water Right Application Processing)
- OAR Chapter 690, Division 340 (Water Use Authorizations)
- OAR Chapter 690, Division 410 (Statewide Water Resource Management)

Permits

- Water Right Permit or Water Use Authorization
 - EFSC jurisdictional
- Limited License
 - EFSC jurisdictional

Discussion: As represented in NOI Exhibit J, the applicant proposes to either construct an on-site well or obtain water from existing private or municipal water sources with valid water rights and trucked to the site. Water right permits, limited water use licenses, and other water authorizations for energy facilities are subject to review and authorization by the Council, and any permit would be included in and governed by the site certificate.

Oregon Department of Transportation

Statute and Rule References

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

Permits

- Oversize Load Movement Permit/Load Registration
 - Not EFSC jurisdictional and no additional information needed for the ASC
- Access Management Permit
 - Not EFSC jurisdictional and no additional information needed for the ASC
- Permit to Occupy or Perform Operations Upon a State Highway
 - Not EFSC jurisdictional and no additional information needed for the ASC

Discussion: Various permits from Oregon Department of Transportation (ODOT) may be required prior to construction of the facility. Access from Oregon state highways would require an access permit. Utility installations within the right-of-way of a state highway in Oregon require an Occupy or Perform Operations upon a State Highway permit. Movement of construction cranes and other large equipment and materials could also require an Oversize

Load Movement permit. These permits are not related to facility siting and are not included in or governed by the site certificate. The applicant or its contractor must secure any applicable ODOT permits directly from ODOT, independent of the site certificate process. The impacts associated with road use and modifications, however, must be evaluated in Exhibit U.

State Historic Preservation Office

Statute and Rule References

- ORS Chapter 97, 358, and 390
- OAR Chapter 736, Division 51

Permits

- Archaeological Excavation Permit
 - May be EFSC jurisdictional if proposed in ASC; if so, then ASC materials required

Discussion: Per ORS 390.235 and 358.920 a person may not excavate, injure, destroy, or alter an archaeological site or object or remove an archaeological object located on public or private lands in Oregon unless that activity is authorized by an Archaeological Permit issued by the State Historic Preservation Office (SHPO). Because there are previously identified archaeological objects or sites (Oregon Revised Statute [ORS] 358.905), or Native American cairn, burial, human remains, sacred objects and objects of cultural patrimony (ORS 97.740-760) in or adjacent to the site, an Archaeological Excavation Permit will be required for the construction of the proposed facility.⁸ The applicant has not proposed to have this permit be included and governed by the site certificate, and as such the applicant will be required to obtain this permit from the State.

Approvals

Oregon Department of Aviation

Statute and Rule References

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

Permit

- Determination of No Hazard to Air Navigation
 - EFSC Jurisdictional

Discussion

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

The applicant must identify the distance and direction of the following airports and any private airstrips within 3 nautical miles, from the micrositing corridor from the following airports:

- Lexington Airport

⁸ August 22, 2022, Letter to ODOE regarding SHPO Case No. 22-1199.

- PGE Boardman
- West Buttercreek

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

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

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

Local Permits

Land Use Ordinance References

- Morrow County Zoning Ordinance
- Morrow County Comprehensive Plan
- OAR Chapter 734, Division 51

Permits

- Morrow County Conditional Use Permit
- Morrow County Zoning Permit
- Morrow County Build on Right-of-Way Permit
- Morrow County Utility Crossing Permit and Access Approach Site Permit
- Morrow County Oversized Load Movement Permit
- City of Boardman Building Permit

Discussion: Morrow County has permitting requirements that relate to the siting, construction, or operation of the proposed facility. The applicant shall identify those permits or approvals and include an analysis of whether each should be included in and governed by the site certificate.

As stated in the NOI, the applicant requests that the Council determine compliance with the statewide planning goals under ORS 469.504(1)(b). Accordingly, land use permits including the zoning permit and conditional use permit will be included in and governed by the site certificate.

The other listed Morrow County permitting requirements are not related to facility siting and as such will not be included in or governed by the site certificate. Building permits are specifically excluded from EFSC jurisdiction by statute, ORS 469.401(4). In the NOI, the applicant explained that any other county permits required for the construction of the proposed facility will be obtained by the construction contractor prior to the start of construction activities at the site.

Third-Party Permits

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

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

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

(f) Exhibit F – Property Owners

Applicable Paragraphs: All paragraphs apply.

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

Discussion: Exhibit F must include a list of all owners of record of property located within the site boundary and extending 500 feet from the property boundary of any tax lot or parcel that wholly or partially within the site boundary.

Property owner lists used for the issuance of public notices must be based on the most the most recent county tax assessment roll and the applicant will be required to provide updated

property owner information prior to the determination of completion. To avoid the duplication of work, the applicant may omit specific property owner information from the preliminary Application for Site Certificate but must still include a list of all tax lots within the notification area described above. The list should be accompanied by legible maps that clearly identify tax lot identification numbers as well as adjacent road names. In addition to incorporating the list in the application, the applicant must submit the list to the Department in Excel Workbook (.xlsx) or comma-separated values (.csv) format.

The applicant must submit updated property owner lists as requested by the Department to ensure that all public notices issued use the most recent tax assessment roll.

(g) Exhibit G – Materials Analysis

Applicable Paragraphs: All paragraphs apply.

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

Discussion: Exhibit G must include a materials analysis including an inventory of substantial quantities of industrial materials flowing into and out of the proposed facility during construction and operation; the applicant's plans to manage hazardous substances during construction and operation, including measures to prevent and contain spills; and the applicant's plans to manage non-hazardous waste materials during construction and operation. Exhibit G must identify any proposed fuel storage areas, vehicle maintenance areas, or other areas that will be utilized for activities that could store hazardous materials.

(h) Exhibit H – Geologic and Soil Stability

Applicable Paragraphs: All paragraphs apply

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

Discussion: Exhibit H must include Information regarding the geological and soil stability within the analysis area. The contents of Exhibit H must be based on a consultation with the Oregon Department of Geology and Mineral Industries regarding the appropriate methodology and scope of the seismic hazards and geology and soil-related hazards assessments, the appropriate geotechnical work that must be performed at the site, and the guidelines for preparing the geologic report for the application required under OAR 345-021-0010(1)(h)(A). Under OAR 345-021-0010(1)(h)(B), Exhibit H must include a summary of this consultation.

