

**BEFORE THE
ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON**

In the Matter of the Application for Site Certificate
for the West End Solar Project

)
) FINAL ORDER ON
) APPLICATION FOR SITE
) CERTIFICATE

March 24, 2023

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ACRONYMS AND ABBREVIATIONS

AADT	Average Annual Daily Traffic
ACEC	Oregon Trail Area of Critical Environmental Concern
ACDP	Air Contaminant Discharge Permit
ADT	Average daily traffic
Applicant	EE West End Solar, LLC
ASC	Application for Site Certificate
AVA	American Viticulture Area
BGEPA	Bald and Golden Eagle Protection Act
BLM	U.S. Bureau of Land Management
BMP	Best Management Practice
BPA	Bonneville Power Administration
CadnaA	Computer Aided Noise Abatement
CFR	Code of Federal Regulations
Cfs	Cubic feet per second
CON	Construction
Council	Oregon Energy Facility Siting Council
CR	Country Road
CSZ	Cascadia Subduction Zone
CTUIR	Confederated Tribes of the Umatilla Indian Reservation
CTWS	Confederated Tribes of the Warm Springs Reservation of Oregon
dBA	A-weighted decibel
Department	Oregon Department of Energy
demo	Demolish
DEQ	Oregon Department of Environmental Quality
DC	Direct current
DOGAMI	Oregon Department of Geology and Mineral Industries
DPO	Draft Proposed Order
DSL	Oregon Department of State Lands
EFSC	Oregon Energy Facility Siting Council
EFU	Exclusive Farm Use
EMWMP	Emergency Management and Wildfire Mitigation Plan
EPA	United States Environmental Protection Agency
ESCP	Erosion and Sediment Control Plan
ESEE	Environmental, Socioeconomic and Energy
ESS	Energy storage system
FAA	Federal Aviation Administration
FACP	Fire alarm control panel
FHWA	Federal Highway Administration
FSS	Fire Safety System
GEN	General Conditions
GPS	Global Positioning System
HMA	Habitat Mitigation Area
HMP	Habitat Mitigation Plan
HMBP	Hazardous Materials Business Plan
hp	Horsepower

ACRONYMS AND ABBREVIATIONS

HPROSMP	Hermiston Parks, Recreation and Open Space Master Plan
I-82	Interstate 82
I-84	Interstate 84
IBC	International Building Code
IDP	Inadvertent Discovery Plan
IOU	Investor owned utility
ISO	International Organization for Standardization
km	kilometers
kV	kilovolts
LCDC	Land Conservation and Development Commission
LLC	Limited liability company
LOS	Level of service
MGD	Million gallons per day
MW	Megawatt(s)
NOI	Notice of Intent
NFPA	National Fire Protection Association
NHD	National Hydrologic Database
NOAA	Northwest Interagency Coordination Center
NPDES	National Pollutant Discharge Elimination System
NRCS	Natural Resources Conservation Service
NRHP	National Register of Historic Places
NSR	Noise sensitive receptor
NWCC	Northwest Interagency Coordination Center
NWI	National Wetlands Inventory
NWR	National Wildlife Refuge
O&M	Operations and Maintenance
OAR	Oregon Administrative Rule
OAH	Oregon Office of Administrative Hearings
ODA	Oregon Department of Agriculture
ODFW	Oregon Department of Fish and Wildlife
ODOE	Oregon Department of Energy
ODOT	Oregon Department of Transportation
ONHT	Oregon National Historic Trail
OPRD	Oregon Parks and Recreation Department
OPS	Operational Conditions
ORBIC	Oregon Biodiversity Information Center
ORS	Oregon Revised Statutes
OSSC	Oregon Structural Specialty Code
OWRD	Oregon Water Resources Department
Parent company	Eurus Energy America Corporation
pASC	Preliminary Application for Site Certificate
PRE	Preconstruction Conditions
PRO	Preoperational Conditions
Proposed facility	West End Solar Project
PSA	Predictive service area

ACRONYMS AND ABBREVIATIONS

RAI	Request for Additional Information
RET	Retirement Conditions
ROW	Rights-of-way
RPS	Renewable Portfolio Standard
RV	Recreational vehicle
SAG	Special Advisory Group
SCADA	Supervisory Control and Data Acquisition system
SC	Sensitive critical
SEIA	Solar Energy Industries Association
SHPO	State Historic Preservation Office
SLIDO-2	Statewide Landslide Information Database for Oregon, Release 2
SMBC	Sumitomo Mitsui Banking Corporation
SPCC	Spill Prevention Control and Countermeasure Plan
T&E	Threatened and Endangered
TSP	Transportation System Plan
UCDC	Umatilla County Development Code
UCFD #1	Umatilla County Fire District #1
UEC	Umatilla Electric Cooperative
US-395	U.S. Route 395
USACE	U.S. Army Corps of Engineers
USGS	United States Geological Survey
USFWS	United States Fish and Wildlife Service
U.S.	United States
V/C	Volume to capacity
VOC	Volatile Organic Compound
WGS	Washington Ground Squirrel
WPCF	Water Pollution Control Facilities
ZVI	Zone of Visual Influence

1 **I. INTRODUCTION**
2

3 The Oregon Energy Facility Siting Council (Council or EFSC) issues this final order in accordance
4 with Oregon Revised Statute (ORS) 469.370(7), based on its review of the Administrative Record
5 of the Application for Site Certificate (ASC) for the proposed West End Solar Project (proposed
6 facility). The record of the ASC includes comments received on the record of the DPO public
7 hearing, agency consultation on issues raised on the record of the DPO public hearing, and
8 comments and recommendations received during review of the preliminary and complete ASC
9 from state agencies, local governments, and tribal governments. This final order includes
10 conditions of approval for inclusion in the site certificate to ensure or maintain compliance with
11 applicable rules and standards during facility construction, operation and retirement. Based
12 upon its review, as presented in findings of fact, conclusions of law and site certificate
13 conditions, the Council approves the ASC and issue a site certificate for the facility. This facility
14 is processed under the Council’s rules for Expedited Review of Small Capacity Facilities because
15 it would be less than 100 MW generating capacity, discussed further in this order.
16