Under OAR 345-021-0010(1)(h)(A), (E), and (F), Exhibit H must include a geologic report meeting the Oregon State Board of Geologist Examiners geologic report guidelines and an assessment of seismic hazards and appropriate mitigation consistent with the recommendations made by DOGAMI during the consultation and the requirements of the rule.

Under OAR 345-021-0010(1)(h)(C) and (D), exhibit H must provide a description and schedule of site-specific geotechnical work that will be performed before construction activities begin at the site, and a description of any locations where the applicant proposes to perform site specific geotechnical work associated with facility collector lines or overhead transmission lines.

(i) Exhibit I – Soils

Applicable Paragraphs: All paragraphs apply.

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

Discussion: Exhibit I must include information from reasonably available sources regarding soil conditions and uses in the analysis area.

Under OAR 345-021-0010(1)(i)(A) and (B), Exhibit I must identify the major soil types within the study area and include a description of current and historical (if distinct from current) land uses that require or depend on productive soils. If applicant utilizes NRCS web-soil survey data to evaluate wind and water erosion potential at the proposed facility site, Exhibit I shall include accurate references and hyperlinks to source data.

Under OAR 345-021-0010(1)(i)(C) through (E), Exhibit I must identify and assess potential adverse impacts of construction and operation of the proposed facility, including impacts such as erosion, soil compaction, and any impacts from liquid effluent associated with panel washing or other maintenance activities, on soils in the analysis area, including potential impacts to soils on adjacent properties.

Exhibit I must also describe any measures the applicant proposes to avoid or mitigate adverse impacts to soils during construction and operation of the proposed facility and any proposed monitoring program. For cultivated or arable lands, Exhibit I should contain sufficient evidence to demonstrate that temporary disturbances during construction or maintenance activities will not result in long-term losses of productivity. Any mitigation activities for permanent disturbance areas should also be described in Exhibit X. If the applicant will rely upon an erosion and sediment control plan to meet the Soil Protection Standard a draft of that plan must be included in the application.

The applicant can cross-reference any applicable information related to the federally delegated NPDES 1200-C permit application. Please note that an erosion and sediment control plan that meets the NPDES 1200-C requirements may not necessarily be sufficient to meet the EFSC Soil Protection standard. See Section III(e), *Exhibit E – Permits*, for additional discussion of federally-delegated permits.

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

Applicable Paragraphs: All paragraphs apply.

Related Council and Other Standards: General Standard of Review [OAR 345-022-0000]; Removal of Material, Filling [ORS 196.795-.990]; Administrative Rules Governing the Issuance and Enforcement of Removal-Fill Authorizations Within Waters of Oregon Including Wetlands [OAR chapter 141, division 085]

Discussion: Exhibit J must include information based on literature and field study, as appropriate, about waters of this state, as defined under ORS 196.800.

Under OAR 345-021-0010(1)(j)(A), Exhibit J must include a description of all areas within the

1 site boundary that might be waters of the state and a map(s) showing the location of these
2 features. Based on information in the NOI, ODOE understands that there are several
3 intermittent streams within the site boundary.

4
5 Under OAR 345-021-0010(1)(j)(B), (C), and (F), Exhibit J must describe whether construction or
6 operation of the proposed facility could result in potential adverse impacts to any of these
7 streams or other waters of the state, assess the significance of those impacts, and describe
8 proposed actions to avoid or mitigate adverse impacts and the applicant's proposed monitoring
9 program, if any, for such impacts. If impacts to waters of the state cannot be avoided, Exhibit J
10 must describe the amount and type of material that could be deposited or removed from any
11 waters of the state, consistent with the requirements of OAR 141-085-0525, and any other
12 information needed to determine whether a removal-fill permit is required under OAR chapter
13 141, division 085.

14
15 Under OAR 345-021-0010(1)(j)(D) and (E), Exhibit J must include an analysis of whether or not a
16 removal-fill permit is required. If a removal-fill permit is necessary for the proposed facility, the
17 Exhibit J must include all information required for the Council to make a decision on the
18 removal-fill permit application. Wetland delineation reports and removal-fill permit application
19 materials can be sent directly by the applicant to DSL; however, all materials as well as DSL's
20 concurrence with the wetland delineation must also be submitted to the Department as part of
21 Exhibit J. The Department will work closely with DSL in review of the removal-fill permit
22 application, if applicable. If a removal-fill permit is necessary for the proposed facility, a DSL
23 draft removal-fill permit with draft conditions, must be submitted to the Department by DSL to
24 be included as an attachment to the draft proposed order. For EFSC-jurisdictional facilities,
25 authorization of a removal-fill permit is an EFSC decision; should a permit be issued, the
26 Department and DSL would maintain dual responsibility for compliance with any associated
27 permit conditions. See Section III(e), *Exhibit E – Permits*, for additional discussion of state
28 permits.

29
30 **(k) Exhibit K – Land Use**

31 **Applicable Paragraphs:** (A) and (C).

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

33 **Discussion:** Exhibit K must include information about the proposed facility's compliance with
34 the statewide planning goals adopted by the Land Conservation and Development Commission,
35 providing evidence to support a finding by the Council as required by OAR 345-022-0030.

36
37 Under OAR 345-021-0010(1)(k)(A), Exhibit K must include a map showing the comprehensive
38 plan designations and land use zones in the analysis area. Based on information provided in the
39 NOI, the Department understands that the analysis area is entirely within the Exclusive Farm
40 Use Zone in Morrow County.

41
42 Exhibit K must state the Applicant's election to either obtain local land use approval under ORS
43 469.504(1)(a) or to obtain a Council determination under ORS 469.504(1)(b). In the NOI, the
44 Applicant indicated that it intends to satisfy the Council's land use standard, OAR 345-022-

0030, by seeking a Council determination under ORS 469.504(1)(b). Assuming the applicant has not changed its election OAR 345-021-0010(1)(k)(B) does not apply to the application. Note that once the election is made in the ASC, it is final.