17 Council authorizes EE West End Solar, LLC (applicant), a wholly owned subsidiary of Eurus
18 Energy America Corporation, to construct and operate up to 50 megawatts (MW) of solar
19 photovoltaic energy generation facility components, and related or supporting facilities
20 including: a 70 MW lithium ion energy storage system, collector substation and switchyard
21 substation located within a 15 acre area, a 34.5-kV collector line system, Supervisory Control
22 and Data Acquisition (SCADA) System, driveway and access roads, an Operation and
23 Maintenance (O&M) enclosure located near the substations, and a construction staging area.
24 The entire site boundary would be enclosed in a 6 to 10-foot perimeter fence. The applicant
25 does not propose a transmission line within the ASC, yet proposes to connect to one of three
26 existing transmission line rights-of-way that run through the proposed site boundary or
27 adjacent to the site boundary; the Bonneville Power Administration’s McNary to Roundup 230-
28 kilovolt line, PacifiCorp’s Pendleton to Hermiston 69-kilovolt line, and a Umatilla Electric
29 Cooperative 115-kilovolt line.
30

31 The facility would occupy up to 324 acres on Exclusive Farm Use zoned land, including
32 approximately 261 acres of high-value farmland¹ under ORS 195.300(10)(f) because of the
33 location within the designated Columbia Valley American Viticulture Area (AVA) designation
34 and criteria. The facility site does not include high-value farmland as defined under ORS
35 195.300(10)(a) (soils) or ORS 195.300(10)(c) (water rights). The facility site would be located
36 entirely in northwestern Umatilla County, approximately one mile east of the city limits of
37 Hermiston, Oregon and one mile north of the city limits of Stanfield, Oregon.
38

39 In addition to the conditions of this final order, the applicant is subject to the applicable
40 substantive criteria in effect on the date the preliminary ASC (pASC) was submitted, the rules
41 and standards of the Council and state laws in effect on the date the site certificate is

¹ WESAPDoc3-11 ASC Exhibit K Land Use 2022-10-22. Table K-2.

1 executed.² Under ORS 469.401(2), the site certificate shall require the Council and applicant to
2 abide by state law and the rules of the Council in effect on the date the site certificate is
3 executed, except upon a clear showing of a significant threat to public health, safety, or the
4 environment that requires application of later-adopted laws or rules, then Council may require
5 compliance with such later-adopted laws or rules. The Council recognizes that many specific
6 tasks related to the design, construction, operation, and retirement of the facility would be
7 undertaken by the applicant’s agents or contractors. Nonetheless, the applicant would be
8 responsible for ensuring compliance with all provisions of the site certificate.

9
10 The Council does not have jurisdiction over matters that are not included in and governed by
11 the site certificate, including design-specific construction or operating standards and practices
12 that do not relate to siting, as well as matters relating to employee health and safety, building
13 code compliance, wage and hour or other labor regulations, or local government fees and
14 charges.³ However, nothing in ORS chapter 469 shall be construed to preempt the jurisdiction
15 of any state agency or local government over matters that are not included in and governed by
16 the site certificate or amended site certificate.⁴ Also outside the Council’s jurisdiction are
17 matters of land-acquisition, land purchases, land leases and right-of-way easements.

18
19 A site certificate is a binding agreement between the State of Oregon and the applicant,
20 authorizing the applicant to design, construct, operate, and retire a facility within an approved
21 site, incorporating all conditions imposed by the Council in the site certificate.⁵ A site certificate
22 issued by EFSC binds the state and all counties, cities and political subdivisions of Oregon. Once
23 EFSC issues a site certificate, any affected state agency, county, city or political subdivision with
24 an applicable permit identified in the ASC and to be governed by the site certificate, must, upon
25 submission by the applicant of the proper applications and payment of the proper fees, but
26 without hearing or other proceeding, promptly issue the permits, licenses and certificates
27 addressed in the site certificate.⁶ The Council has continued authority over the site for which
28 the site certificate is issued and may inspect, or direct Department staff to inspect, or request
29 another state agency or local government to inspect, the site at any time in order to ensure
30 that the facility is being operated consistently with the terms and conditions of the site
31 certificate.⁷

32
33 **II. PROCEDURAL HISTORY**

34
35 **II.A Expedited Review**
36

² The pASC and payment under ORS 469.421(3) we received by the Department on November 05, 2021.

³ 469.401(4).

⁴ Id.

⁵ ORS 469.300(26).

⁶ ORS 469.401(3).

⁷ ORS 469.430.

1 On December 4, 2020, the Department received a Request for Expedited Review for a Small
2 Capacity Facility for the West End Solar Project, a solar photovoltaic energy generation project
3 with a peak generating capacity of approximately 50 megawatts (MW). The Department
4 reviewed the request and on December 17, 2020 notified the applicant (EE West End Solar, LLC)
5 that the request for expedited review of the application for site certificate (ASC) for the West
6 End Solar Project was granted.⁸

7
8 Under the expedited review process, an applicant is not required to submit a Notice of Intent
9 (NOI). In an expedited review, an applicant submits a preliminary application for a site
10 certificate (pASC) based on the OAR 345-021-0010 informational requirements. The
11 Department issues a Project Order after reviewing the pASC. Procedurally, submission of the
12 ASC and the Department’s review of the ASC are the same for expedited review as for non-
13 expedited review of ASCs.

14 15 **II.B Project Order**

16
17 Pursuant to ORS 469.370(10), OAR 345-015-0160, and OAR 345-015-0300(3) the Department
18 issued a Project Order on February 10, 2022, which specified the state statutes and
19 administrative rules, and local, state, and tribal laws, regulations, ordinances and other
20 requirements applicable to the siting of the facility and is discussed further in this order. The
21 Project Order outlines the ASC requirements from OAR 345-021-0010 that are relevant to the
22 facility. Under OAR 345-015-0160, the Project Order also establishes analysis areas for the
23 facility which are areas that may contain resources that the facility may affect and that must be
24 evaluated in the ASC.⁹ A facility may have different analysis areas for different types of
25 resources. Further, the Department considered the size and type of the facility in determining
26 the analysis areas the applicant must evaluate in the ASC.¹⁰ Finally, under OAR 345-015-0160(3),
27 the Department or Council may amend the Project Order at any time.

28 29 **II.C Application for Site Certificate**

30
31 The Department received the preliminary application for site certificate (pASC) and payment
32 under ORS 469.350 and ORS 469.421 on November 5, 2021. On November 19, 2021, Council
33 appointed the Umatilla County Board of Commissioner’s as the Special Advisory Group (SAG)
34 for the review of the ASC for the facility.¹¹ The Department distributed the pASC to reviewing
35 agencies and requested pASC review and comment by December 17, 2021. Additionally, the
36 Department posted an announcement on its project website notifying the public that the pASC
37 had been received.

38

⁸ OAR 345-015-0300(4).

⁹ OAR 345-015-0160(1)(f) and OAR 345-001-0010(2).

¹⁰ OAR 345-015-0160(2).

¹¹ WESAPDoc3 West End Solar SAG Appointment Order_Umatilla County 2021-11-19.

1 On April 22, 2022, the Council appointed Alison Greene Webster, Senior Administrative Law
2 Judge at the Oregon Office of Administrative Hearings (OAH), as the hearing officer to conduct
3 the public hearing on the draft proposed order (DPO) and to conduct the contested case
4 proceeding.¹²

5
6 Pursuant to OAR 345-015-0190(1), following review of the pASC, the Department determined
7 the pASC to be incomplete and issued requests for additional information (RAIs) on January 3,
8 2022 (RAI1). The applicant responded to the Department's information requests on May 27,
9 2022, June 1, 2022, June 10, 2022 and June 20, 2022 (including revised pASC exhibits) in
10 response to RAI1 and reviewing agency comments. On June 30, 2022, the Department issued
11 additional RAI's, and on August 3, 2022 the Department notified the applicant of the new rules
12 under OAR 345-022-0115 and OAR 345-021-0010(1)(v) - Wildfire Prevention and Risk Mitigation
13 that are applicable to the pASC/ASC for the proposed facility. The Department received
14 additional responses to the RAIs from the applicant on August 11 and September 7, 2022. After
15 reviewing the applicant's responses and revised pASC exhibits, the Department determined the
16 pASC to be complete on September 19, 2022.^{13,14} The applicant submitted an electronic copy of
17 the ASC on September 26, 2022 and filed the complete ASC on September 28, 2022.¹⁵

18
19 Public Notice of the complete ASC was issued via U.S. Mail to property owners within 500-foot
20 of the property on which the facility site boundary would be located, electronically via
21 ClickDimensions to all individuals signed up to receive email notices from the Department
22 regarding the facility or all EFSC facilities, and published in the Hermiston Herald, a newspaper
23 of general circulation in the vicinity of the facility on September 28, 2022.^{16,17} The Department
24 held a remote public information meeting on the complete ASC on October 10, 2022. Pursuant
25 to OAR 345-015-0200, the Department distributed electronic copies of the complete ASC to
26 reviewing agencies, along with a request for agency reports on the complete ASC on September
27 27, 2022. The Department received comments from four agencies, all of which are provided in
28 Attachment B of this order and referenced in Sections *IV.H Fish and Wildlife Habitat*, *IV.J*
29 *Threatened and Endangered Species* and *IV.R.2. Removal-Fill Law*, respectively, of this order. As
30 indicated in the Notice of the ASC, the Department and applicant held a remote informational
31 meeting on October 10, 2022.¹⁸

32
33 Under OAR 345-015-0190(9), while the Department drafted the DPO, continued to review the
34 ASC, and consulted with reviewing agencies, the Department identified the need for additional

¹² WESAPPD0c10 Hearing Officer Appointment 2022-04-22.

¹³ Pursuant to OAR 345-015-0190(5), an ASC is complete when the Department finds that the applicant has submitted information adequate for the Council to make findings or impose conditions on all applicable Council standards.

¹⁴ WESAPPD0c-1 ASC Determination of Complete Application_2022-09-19.

¹⁵ WESAPPD0c5 ASC Filing Date Confirmation 2022-09-28.

¹⁶ WESAPPD0c3-6 ASC Exhibit F Property Owners 2022-09-28, Figure F-1. Updated property owner information was obtained by the applicant from Umatilla County on September 21, 2022.

¹⁷ WESAPPD0c2-1 ASC Public Notice-Mailing-Newspaper Proof-Click D 2022-09-28.

¹⁸ WESAPPD0c2 Complete ASC Public Notice 2022-09-28.

1 information following the determination of completeness. From October 22 to October 25,
2 2022, the applicant filed revised ASC Exhibits which were posted on the Department’s project
3 webpage.¹⁹

4
5 **II.D Council Review Process**

6
7 Draft Proposed Order on ASC

8
9 The Department issued the DPO and notice of the DPO on October 26, 2022, initiating a 22-day
10 comment period extending from October 26, 2022 to November 17, 2022, at the close of the
11 scheduled public hearing.²⁰ The Council-appointed, third-party hearing officer conducted a
12 public hearing on the DPO on November 17, 2022 at Oxford Inn and Suites – Oxford Room in
13 Hermiston, Oregon with opportunities for remote and in-person participation. The public
14 hearing location was selected because it represents the geographic area that would be affected
15 by the facility.

16
17 On the record of the DPO public hearing, the Department received comments from two state
18 agencies, 1 tribal government, 2 members of the public, EFSC members and the
19 applicant/landowners on behalf of the applicant. All comments and applicant response to
20 comments were provided to Council in preparation for the November 18 and December 16,
21 2022 Council meetings.²¹

22
23 Prior to the conclusion of the November 17, 2022 public hearing, the applicant requested that
24 the Hearing Officer extend the record to December 2, 2022 to allow the applicant to provide
25 additional responses to issues raised by EFSC members during the November 17, 2022 DPO
26 public hearing. A summary of DPO comments and the Department’s recommendation and
27 Council’s final conclusions as incorporated in the proposed and final orders are presented in
28 Table A-1: *Summary of DPO Comments and Final Disposition in Final Order*, located at the end
29 of this section.

30
31 On December 16, 2022, Council reviewed the DPO, issues raised in comments received on the
32 record of the DPO, and applicant responses. Council provided comments to the Department
33 regarding Organizational Expertise Condition 1, Retirement and Financial Assurance Condition
34 3(c) and (d) and the Goal 3 exception request (specifically the evaluation of the “minimal direct
35 impacts to agriculture on the subject tracts” reason provided in support of the “reasons”

¹⁹ WESAPPDoc3, 3-1, 3-4, 3-13, 3-16, 3-11, 3-22, 3-25 2022-09-28; Exhibits: A, B, D, M, P, K, V, Y

²⁰ Under OAR 345-015-0220(2), at least 20 days before the hearing on the DPO, the Department must publish notice in a newspaper in circulation in the vicinity of the facility and send notice to individuals identified in OAR 345-015-0220(2)(b).

²¹ The following record documents are the DPO comments and applicant responses DPO comments: WESAPPDoc3 Reviewing Agency Comment ODFW Somers 2022-11-03; WESAPPDoc3-1 Applicant DPO Comment_Curulla 2022-11-14; WESAPPDoc3-2 Reviewing Agency Tribal Gov DPO Comment CTUIR Farrow Ferman 2022-11-16; WESAPPDoc3-3 Public DPO Comment Thompson 2022-11-17; WESAPPDoc3-4 Public DPO Comment Little 2022-11-17; WESAPPDoc3-5 Reviewing Agency Comment ODAV Pike 2022-11-17; WESAPPDoc3-6 Applicant Response DPO-EFSC Comments 2022-11-17 and 2022-12-02.