The Morrow County Board of Commissioners is the Special Advisory Group for the Wagon Trail Solar Project.⁹ The Board of Commissioners appointed the Morrow County Planning Director as the appropriate contact for the review of the Application in their comments on the Notice of Intent dated January 20, 2021 and June 23, 2021.

Under OAR 345-021-0010(1)(k)(C), the applicant must identify all applicable substantive criteria from the Morrow County Comprehensive Plan and any land use regulations adopted by Morrow County that are required by the statewide planning goals and that are in effect on the date the application is submitted.

Exhibit K must discuss each applicable substantive criteria and must demonstrate how the proposed facility complies with those criteria. If the proposed facility will not comply with one or more of the applicable substantive criteria, the applicant must demonstrate that the proposed facility nevertheless complies with the applicable statewide planning goals or that an exception to a goal is justified under ORS 469.504(2) and OAR 345-022-0030(4).

Exhibit K shall also provide evidence that the proposed facility would comply with any directly-applicable Land Conservation and Development Commission (LCDC) administrative rules and statutory requirements related to the proposed facility, including ORS 215.243, 215.274, 215.283, 215.296, and specifically including all requirements regarding the location of the proposed facility within the EFU zone. Exhibit K shall provide evidence that the proposed facility would comply with the applicable administrative rules at OAR 660-033-0130(38) related to development of solar power generation facilities, as well as rules related to associated transmission lines to energy generating facilities. As part of the evaluation of compliance with OAR 660-033-0130(38), Exhibit K must include evidence that demonstrates that the proposed facility will not make it more difficult for existing farms and ranches in the area extending one mile from the center of project to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

The proposed facility also requires an exception to Statewide Planning Goal 3 (Agricultural Lands). The Council's goal exception process is described at ORS 469.504(2) and OAR 345-022-0030(4). Because the land within the site is not physically developed or irrevocably committed to non-agricultural use ORS 469.504(2)(a) and (b) are not applicable to the proposed facility and Exhibit K must evaluate whether or not each of the standards listed under ORS 469.504(2)(c) are met:

⁹ Energy Facility Siting Council Order Appointing the Morrow County Board of Commissioners as a Special Advisory Group in the Matter of the Application for a Site Certificate for the Proposed Wagon Trail Solar Project, November 3, 2022.

- Reasons justify why the state policy embodied in the applicable goal should not apply
- The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the council applicable to the siting of the proposed facility
- The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts

Exhibit K must clearly demonstrate that all three standards are met and must provide site-specific evidence to support the evaluation. Evaluation of significant impacts to agriculture should include relevant information about specific uses and historic agricultural production on properties within and adjacent to the proposed facility, including agricultural revenue and number of workers employed for agricultural activities on the impacted land. Reasons that support a local economic benefit should provide specific and detailed information about how the proposed facility would provide economic benefits which differ from any other type of development. The applicant should address comments by reviewing agencies, the SAG, and stakeholder groups about impacts to agriculture in the context of the Goal 3 exception request. See Section III(e), *Exhibit E – Permits*, for additional discussion of local permits.

(l) Exhibit L – Protected Areas

Applicable Paragraphs: All paragraphs apply.

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

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

(m) Exhibit M – Financial Capability

Applicable Paragraphs: All paragraphs apply.

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

Discussion: Exhibit M must include information about the applicant's financial capability and should include basic information about the applicant's financial condition. The applicant is not included to provide information or records protected from public disclosure by any provision of state or federal law.

Under OAR 345-021-0010(1)(m)(A), Exhibit M must include an opinion or opinions from legal counsel stating that, to counsel's best knowledge, the applicant has the legal authority to construct and operate the facility without violating its bond indenture provisions, articles of incorporation, common stock covenants, or similar agreements.

Under OAR 345-021-0010(1)(m)(B) and (C), Exhibit M must include the type and amount of the applicant's proposed bond or letter of credit. The proposed amount should be based on the information provided under Exhibit X, and the applicant must explain any discrepancies between the proposed bond amount and the retirement estimate. If the applicant would like to reserve the option to construct the facility in phases, the applicant must provide sufficient detail in Exhibit X to allow the Council to determine an appropriate bond or letter of credit amount based on phase.

Exhibit M evidence that the applicant has a reasonable likelihood of obtaining the proposed bond or letter of credit from a reputable financial institution in that amount before beginning construction of the facility. If applicant chooses to provide a comfort letter from a financial institution as evidence to support Council's review of this requirement, the letter should refer to the applicant, be on letterhead, and accurately reference, at a minimum, the dollar amount (in relevant quarter and year) of the estimated decommissioning amount.

(n) Exhibit N – Non-Generating Facility Need

Applicable Paragraphs: OAR 345-021-0010(1)(n) does not apply because the proposed facility is a generating facility. Exhibit N is not required.

(o) Exhibit O – Water Use

Applicable Paragraphs: All paragraphs apply except (D).

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

Discussion: Exhibit O must include information about anticipated water use during construction and operation of the proposed facility.

Under OAR 345-021-0010(1)(o)(A) through (C) and (G), Exhibit O must include a description of how water will be used during construction and operation of the proposed facility, and must describe each source of water and the estimated amount of water the facility will need from each source during construction and during operation under annual average and worst-case conditions, and a description of proposed actions to mitigate the adverse impacts of water use on affected resources.

Under OAR 345-021-0010(1)(o) E) and (F), Exhibit O must provide an evaluation of whether or not the proposed facility would need a groundwater permit, surface water permit or a water right transfer. If the proposed facility would need a groundwater permit, a surface water permit or a water right transfer, Exhibit O information to support a determination by the Council that the Water Resources Department should issue the permit or transfer of a water use, including information in the form required by the Water Resources Department under OAR Chapter 690, Divisions 310 and 380. See Section III(e) Exhibit E – *Permits*, for a discussion of OWRD permits

and Section III(u) – *Public Services*, for information requirements related to water service providers.

(p) Exhibit P – Fish and Wildlife Habitat

Applicable Paragraphs: All paragraphs apply.

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

Discussion: Exhibit P must include Information about fish and wildlife habitat and the species that could be affected by the proposed facility, providing evidence to support a finding by the Council that the design, construction, and operation of the facility, taking into account mitigation, are consistent with the general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1) through (6) in effect as of February 24, 2017. The applicant must consult with the Oregon Department of Fish and Wildlife (ODFW) in developing the materials for Exhibit P.

The Oregon Fish and Wildlife Habitat Mitigation Policy under OAR Chapter 635, Division 415 classifies six habitat categories and establishes a mitigation goal for each category. Under OAR 345-021-0010(1)(p)(B) and (C), Exhibit P must identify all fish and wildlife habitat in the analysis area, classified by both vegetation class and habitat category as set forth in OAR 635-415-0025 and describe the characteristics and condition of that habitat in sufficient detail to justify the categorizations. The habitat classification is subject to the Department and ODFW review. Exhibit P must include maps and a table of the areas of permanent disturbance and temporary disturbance (in acres) in each habitat category and subtype.

Under OAR 345-021-0010(1)(p)(A) through (E), Exhibit P must include a description of biological and botanical surveys performed that support the habitat categorization and other information in Exhibit P, including a discussion of the proposed timing and scope of each survey.

Under OAR 345-021-0010(D), based on consultation with the ODFW and appropriate field study and literature review, Exhibit P must identify all state sensitive species that might be present in the analysis area and a discussion of any site-specific issues of concern to ODFW. Exhibit P must include baseline surveys in appropriate habitats for these species, and any other identified state sensitive species within the analysis area and must provide a map showing the locations of the different species and habitats with respect to the proposed activities. If state sensitive species, or suitable habitat for state sensitive species, are identified within the analysis area that could be adversely affected as a result of the proposed facility, the applicant shall include a description of the nature, extent, and duration of potential adverse impacts and a description of any proposed mitigation measures, consistent with the Exhibit P requirements, the EFSC Fish and Wildlife Habitat standard, and the ODFW Habitat Mitigation Policy.

Exhibit P must show how it would comply with the habitat mitigation goals and standards by appropriate monitoring and mitigation, including measures proposed by the applicant to avoid, reduce, or otherwise mitigate adverse impacts to habitat and state sensitive species. This information must also be incorporated into a draft Revegetation and Noxious Weed Control Plan, a draft Habitat Mitigation Plan, and a draft Post Construction Monitoring Plan, which should be included as attachments to Exhibit P.

The draft Revegetation and Noxious Weed Control Plan and associated information in Exhibit P must describe how the areas that are temporarily disturbed during construction or operation of the facility will be rehabilitated and returned to their pre-construction functionality. The plan should clearly describe draft success criteria for revegetation activities and describe the monitoring program that will be used to ensure those criteria are met.

The draft Habitat Mitigation Plan and associated information in Exhibit P must clearly demonstrate how the applicant will provide mitigation for both short- and long-term habitat impacts in accordance with the ODFW Habitat Mitigation Policy. This includes identifying the location of a specific habitat mitigation area that could be used to provide in-kind, in-proximity mitigation for any impacts to Category 1 to 4 Habitat, as well as ecological uplift mitigation actions that could be implemented at the habitat mitigation area to provide the appropriate mitigation.

The Habitat Mitigation Plan must include results of a desktop or field-level survey assessing the habitat categories of the habitat mitigation area and must describe the legal mechanism or mechanisms proposed for acquiring the legal right to maintain and enhance the habitat mitigation area. The Habitat Mitigation Plan must include draft success criteria for the proposed ecological uplift actions and describe a process for evaluating monitoring and reference site locations, prior to construction.

The post construction monitoring plan for the project should provide for, at a minimum, monitoring of all known raptor nest sites in the project area for the life of the project and two years of post-construction fatality monitoring to determine fatality effects of solar projects on avian species using the airspace above and around the proposed project.

(q) Exhibit Q – Threatened and Endangered Species

Applicable Paragraphs: All paragraphs apply.

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

Discussion: Exhibit Q must include information about threatened and endangered plant and animal species that may be affected by the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0070.

Under OAR 345-021-0010(1)(q)(A) through (G), Exhibit Q must include a list of all threatened and endangered species listed in OAR 635-100-0125 or 603-073-0070 that have the potential to occur in the analysis area. The applicant shall identify these species based on a review of literature, consultation with knowledgeable individuals, and reference to the list of species maintained by the Oregon Biodiversity Information Center. For each species identified, Exhibit Q must describe the nature, extent, locations, and timing of its occurrence in the analysis area; how the facility might adversely affect the species; what measures the applicant proposes to avoid or reduce and adverse impact; and the applicant's proposed monitoring program for impacts.

For each threatened and endangered plant species, Exhibit Q must describe how the proposed facility, including any mitigation measures, complies with the protection and conservation program adopted by the Oregon Department of Agriculture (ODA), or if there is no protection and conservation program in place for an identified threatened or endangered plant species, describe any significant potential impacts the proposed facility may have on the continued existence of the species and on the critical habitat of such species, and must provide evidence that the proposed facility, including any mitigation measures, is not likely to cause a significant reduction in the likelihood of survival or recovery of the species.

For each threatened and endangered animal species, Exhibit Q must describe any significant potential impacts of the proposed facility on the continued existence of such species and on the critical habitat of such species, and must provide evidence that the proposed facility, including any mitigation measures, is not likely to cause a significant reduction in the likelihood of survival or recovery of the species.

Field surveys for any threatened and endangered species that may occur within the analysis area are required within or near suitable habitat that will be disturbed during construction and operation of the proposed facility. The applicant must consult with ODFW and ODA's Native Plant Conservation Program regarding appropriate field survey methods, survey areas, survey seasons, qualifications of field survey personnel, and the information to be included in a field survey report.

Surveys that will be required for the proposed facility, include, but are not limited to, surveys for Washington Ground Squirrel in any suitable habitat within 1,000 feet of all proposed ground disturbing activities. If Washington Ground Squirrel colonies or occupied habitats are identified during surveys, Exhibit Q must include information about how the applicant proposes to avoid impacts to Washington Ground Squirrel and must provide a plan for monitoring colonies for the life of the facility. Any information about monitoring and mitigating impacts to threatened or endangered species should be incorporated into the Revegetation and Noxious Weed Control Plan, draft Habitat Mitigation Plan, and draft Post Construction Monitoring Plan included in Exhibit P, as appropriate.