1 exception request).²² Council comments described above are incorporated in the applicable
2 Section IV., *Evaluation of Council Standards*, below, as represented in Table A-1.

3
4 Consistent with OAR 345-015-0230(2), following the Council’s review of the DPO, the
5 Department consulted with reviewing agencies including Oregon Department of Water
6 Resources (DWR), Oregon Depart of Agriculture (ODA) and the Special Advisory Group (Umatilla
7 County) to support the evaluation of comments and recommendations presented in the
8 proposed order.

9
10 *Council Comments on Goal 3 Exception*

11
12 As described in Table A-1 at the end of this section and in Section IV.E.3., *Goal 3 Exception*,
13 Council’s comments on the Goal 3 exception request expressed concern that one of the four
14 reasons proposed for the “reasons” exception had not been adequately evaluated.

15
16 To address the Council’s comments, the Department consulted with Oregon Department of
17 Agriculture (ODA) to determine an approach in evaluating soil capability on a regional basis. To
18 substantively and adequately evaluate the question, the following information would be
19 needed:

- 20
21 • Tract and parcel level data extending approximately 9 miles east, 7 miles north, and 3.5
22 miles south and west (this would follow developed breaks including City of Hermiston,
23 I-84 and I-207 to I-730 and then to the edge of topographic features at which the land
24 use pattern changes)
- 25 ○ This resulted in more than 20,000 parcels and over 200,000 acres
- 26 • Then, to evaluate the question of comparable soil capability, for the over 20,000
27 parcels, 1) a complete history of water rights including active, cancelled and transferred
28 rights; NRCS soil classification evaluated based on complete water right history;
29 cultivation and grazing history for more than 15 years; and status of Conservation
30 Recovery Program (CRP) enrollment within the 15 year evaluation period.

31
32 CRP enrollment and a complete 15-year land use history (cultivation or grazing status) for more
33 than 20,000 parcels is not information that is readily and publicly available, and necessitates, to
34 some degree, on the ground surveys and landowner consultation. The scope of this assessment
35 is significant and not one that the Department could complete if the full extent were to be
36 completed.

37
38 The Department evaluated Council’s prior findings and analysis for past exceptions taken for
39 solar facilities where “minimal impacts to agriculture” was a reason determined, in part, to

²² Final Approved EFSC Meeting Minutes 2022-12-16.

1 justify the goal exception. Based on prior Council Final Orders²³ approving goal exceptions, none
2 relied upon or required an evaluation similar to the scope of the evaluation described above.
3 Therefore, in the proposed order, the Department recommended Council maintain consistency
4 with the relevant findings and analysis in this order and of its past orders, as applicable to the
5 “minimal impacts to agriculture” reason, and, at a later date, may evaluate whether it wants to
6 recommend that the “minimal impacts to agriculture” reason be evaluated as identified above
7 either through rulemaking or policy directive to the Department. This would allow Council, the
8 Department, and applicants/certificate holders an adequate opportunity to weigh whether it
9 believes it could complete such an evaluation, propose alternate evaluations, and whether the
10 results would be favorable enough to continue supporting the reason.

11
12 Proposed Order on ASC

13
14 On January 13, 2023, the Department issued a proposed order, taking into consideration
15 Council comments, evidence and arguments provided by the applicant in responses to issues
16 raised “on the record of the public hearing” (i.e. oral testimony provided at the public hearing
17 and written comments received by the Department from October 26 through November 17,
18 2022), and agency consultation.

19
20 Concurrent with the issuance of the proposed order, the Department issued a Notice of
21 Proposed Order and Contested Case, establishing a deadline of February 13, 2023 for eligible
22 individuals to submit a petition for party status in the contested case proceeding.²⁴

23
24 Contested Case Proceeding on the Proposed Order on ASC

25
26 Only those persons who commented in person or in writing on the record of the DPO public
27 hearing may request to participate as a party or limited party in the contested case proceeding.
28 Additionally, to raise an issue in a contested case, the issue must be within Council jurisdiction,
29 and the person must have raised the issue on the record of the public hearing with “sufficient
30 specificity to afford the Council, the department, and the applicant an adequate opportunity to
31 respond.”²⁵ No petitions for contested case were received by the hearing officer or Department
32 by the February 13, 2023 deadline. On February 17, 2023, Council-appointed hearing officer
33 Alison Greene Webster issued the Order Concluding the Contested Case in the matter of the
34 Application for a Site Certificate for the West End Solar Project.²⁶

35
36 Final Order on the ASC

²³ 2018 Final Order on ASC for Boardman Solar Energy Facility (p.94); 2020 Final Order on ASC for Bakeoven Solar Project (pp.109-111); 2018 Final Order on RFA1 for Carty Generating Station (pp.65-73); 2021 Final Order on ACS for Madras Solar Energy Facility (pp.102-103); 2019 Final Order on Amendment 4 of Montague Solar Facility (p.97); 2022 Final Order on ASC for Obsidian Solar Center (p,86); 2019 Final Order on Amendment 4 of Wheatridge Wind Energy Facility (pp.63-64).

²⁴ See ORS 469.370(4) and OAR 345-015-0014.

²⁵ ORS 469.370(3).

²⁶ WESAPDoc1 OAH Order Concluding Contested Case No. 2022-ABC-05632_2023-02-17.

1
2 On March 14, 2023, the Department issued public notice of the March 24, 2023 EFSC Meeting
3 Agenda which included Public Notice of Hearing to Adopt Final Order under ORS 469.370(7), in
4 case of any material changes made to the proposed order by EFSC during the meeting.²⁷
5 Following the contested case proceeding, the Council must take action to either modify or
6 approve the proposed order as the final order and issue a site certificate; or, may reject the
7 Proposed Order, denying the Final Order and issuance of a site certificate, based upon the
8 standards adopted under ORS 469.501, and any additional state statutes, rules, or local
9 government regulations or ordinances determined to be applicable to the proposed facility in
10 the Project Order.²⁸

11
12 At its regularly scheduled EFSC Meeting on March 24, 2023 located in Salem, Oregon, EFSC
13 reviewed the proposed order for the facility and unanimously approved proposed order as staff
14 recommended, and adopted the proposed order as the final order and issued a site certificate
15 for the facility.²⁹

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²⁷ ORS 469.370 (7) At the conclusion of the contested case, the council shall issue a final order, either approving or rejecting the application based upon the standards adopted under ORS 469.501 and any additional statutes, rules or local ordinances determined to be applicable to the facility by the project order, as amended. The council shall make its decision by the affirmative vote of at least four members approving or rejecting any application for a site certificate. The council may amend or reject the proposed order, so long as the council provides public notice of its hearing to adopt a final order, and provides an opportunity for the applicant and any party to the contested case to comment on material changes to the proposed order, including material changes to conditions of approval resulting from the council's review. The council's order shall be considered a final order for purposes of appeal.

²⁸ ORS 469.370(7) and (10).

²⁹ EFSC Member affirmative vote: Chair M. Grail, Vice Chair K. Howe, C. Condon, A. Beier, R. Devlin, J. Truitt. Council Member P. Chocktoot was present at meeting but was disconnected from webinar and did not vote.

Table A-1: Summary of DPO Comments and Final Disposition in Final Order

Commenter	Comment Subject	Comment Summary	Final Order Applicability (Section Reference)	Final Order Conclusion
<i>State and Tribal Government Agencies</i>				
ODFW	Draft Habitat Mitigation Plan (HMP) (Attachment P-5)	Draft HMP is not consistent with mitigation goals for Category 3, 4 and 5; however, habitat quality of site is lower than Category 3 and 4 due to its limited functionality and connectivity	IV.H Fish and Wildlife Habitat (pp. 136-140)	Section IV.H., Fish and Wildlife Habitat, Fish and Wildlife Habitat Condition 1: F&W Condition 1 includes an opportunity for the applicant to update the habitat categorization referenced in the HMP to Category 5; commitments for mitigation area size and enhancement actions should be maintained as sufficient to meet the mitigation goals for Category 5 habitat.
CTUIR	Inadvertent Discovery Plan (IDP) (Attachment S-3) and Noxious Weed Control	Draft IDP should be updated to reflect current contacts for CTUIR, Oregon State Police and CIS; and, requests confirmation of applicant’s plan for noxious weed control	IV.K Historic, Cultural and Archeological Resources (pp. 161 – 162); and, IV.H. Land Use (pp. 109-111)	Section IV.K., Historic, Cultural, and Archeological Resources: Findings for Historic, Cultural, and Archeological Resources Condition 1 describe that the draft IDP reviewed by Council includes updated contact information identified by CTUIR; condition language requires another update of relevant contacts prior to construction. Attachment P-4 includes the applicant’s draft Noxious Weed Control Plan; plan identifies pre-construction noxious weed survey and treatment, and monitoring, treatment and control

Table A-1: Summary of DPO Comments and Final Disposition in Final Order

Commenter	Comment Subject	Comment Summary	Final Oder Applicability (Section Reference)	Final Order Conclusion
				methods to be implemented during construction and operation. No changes made in response to CTUIR comment.
ODAV	Review of facility structures for potential impacts to navigable airspace	Recommends a condition requiring that applicant obtain FAA and ODAV review of structures	IV.M.6 Public Services, Air Traffic (pp. 197-198)	No Final Order Revision: Public Services Condition 3 is consistent with ODAV comments.
<i>Public Comments</i>				
G. Thompson	Opposes proposed facility	Concerns related to project impacts to good quality farmland and wildlife	NA	No Final Order Revision: Comment did not contain sufficient detail to allow the Council to substantively respond.
C. Little	Supports proposed facility	General support of solar project to support local economies and help meet state reviewable energy policies/laws	NA	No Final Order Revision: Comment did not contain sufficient detail to allow the Council to substantively respond.
<i>EFSC Member Comments</i>				
H. Jenkins	Land Use, Goal 3 exception	Expressed concerns about using arable soils for an energy facility rather than preserving for agricultural use and requested additional	IV.E.3 Land Use, Goal 3 Exception (pp. 93-111)	Section II.D. describes the Department’s post-DPO evaluation conducted in consultation with Oregon Department of Agriculture and Council’s conclusion that the analysis requested by Council is a significant change in the “test” applied

Table A-1: Summary of DPO Comments and Final Disposition in Final Order

Commenter	Comment Subject	Comment Summary	Final Oder Applicability (Section Reference)	Final Order Conclusion
		<p>reasons/evidence to support the proposed Goal 3 exception “reason” that the proposed facility would result in a minimum direct impact to agriculture. Requested a regional assessment to support arguments that the subject tracts are not suitable for agriculture.</p>		<p>to the evaluation of the adequacy of the “reason” compared to prior goal exceptions taken by Council which relied, in part, on the same “minimal impact to agriculture” reason. Therefore, at a later date, Council may consider whether to apply this “test” in a rulemaking or policy to allow applicants/certificate holders an adequate opportunity to understand and complete the evaluation.</p>
K. Howe	Land Use, Goal 3 exception	<p>Information in the record is confusing and refers to adjacent agricultural activity on soils of same quality as site – requests that information submitted at the hearing be applied to ASC Exhibit K analysis to ensure the record is accurate and clear.</p>		<p>Section IV.E1.b. Land Use, Applicable Substantive Criteria and Goal Exception: Updated section based on additional facts and evidence provided by applicant (see below)</p>
C. Condon	Organizational Expertise and	<p>Applicant should clarify how the applicant, an LLC, can rely on the</p>	IV.B Organizational Expertise (pp. 51-54)	<p>Section IV.B Organizational Expertise, Organizational Expertise Condition 3(c) and (d) authorizes the Department to</p>

Table A-1: Summary of DPO Comments and Final Disposition in Final Order

Commenter	Comment Subject	Comment Summary	Final Oder Applicability (Section Reference)	Final Order Conclusion
	concerns over the “Act”	parent company in light of the limitations established in the definition of the “Act” as referenced in ASC Exhibit A Attachment A-3	IV.G Retirement and Financial Assurance (pp. 132-134)	review site certificate compliance status to re-evaluate the adequacy of the decommissioning estimate contingencies. Provides State protection if the applicant went bankrupt or the Council opted to terminate the site certificate and the applicant was unable to fulfil its facility decommissioning obligation.
<i>Applicant Comments (includes comments from underlying landowners on behalf of applicant)</i>				
R. Curulla, EE West End Solar, LLC	Organizational Expertise Condition 4 (previously Condition 5)	Requests to revise Organizational Expertise Condition 4 (previously Condition 5) to remove requirement to provide the Department the selected contractor’s compliance history	IV.B Organizational Expertise (pp. 54-55)	No Final Order Revision: Council concludes that condition be maintained. The Council disagrees that this request is unreasonably burdensome as the information is readily available from construction contractors, due to the lack of demonstrated experience of the applicant in Oregon. The Council intends to rely on the results of the selected contractor’s compliance history to inform the level of construction compliance oversight/inspections by the Department.