(r) Exhibit R – Scenic Resources

Applicable Paragraphs: All paragraphs apply.

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

Discussion: The ASC shall include an analysis of potential impacts of the proposed facility on scenic resources identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area. For the purposes of Exhibit R, "local" land use plans include state, county, and city planning documents or inventories. For any significant or important scenic resources identified in a local, tribal or federal land management plan, the applicant shall include in the ASC an evaluation of the proposed facility's consistency or compliance with any development or land use criteria included in the land management plan for the identified resource. ASC Exhibit R

shall include a copy of the portion(s) of the management plan that identifies the resource as significant or important. The applicant shall also describe the measures it proposes to avoid, reduce, or otherwise mitigate any significant adverse impacts to these scenic resources. A visual impact assessment is required as part of Exhibit R; while no specific methodology is required by EFSC rule, the applicant must submit evidence adequate to demonstrate why the proposed facility is in compliance with the Scenic Resources standard. Visual simulations or other visual representations are not required but can provide important evidence for use by the Department and Council in understanding the potential visual impact of the proposed facility to Scenic Resources.

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

Applicable Paragraphs: All paragraphs apply.

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

Discussion: Exhibit S must include information about historic, cultural, and archaeological resources. As described under OAR 345-022-0090(2), the Council may issue a site certificate for a facility that would produce power from solar energy without making the findings required under OAR 345-022-0090(1); however, the applicant must still provide sufficient information for the Council to determine whether conditions of approval to ensure compliance with the Standard are appropriate.

Information concerning the location of archaeological sites or objects may be exempt from public disclosure under ORS 192.345(11). Such information, including archaeological survey reports, should be provided confidentially under separate cover in **hard copy only** format, and 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.

According to comments on the NOI provided by SHPO and the Confederated Tribes of the Umatilla Indian Reservation, there are previously identified archaeological objects or sites, or Native American cairn, burial, human remains, sacred objects and objects of cultural patrimony in or adjacent to the proposed site boundary. Accordingly, the Department is extending the analysis area for visual and noise impacts to aboveground historic and cultural resources to the area within and extending 2 miles from the site boundary. The applicant must consult with SHPO to determine the appropriate methods for historic property and cultural resource surveys and other measures that are needed to locate, identify, and assess historic, cultural, and archaeological resources, including archaeological sites and objects as defined in ORS 358.905, to provide sufficient evidence to support the findings required by OAR 345-022-0090. The Department expects that the level of analysis within the 2-mile indirect analysis area may vary based on the potential for impacts and a viewshed and/or noise analysis may be used to inform the extent of literature review and field work that is required for particular areas.

As described under OAR 345-021-0010(1)(s)(D)(i) to (iii), Exhibit S must describe survey

methodology, survey areas, and the results of all surveys conducted for historic, cultural, and archaeological resources as well as an analysis of any significant adverse impacts anticipated and proposed mitigation measures.

Under OAR 345-021-0010(1)(s)(A) through (C), Exhibit S must include an inventory of all historic properties discovered in the analysis area, including any archaeological sites or objects on private land in the analysis area and archaeological sites on public land in the analysis area. Exhibit S must include an evaluation of whether the historic properties have been listed on, or would likely be listed on, the National Register of Historic Places, based on an evaluation of the National Register Evaluation Criteria as described in National Register Bulletin 15.¹⁰

Under OAR 345-021-0010(1)(s)(D), Exhibit S must also include an impact assessment, and proposed measures to avoid or mitigate potential impacts to historic, cultural, or archaeological resources that have been listed on, or would likely be listed on the National Register of Historic Places.

Under OAR 345-021-0010(1)(s)(E), Exhibit S must include the applicant's proposed monitoring program, if any, for impacts to historic, cultural, and archaeological resources during construction and operation of the proposed facility, including a program to address inadvertent discovery of resources during ground disturbing activities at the site.

The Applicant is strongly encouraged to discuss the proposed facility with the potentially affected tribes identified by the Legislative Commission on Indian Services, including the Burns Paiute Tribe, Confederated Tribes of the Warm Springs, and the Confederated Tribes of the Umatilla Indian Reservation.

(t) Exhibit T – Recreation

Applicable Paragraphs: All paragraphs apply.

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

Discussion: The ASC shall analyze the importance of recreational opportunities in the analysis area using the factors listed in OAR 345-022-0100(1), discuss any significant potential adverse impacts to important recreational opportunities, and describe measures proposed to avoid, minimize or mitigate those impacts. Impacts that must be evaluated in Exhibit T include:

- Direct or indirect loss of a recreational opportunity as a result of facility construction or operation.
- Noise resulting from facility construction or operation.
- Increased traffic resulting from facility construction or operation.
- Visual impacts of facility structures.

Note that a visual impact assessment is required as part of Exhibit T. While no specific methodology is required, the applicant must submit sufficient evidence to demonstrate how the proposed facility would comply with the Recreation standard. The applicant should consider

¹⁰ Available from: <https://www.nps.gov/subjects/nationalregister/publications.htm>

the extent of impacts and prior Council evaluations when designing the impact assessment methodology. Visual simulations or other visual representations are not required but can provide important evidence for use by the Department and Council in understanding the potential visual impact of the proposed facility to important recreational opportunities.

Compliance with the DEQ noise rules (Exhibit X) does not correlate to compliance with the noise assessment considered in the Recreation standard. Particularly, while construction noise is exempt from the DEQ noise rules, construction noise must be considered under the Recreation standard. However, information developed to demonstrate compliance with the DEQ noise rules such as noise modeling can be used in the assessment under the Recreation standard.

If the applicant becomes aware of any potentially significant impacts to the identified recreational opportunities other than those described above, the impacts must be disclosed and evaluated in Exhibit T.

(u) Exhibit U – Public Services

Applicable Paragraphs: All paragraphs apply.