Table A-1: Summary of DPO Comments and Final Disposition in Final Order

Commenter	Comment Subject	Comment Summary	Final Oder Applicability (Section Reference)	Final Order Conclusion
	Land Use Condition 2(d) (parking lot design)	Requests to revise Land Use Condition 2(d) to allow Umatilla County to approve alternative parking lot design requirements, if needed.	IV.E Land Use (pp. 74-79)	Section IV.E.1.b. Land Use, IV.E.1 Applicable Substantive Criteria, Land Use Condition 2(d): Department consulted with Umatilla County and Council finds that UCDC 152.562(I) (1-7) be removed from the list of applicable substantive criteria in Table 2 and that the condition imposing parking lot standards be removed in final order based on inapplicability of the requirement for non-public use facility.
	Land Use Condition 12 (setback for avoidance of impacts to irrigated agriculture)	Requests to revise Land Use Condition 12 to correct tax lot reference applied to setback.	IV.E Land Use (pp. 110-111)	Section IV.E.1.b. Land Use, Land Use Condition 12: Council agrees that the condition contained an erroneous taxlot reference amends the condition to reference taxlot 4N2900000300 rather than 4N29000001700
	T&E Species Condition 1	Requests revisions to T&E Species Condition 1 for sub(a) to allow desktop analysis for areas extending outside the site boundary where applicant land access has not been obtained; and	IV.I Threatened and Endangered Species (pp. 150-151)	Section IV.I., Threatened and Endangered Species, Threatened and Endangered Species Condition 1: Council agrees that the condition should be amended per applicant comment – final revisions are consistent with the methods employed for the ASC evaluation and were discussed/concurred with by ODFW.

Table A-1: Summary of DPO Comments and Final Disposition in Final Order

Commenter	Comment Subject	Comment Summary	Final Oder Applicability (Section Reference)	Final Order Conclusion
		(c) to remove explanation of WGS colonies and burrows.		
	T&E Species Condition 2	Requests revisions to T&E Species Condition 2 to remove the requirement for delineation and avoidance of Category 2 WGS habitat.	IV.I Threatened and Endangered Species (pp. 151-152)	Section IV.I., Threatened and Endangered Species, Threatened and Endangered Species Condition 2: Council agrees that the condition should be amended per applicant comment - delineation for avoidance and avoidance requirements do not apply to Category 2 WGS habitat impacts, only Category 1 WGS habitat.
S. & W. Scott	Land Use, Goal 3 exception and farm impacts	Testimony describing that they farmed land in 2013 and 2015; best crop occurred in 2013 resulting in 14 bushels an acre which did not pay for the inputs; in 2015, they produced 11 bushels an acre at \$5.50 a bushel. Area is within critical groundwater restricted area and obtaining water for irrigation is virtually impossible.	IV.E Land Use (pp. 93-111)	Section IV.E1.b. Land Use, IV.E.3 Goal Exception: Council includes the testimony and facts presented by S. Scott are incorporated into findings of fact for Goal 3 exception analysis.

Table A-1: Summary of DPO Comments and Final Disposition in Final Order

Commenter	Comment Subject	Comment Summary	Final Oder Applicability (Section Reference)	Final Order Conclusion
A. Prior (landowner)		<p>Confirmed that adjacent lands with same soil type are irrigated.</p> <p>Testimony describing that he has owned the property since 1990 and has never attempted to farm the parcel because it is outside of irrigation water district boundaries. He affirmed that his adjacent properties where high value crops are produced are indeed irrigated and that he does not have enough water rights to irrigate the subject properties and that the value of the land is not viable to move water right on to farm.</p>		<p>Section IV.E1.b. Land Use, IV.E.3 Goal Exception: Testimony and facts presented are incorporated into findings of fact for Goal 3 exception analysis.</p>
L. McClain on behalf of EE West End Solar, LLC (applicant)		<p>Provided a copy of the East Improvement District Recorded Landowner Notice, which</p>		<p>Section IV.E1.b. Land Use, IV.E.3 Goal Exception:</p>

Table A-1: Summary of DPO Comments and Final Disposition in Final Order

Commenter	Comment Subject	Comment Summary	Final Oder Applicability (Section Reference)	Final Order Conclusion
		<p>provides documentation of all of the parcels located in the East Improvement Irrigation District. Pages 92-94 of the PDF are the pertinent sections to Art Prior’s land holdings. Page 94 lists the tax lots he owns that are in the East Improvement District – including the two tax lots (Tract 3 and Tract 6) located east of the West End Solar site boundary that have recently been developed for irrigated agricultural use. The tax lot Mr. Prior owns within the site boundary (4N29C00000500) is not listed in this document.</p>		<p>Testimony and facts presented are incorporated into findings of fact for Goal 3 exception analysis.</p>
<p>L. McClain on behalf of EE West</p>		<p>Provided a map from the Oregon Water Resources Department of the Groundwater</p>		<p>Section IV.E1.b. Land Use, IV.E.3 Goal Exception:</p>

Table A-1: Summary of DPO Comments and Final Disposition in Final Order

Commenter	Comment Subject	Comment Summary	Final Oder Applicability (Section Reference)	Final Order Conclusion
End Solar, LLC (applicant)		Restricted Areas in North Umatilla County, Stage Gulch area, where the facility and adjacent properties are located.		Testimony and facts presented are incorporated into findings of fact for Goal 3 exception analysis.

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1 The Council’s final order is subject to judicial review by the Oregon Supreme Court. Only a party
 2 to the contested case proceeding may request judicial review and the issues on appeal are
 3 limited to those raised by parties or limited parties in the contested case proceeding. A petition
 4 for judicial review must be filed with the Supreme Court within 60 days after the date of service
 5 of the Council’s final order or within 30 days after the date of the petition for rehearing is
 6 denied or deemed denied.³⁰

7
 8
 9

III. DESCRIPTION OF THE FACILITY

10 The information presented in Table A-2 below and in this section is based upon details provided
 11 in ASC, primarily from Exhibits B and C. Section III.A., *Facility Components* describes facility
 12 components and Section II.B., *Facility Location* describes the location and site boundary of the
 13 facility.
 14

Table A-2: Facility Component Summary

Component and Design Standard	No.	Unit
Solar Components		
Solar micrositing area	324	acres
PV Solar Modules		
Approx. Total number	180,000	modules
Max Height at full-tilt	16	feet
Posts		
Approx. Total number	33,000	posts
Inverters/Transformer Units		
Approx. Total number	25	
Noise level, per unit	88	dBA
Transformer oil-containing capacity	550	gallons
Related or Supporting Facility Components		
34.5 kV Collection System		
Collector line length, belowground	15	miles
Perimeter Fence		
Length	15,400	Linear feet
Height	10	feet
Roads		
New road (length, width)	3.4; 12-20	Miles, feet
Grid-Interconnect		
No. of Structures	2	
Structure type, height	Utility pole, 30	feet
Battery Energy Storage System (Lithium-ion)		
Approx. total batteries	70	MW

³⁰ ORS 469.403.