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

Discussion: The ASC shall provide information related to the proposed facility's potential impacts to the ability of public and private providers within the analysis area to provide: sewers and sewage treatment, water, storm water drainage, solid waste management, housing, air and vehicular traffic safety, police and fire protection, health care and schools (OAR 345-022-0110). Applications for site certificate typically include

Under OAR 345-021-0010(1)(u)(A) through (D), Exhibit U must include an analysis identifying the public and private service providers in the analysis area that would likely be affected by construction and operation of the proposed facility, a description of any likely impacts on the ability of the service providers to provide their respective services, and evidence that any adverse impacts, taking into account any mitigation proposed by the applicant, are not likely to be significant. The analysis must describe any important assumptions the applicant used to evaluate potential impacts. Mitigation may include funding for equipment or capital improvements, training, or other actions intended to increase the capacity of public service providers.

The applicant may include information developed in support of Exhibit V in its evaluation of impacts to fire protection providers, an evaluation of any potential impacts that may affect responders to structural fires at the proposed facility, including but not limited to fires involving Battery Energy Storage Systems or electrical equipment at the site should also be included as part of Exhibit U.

In evaluating impacts to traffic safety, Exhibit U must contain sufficient evidence to demonstrate that the construction and operation of the proposed facility will not result in significant safety impacts to drivers along State Highway 207. Impacts that must be evaluated

1 should include the impacts of vehicles entering and exiting the site during construction and the
2 potential for glint or glare from solar modules and other surfaces during operation. Exhibit U
3 should also evaluate whether any significant traffic delays will occur and whether or not these
4 delays could affect ambulance services or other emergency responders. In addition, Exhibit U
5 must evaluate the impacts that the construction and operation of the proposed facility will
6 have on local aviation resources, including the Lexington Airport and the West Butter Creek
7 Airport, sufficient to demonstrate compliance with OAR chapter 738, division 070.

8
9 Exhibit U must evaluate the impact that the temporary and permanent workforce will have on
10 housing in the analysis area, including the availability of hotels, RV parks, and other temporary
11 accommodations. This evaluation must assume that 100 percent of the temporary construction
12 workforce will require temporary accommodations unless the applicant can provide evidence
13 to demonstrate the availability of local workers or can provide evidence of a local hiring
14 program.

15
16 In addition to the analysis described above, the applicant is encouraged to obtain letters from
17 local public services providers to demonstrate that the proposed facility would not cause a
18 significant adverse impact on their ability to provide their respective services. Including:

- 19
20 • Local fire department,
21 • Police department,
22 • Public works department,
23 • Sewer and sewage treatment providers,
24 • Water service providers
25 • Solid waste providers
26

27 Letters obtained from public service providers include analysis indicating that their level of
28 service would not be impacted. For instance, letters obtained from water service providers
29 should include an evaluation of permit limits, permit or water right numbers, type of water use,
30 and historical demand to demonstrate that it can meet proposed facility needs. Letters from
31 fire service providers should explain how resources used by the facility, in the event of a fire-
32 related issue, would not impact their ability to provide fire emergency response, rather than a
33 conclusory statement without supporting analysis demonstrating a clear understanding of the
34 facility. Letters from public works departments should demonstrate an understanding of
35 proposed facility road use, including maximum number of vehicle miles travelled and vehicle
36 weight, and confirmation of whether the use would impact local roads.

37
38 As described in the Public Services standard at OAR 345-022-0110(2), the Council may issue a
39 site certificate for a facility that would produce power from solar energy without making the
40 findings of the Public Services standard at OAR 345-022-0110(1), though the Council may apply
41 the requirements of OAR 345-022-0110(1) to impose conditions on a site certificate issued for
42 such a facility.
43

Under OAR 345-021-0010(1)(u)(E), Exhibit U must include the applicant's proposed monitoring program, if any, for impacts to public services.

(v) Exhibit V – Wildfire Prevention and Risk Mitigation

Applicable Paragraphs: All paragraphs apply

Related Council and Other Standards: Wildfire Prevention and Risk Mitigation [OAR 345-022-0115]

Discussion: Exhibit V must include information about wildfire risk within the analysis area sufficient to support the Council findings required under OAR 345-022-0115. This must include a characterization of wildfire risk within the analysis area that identifies each of the following:

- Baseline wildfire risk, based on factors that are expected to remain fixed for multiple years, including but not limited to topography, vegetation, existing infrastructure, and climate.
- Seasonal wildfire risk, based on factors that are expected to remain fixed for multiple months but may be dynamic throughout the year, including but not limited to, cumulative precipitation and fuel moisture content.
- Areas subject to a heightened risk of wildfire, based on the Baseline and Seasonal risk information.
- High-fire consequence areas, including but not limited to areas containing residences, critical infrastructure, recreation opportunities, timber and agricultural resources, and fire-sensitive wildlife habitat.

The characterization must also describe all data sources and methods used to model and identify risks. The applicant may select data sources and methods as appropriate for the site, but all data must be current and from reputable sources.

Exhibit V must also include a draft Wildfire Mitigation Plan for the proposed facility.¹¹ The Wildfire Mitigation Plan must, at a minimum:

- Identify areas within the site boundary that are subject to a heightened risk of wildfire, using current data from reputable sources, and discuss data and methods used in the analysis.
- Describe the procedures, standards, and time frames that the applicant will use to inspect facility components and manage vegetation in any identified areas of heightened risk of wildfire.
- Identify preventative actions and programs that the applicant will carry out to minimize the risk of facility components causing wildfire, including procedures that will be used to adjust operations during periods of heightened wildfire risk. This should include a discussion of the use of defensible space, fire hardened infrastructure, and power shutoff protocols, as applicable.
- Identify procedures to minimize risks to public health and safety, the health and safety

¹¹ The requirements for the draft Wildfire Prevention Plan also reflect information requested to be included by the Oregon Department of Forestry in their July 18, 2022, comment letter.

of responders, and damages to resources protected by Council standards in the event that a wildfire occurs at the facility site, regardless of ignition source. This should include:

- A description of who will respond to wildfires at the site and a plan for ensuring responders are aware of sensitive resources that should be avoided during fire suppression activities.
 - A description and maps of access and egress options for wildfire responders and emergency vehicles to enter and exit the site in a fire emergency.
 - Information about whether any specialized equipment or training will be needed to respond to fire events at the site involving solar arrays, battery systems, or other facility components.
- Describe methods the applicant will use to ensure that updates of the plan incorporate best practices and emerging technologies to minimize and mitigate wildfire risk.

(w) Exhibit W – Solid Waste and Wastewater

Applicable Paragraphs: All paragraphs apply

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

Discussion: Exhibit W must describe the applicant's plans to minimize the generation of solid waste and wastewater and to recycle or reuse solid waste and wastewater, providing evidence to support findings by the Council under OAR 345-022-0120. As provided in OAR 345-022-0120(2), the Council may issue a site certificate for a facility that would produce power from solar energy without making the findings required by OAR 345-022-0120(1); however, the applicant must still provide sufficient evidence in Exhibit W for the Council to determine whether conditions of approval are needed to ensure that waste generation will be minimized.

Under OAR 345-021-0010(1)(w)(A), (B), and (D), Exhibit W must include a description of the major types and amount of solid waste and wastewater that construction, operation, and retirement of the facility are likely to generate; the structures, systems, and equipment for management and disposal of the wastes, including any plans to minimize, recycle or reuse the wastes. This should include a discussion of whether or not the applicant has plans in place to recycle solar modules or other facility components.

Under OAR 345-021-0010(1)(w)(C), Exhibit W must include a discussion of any actions or restrictions proposed by the applicant to reduce consumptive water use during construction and operation of the facility. This includes water needed for operation and maintenance of the facility and should include a discussion of wastewater and runoff generated from panel washing.

Under OAR 345-021-0010(1)(w)(E) and (F), Exhibit W must include a description of any adverse impact on surrounding and adjacent areas from the accumulation, storage, disposal and transportation of solid waste, wastewater and stormwater during construction and operation of the facility and evidence that those impacts, taking into account any measures the applicant proposes to avoid, reduce, or otherwise mitigate the impacts, will be minimal.

Under OAR 345-021-0010(1)(w)(G), Exhibit W must include the applicant's proposed monitoring program, if any, for minimization of solid waste and wastewater impacts.

The applicant is encouraged to reference information provided under other exhibits, including but not limited Exhibits O and U, in the development of this exhibit.

(x) Exhibit X – Facility Retirement

Applicable Paragraphs: All paragraphs apply.

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

Discussion: Exhibit X must provide information about site restoration, providing evidence to support a finding that the site can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility.

Under OAR 345-021-0010(1)(x)(A) and (B), this information must include the estimated useful life of the proposed facility and a description of the specific actions and tasks to restore the site to a useful, non-hazardous condition.

Under OAR 345-021-0010(1)(x)(C) and (D), Exhibit X must also include an estimate, in current dollars, of the total and unit costs of restoring the site to a useful, non-hazardous condition and a discussion and justification of the methods and assumptions used in preparing the estimate. The estimate should include sufficient detail to identify costs associated with individual tasks and units.

Under 345-021-0010(1)(x)(E), Exhibit X must include a proposed monitoring plan for any potential site contamination by hazardous materials, including oils or fuels used or stored on site, such as periodic environmental site assessment and reporting. If the applicant believes no monitoring for soil contamination is necessary, Exhibit X must provide evidence to support this position.

(y) Exhibit Y – Noise

Applicable Paragraphs: All paragraphs apply.

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: Exhibit Y must include information about noise generated by construction and operation of the proposed facility, providing evidence to support a finding by the Council that the proposed facility complies with the Oregon Department of Environmental Quality's noise control standards in OAR 340-035-0035.

Under OAR 345-021-0010(1)(y)(A), Exhibit Y must include predicted noise levels from all potential noise-generating components of the facility including, but limited to the solar photovoltaic modules and trackers, cabling, inverters, transformers, transmission lines and switchgears.

Under OAR 345-021-0010(1)(y)(B), Exhibit Y must include an analysis of demonstrating that the

predicted noise levels will not exceed the ambient antidegradation standards established under OAR 340-035-0035. Noise generated by the facility may not increase the ambient statistical noise levels, L10 or L50, by more than 10 dBA in any one hour, and may not exceed the levels specified in Table 2 below.

Table 2. New Industrial and Commercial Noise Source Standards Allowable Statistical Noise Levels in Any One Hour (OAR 340-035-0035, Table 8)

7:00 a.m. – 10:00 p.m.	10:00 p.m. – 7:00 a.m.
L50 – 55 dBA	L50 – 50 dBA
L10 – 60 dBA	L10 – 55 dBA
L1 – 75 dBA	L1 – 60 dBA

The Analysis must include a discussion and justification of the methods and assumptions used, including methods used to measure ambient noise levels at the site. OAR 340-035-0035(3) provides that sound measurement procedures must conform to the procedures set forth in Sound Measurement Procedures Manual (NPCS-1).¹² If the applicant's sound measurement procedures differ from the NPCS-1, please provide a discussion and basis for the variation. The analysis must evaluate noise impacts using the maximum expected noise levels from all noise-generating equipment during construction and operation. Operational noise shall be evaluated from both stationary sources and corona noise from transmission lines.

Under OAR 345-021-0010(1)(y)(E), Exhibit Y must include a list of the names and addresses of all owners of all dwellings or other noise sensitive properties within one mile of the proposed site boundary; however, if the applicant determines potential exceedances of the ambient antidegradation standards may occur beyond the 1-mile distance, impacts to noise sensitive properties within the area of potential exceedance must be evaluated. The applicant is not required to conduct ambient noise monitoring at each noise sensitive property; however, 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.

Under OAR 345-021-0010(1)(y)(C) and (D), Exhibit Y must describe any measures the applicant proposes to reduce noise levels or noise impacts or to address public complaints about noise from the facility and any measures the applicant proposes to monitor noise generated by operation of the facility. This information must be provided regardless of whether or not any exceedances of the ambient antidegradation standards are expected.

(z) Exhibit Z – Cooling Tower Impacts

Applicable Paragraphs: OAR 345-021-0010(1)(z) does not apply because the applicant has not proposed to construct an evaporative cooling tower in relation to the proposed facility.

(aa) Exhibit AA – Electric and Magnetic Fields

¹² Available from the Department upon request.

Applicable Paragraphs: All paragraphs apply.