Table A-2: Facility Component Summary

Component and Design Standard	No.	Unit
Approx. total containers	200	
Approx. container dimensions	8 x 10 x 10	H x W x L, feet
HVAC noise level, per unit	98	dBA at 6 feet
<i>Substations/Switchyard</i>		
Switchyard	1	
No. of substations	1	
No. of main power transformers	2	
Transformer oil-containing capacity	15,000	gallons
Transformer noise level	102	dBA
<i>O&M Enclosure</i>		
Size	20 x 600	Height x width
Buildings	Dry storage shed, workspace, storage area	

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III.A Facility Components

The facility would occupy up to 324 acres and includes the energy facility together with related or supporting facilities. 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.³¹ As stated in ASC Exhibit B, the facility includes solar photovoltaic power generation components and related or supporting facilities, with a nominal and average generating capacity of approximately 50 MW.

III.A.1 Energy Facility

The solar energy facility would be comprised of approximately 180,000 solar modules that would use either mono- or poly-crystalline cells contained within antireflective glass panels linked together with wire connectors.³² The crystalline silicon cells are insulated and protected on both sides by sheets of polymers and glass, which is tempered and covered with a protective plastic layer that gives the glass added strength and ensures that if the glass were to crack or break it would stay intact. Furthermore, the modules would be connected in series to form long rows connected via shielded electrical cables, to protect against fires. Strings of these solar modules would be mounted on single-axis tracker systems that rotate the modules to follow the path of the sun throughout the day. The modules on posts and trackers would be approximately 16 feet in height when tilted on the single-axis tracking system.³³ The tracker system would be supported by approximately 33,000 steel posts, which could be round hollow

³¹ ORS 469.300 (24), OAR 345-001-0010(21) and – (50).
³² WESAPDoc3-1 ASC Exhibit B Project Description 2022-10-22, Section 2.0.
³³ WESAPDoc3-7 ASC Exhibit G Materials Analysis 2022-09-28, Section 2.1.

1 posts or pile-type posts (i.e., H-pile, C-pile, S-pile) or helical.³⁴ The type of post and post depth
2 may vary depending on soil conditions, but the posts would typically be installed 4 to 8 feet
3 below the surface and protrude 4 to 7 feet above grade. Posts at the end of tracker rows are
4 usually installed to greater depth to withstand wind uplift. In some soil conditions, concrete
5 backfill would be required for each post, which would be determined by geotechnical
6 investigations conducted prior to construction of the proposed facility as discussed further in
7 Sections IV.D., *Soil Protection* and IV.C., *Structural Standard*. The solar array and related or
8 supporting facilities would be within a 6 to 10-foot-tall chain link perimeter fence line. A solar
9 “array” refers to the configuration of multiple rows of modules and can vary depending on the
10 type of equipment technology and topography of the site. Related or supporting facilities are
11 discussed in more detail below.

12
13 Approximately 25 inverters would serve the function of converting DC electricity generated
14 from the solar modules to AC electricity and then are routed to approximately 25 step-up
15 transformers which increase the output voltage from the inverter to the final substation feed
16 voltage which would depend on which transmission line the facility connects to. Transformers
17 would be co-located with the inverters associated with each tracker row, or centrally located
18 and constructed on concrete or gravel pads. The inverter and transformer specifications would
19 comply with the applicable requirements of the National Electric Code and Institute of Electrical
20 and Electronics Engineers standards and the transformers would have an oil containment
21 system made of prefabricated steel, concrete, or fiberglass for the 550 gallons of oil, depending
22 on permit and code requirements.

23
24 *Facility Interconnection*

25
26 The applicant did not propose a transmission line as a related or supporting facility and explains
27 that there are three existing transmission line rights-of-way that are capable of providing
28 interconnection. The three existing transmission line rights-of-way are illustrated in ASC Exhibit
29 C, Figures C-2 through C-4. Two transmission line rights-of-way transect the proposed site
30 boundary and run southeast to northwest crossing over the site boundary: Bonneville Power
31 Administration’s (BPA) McNary to Roundup 230-kilovolt (kV) line and PacifiCorp’s Pendleton to
32 Hermiston 69-kV line. The Umatilla Electric Cooperative (UEC) 115-kV line parallels the eastern
33 edge of the proposed site boundary adjacent to South Edwards Road. The applicant anticipates
34 that interconnection would occur with the Umatilla Electric Cooperative 115-kV line, however,
35 the applicant seeks interconnection micrositing flexibility for all or part of the proposed facility
36 to the three existing transmission lines. As described below in Section III.A.2., *Related or*
37 *Supporting Facilities*, the applicant proposes a facility Switchyard Substation in addition to the
38 facility Collector Substation. The switchyard would likely be owned and operated by the utility
39 the facility interconnects with (e.g., Umatilla Electric Cooperative, Bonneville Power
40 Administration, or PacifiCorp), and under Land Use Condition 6, prior to operation, the
41 applicant would be required to provide an executed interconnection agreement with Umatilla

³⁴ WESAPDoc3-1 ASC Exhibit B Project Description 2022-10-22, Attachment B-1 provides a figure with drawings of the tracker post designs.

1 Electric Cooperative, Bonneville Power Administration or PacifiCorp demonstrating that the
2 facility has a long-term agreement for interconnection to one of the existing transmission lines.