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

Discussion: Because the proposed facility would include transmission lines as a related and supporting facilities, the provisions of OAR 345-021-0010(1)(aa) and OAR 345-024-0090 apply. For the purposes of this exhibit, all

Exhibit AA must include sufficient information to support a finding that the applicant:

- Can design, construct, and operate the proposed transmission lines so that alternating current electric fields do not exceed 9 kV per meter at one meter above the ground surface in areas accessible to the public.
- Can design, construct, and operate the proposed transmission line so that induced currents resulting from the transmission lines will be as low as reasonably achievable.

This must include the information about the expected electric and magnetic fields from each transmission line required under OAR 345-021-0010(1)(aa)(A), and information about any radio interference likely to be caused by the transmission line in the primary reception area near State Highway 207.

(bb) Exhibit BB – Other Information

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

Discussion: No additional information is requested at this time

(cc) Exhibit CC – Other Law

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

Discussion: All requirements apply.

(cc) Exhibit CC. Identification, by legal citation, of all state statutes and administrative rules and local government ordinances containing standards or criteria that the proposed facility must meet for the Council to issue a site certificate, other than statutes, rules and ordinances identified in Exhibit E, and identification of the agencies administering those statutes, administrative rules, and ordinances. The applicant must identify all statutes, administrative rules, and ordinances that the applicant knows to be applicable to the proposed facility, whether or not identified in the project order. To the extent not addressed by other materials in the application, the applicant must include a discussion of how the proposed facility meets the requirements of the applicable statutes, administrative rules, and ordinances.

(dd) Exhibit DD – Specific Standards

Applicable Paragraphs: Paragraph (C) applies.

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

Discussion: The Council applies specific standards for transmission lines under its jurisdiction in OAR 345-024-0090. The applicant must provide analysis regarding compliance with OAR 345-024-0090 in Exhibit AA.

IV. ANALYSIS AREAS FOR THE PROPOSED FACILITY

The analysis areas are the areas that the applicant must study for potential impacts from the construction and operation of the proposed facility. **Please Note:** If significant impacts associated with the applicable Council standards¹³ could occur beyond the analysis areas described here, then the applicant must assess those impacts in the ASC and show how the facility would comply with the applicable standard with regard to the larger area where impacts could occur.

For all potential impacts, the analysis area includes all the area within the site boundary. The minimum required analysis areas are presented in Table 3.

Table 3: Analysis Areas

Affected Standard or Resource	Exhibit	Analysis Area
Structural Standard	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	I	The area within the site boundary.
Wetlands	J	The area within the site boundary.
Land Use	K	The area within and extending 0.5 mile from the site boundary.
Protected Areas	L	The area within and extending 20 miles from the site boundary.
Fish and Wildlife Habitat	P	The area within and extending 0.5 mile from the site boundary.
Threatened and Endangered Species	Q	The area within and extending 5 miles from the site boundary.
Scenic Resources	R	The area within and extending 10 miles from the site boundary.
Historic, Cultural and Archaeological Resources	S	For direct impacts to archeologic sites and objects, the area within the site boundary. For indirect impacts to aboveground resources, including Traditional Cultural Properties or Historic Properties of Religions and Cultural Significance to Indian Tribes, were identified within 1-mile of the site boundary during the desktop review, the

¹³ OAR 345-022-0080 - Scenic Resources, OAR 345-022-0100 – Recreation, and OAR 345-022-0110 - Public Services directly reference the analysis area as described in the Project Order.

Table 3: Analysis Areas

Affected Standard or Resource	Exhibit	Analysis Area
		analysis area shall include the area within and extending 1-mile from the site boundary.
Recreation	T	The area within and extending 5 miles from the site boundary.
Public Services	U	The area within and extending 15 miles from the site boundary, including the Cities of Lone, Heppner, and Boardman and the Town of Lexington.
Wildfire Risk	V	The analysis area is the site boundary and 0.5 mile from the site boundary.
Noise Control Regulation	Y	The area within and extending 1-mile from the site boundary.
Notes: 1. The applicant should note that analysis areas defined in this Project Order are to be used for the assessment of impacts to the associated resource. The applicant is not required to perform comprehensive field surveys of the entire analysis area if another method of impact assessment is suitable. However, the Department reserves the right to require field surveys if it is determined that a different method of analysis is insufficient to provide the level of information necessary to find the application complete. It is recommended that the Department be consulted if the applicant wishes to propose alternative methods of analysis than field surveys.		

V. COMMENTS FROM THE PUBLIC AND REVIEWING AGENCIES

The Department and applicant received one verbal comment (via Webex) from a member of the public during the January 7, 2021 NOI informational meeting. In addition, during the original NOI comment period, the Department received 10 comments from government entities including other state agencies and Special Advisory Groups, and no other comments from members of the public. During the amended NOI comment period, as discussed above in Section I. Introduction, the Department received six comments from government entities including other state agencies and Special Advisory Groups, and one comment from members of the public. All of these comments were provided under separate cover to the applicant and were reviewed and considered in the development of this Project Order. Within each applicable exhibit of the ASC, the applicant shall address those concerns raised by reviewing agencies and members of the public that are within the jurisdiction of the Council.

VI. EXPIRATION DATE OF THE NOTICE OF INTENT

In accordance with OAR 345-020-0060, the Wagon Trail Solar Project amended NOI will expire two years after the date of submittal of the original NOI, on November 3, 2022, unless the applicant submits a petition to Council to extend the expiration date. Such a petition must be submitted no less than 45 days before the NOI expiration date. If the Council finds that the extension petition shows good cause, it may extend the NOI expiration date by up to one year.

VII. PROJECT ORDER AMENDMENT AND APPLICATION COMPLETENESS

As provided in ORS 469.330(4) and OAR 345-015-0160(3), the Council or the Department may amend this Project Order at any time. Amendment may include changes to the analysis areas. To issue a site certificate, the Council must determine that the proposed facility complies with Oregon statutes and administrative rules identified in the Project Order, as amended, as applicable to the issuance of a site certificate for the proposed facility (ORS 469.503(3)).

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

VIII. APPLICABILITY AND DUTY TO COMPLY

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

OREGON DEPARTMENT OF ENERGY

Todd Cornett

Todd Cornett (Nov 3, 2022 06:38 PDT)

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

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