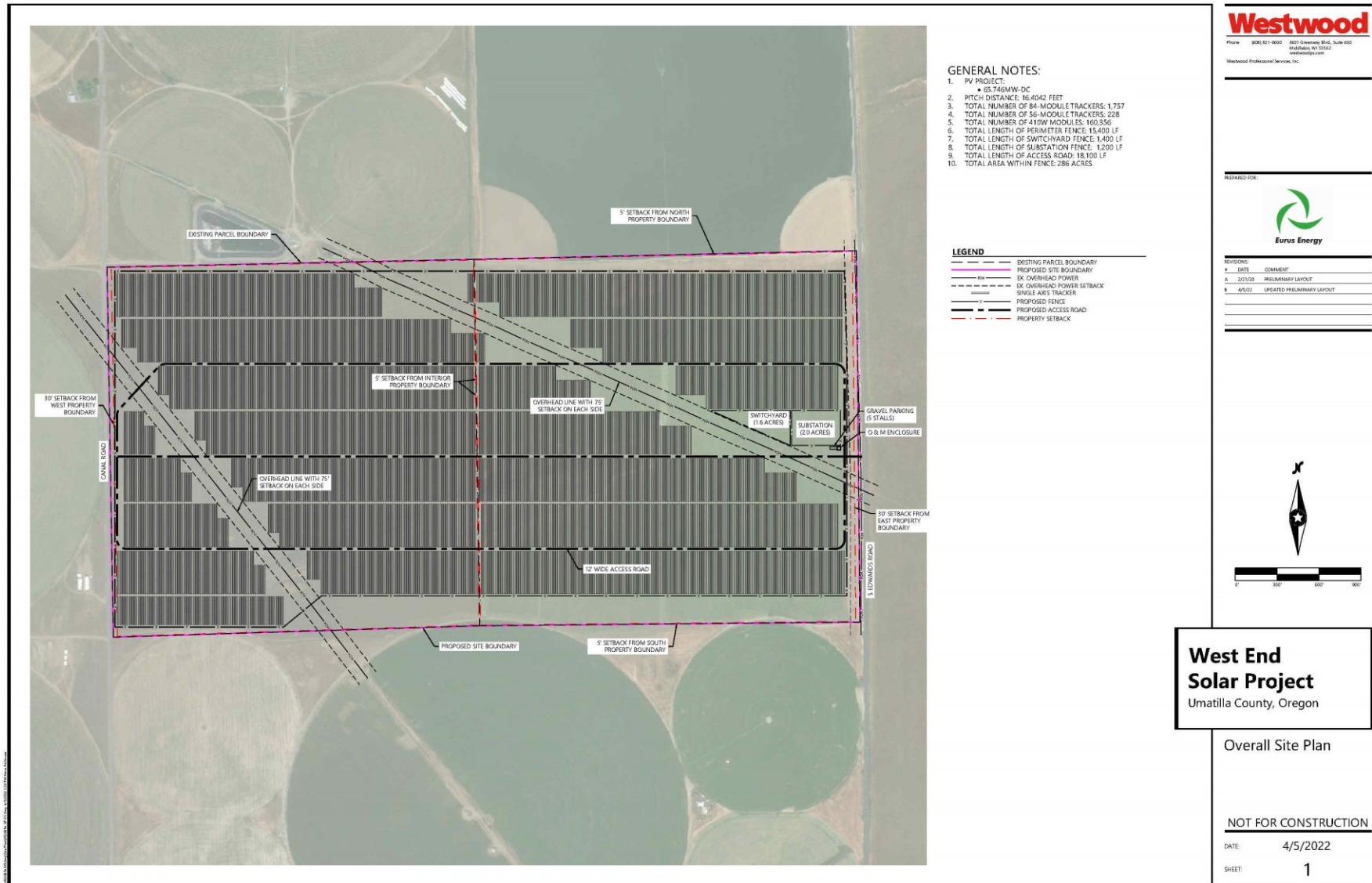
3
4 As discussed in Section IV.K., *Historic, Cultural, and Archaeological Resources*, because of the
5 age of the BPA McNary to Roundup 230-kilovolt (kV) transmission line and PacifiCorp’s
6 Pendleton to Hermiston 69-kV transmission line, they are considered historic resources.
7 However, as operational transmission lines, it is permissible to interconnect with them. The
8 applicant indicates that the facility would be constructed and operated to avoid the
9 transmission line rights-of-way, as represented in ASC Exhibit C, Figure C-4 (Overall Site Plan),
10 and in Figure 1: *Preliminary Facility Site Plan*, of this order. As indicated in the Preliminary Site
11 Plan, there would be a 75-foot set back of facility components on both sides of the transmission
12 line rights-of-way, however, facility roads would be permissible under the transmission lines.

13
14 *III.A.2 Related or Supporting Facilities*

15
16 Related or supporting facilities, as further described below, include:

- 17
18
- 19 • Battery storage system
 - 20 • 34.5 kV electrical collector lines
 - 21 • Collector substation
 - 22 • Switchyard substation with interconnection facilities
 - 23 • Supervisory Control and Data Acquisition (SCADA) System
 - 24 • Operations and maintenance (O&M) enclosure
 - 25 • Security fencing and gates
 - 26 • Service roads
 - Construction staging areas

1 **Figure 1: Preliminary Facility Site Plan**



2

1 *Battery Storage System*
2

3 The facility may include up to 70 MW of lithium-ion energy storage system (ESS), which would
4 be comprised of up to 200 modular energy storage units or enclosures, each roughly 8 x 10 x 10
5 feet (w, d, h).³⁵ Multiple individual units would be linked together to form an energy storage
6 string, which may be distributed throughout the site boundary around the solar array or
7 centrally located at the proposed substation. The ESS enclosures would be located on gravel
8 surface, without vegetation present. The smaller step-up transformers located at the energy
9 storage enclosures would have an oil containment system made of prefabricated steel,
10 concrete, or fiberglass oil collection system depending on permit and code requirements,
11 similar to those at the substation, discussed more below.

- 12
- 13 • The ESS units would have/be:
 - 14 ○ A thermal management system designed and sized so heat generated could be
15 removed ensuring the batteries operate in an environment that does not exceed
16 the operational temperature range defined by the battery manufacturer.
 - 17 ○ Temperature, current, voltage, and humidity sensors which provide a real time
18 information of the conditions inside the enclosures.
 - 19 ○ Fire Safety System (FSS) which monitors heat, and smoke, and provides
20 dedicated annunciation/alarming in the event a fire condition is detected,
21 automatically returns the system to a standby mode and if necessary
22 automatically deploys an appropriate suppression agent.³⁶
 - 23 ○ Designed so that if an internal fire occurs, it can impede flames from moving to
24 adjacent enclosures or the environment.
 - 25 ○ Equipped with proper safety labels and signages for the safety of site personnel.
26 The enclosure will be electrically touch safe and grounded.
- 27

28 On-site personnel, when present, would be able to activate an emergency stop via an
29 emergency stop button on the external wall of the energy storage system enclosures. However,
30 the battery storage units would also be remotely controlled, including shut off abilities.

31

32 *34.5-kV Collector Line System*
33

34 The 34.5-kV collector line system links transformers throughout the proposed solar array and
35 carries generated power to the proposed collector substation. The collector line system would
36 be approximately 79,200 feet (approximately 15 miles), buried in a trench likely adjacent to
37 access roads within the solar arrays at a depth of approximately three feet and four feet wide.³⁷

³⁵ ASC Exhibit B, Section 3.0 and G, Section 2.1.

³⁶ The FSS alarm functions are handled by a common fire alarm control panel (FACP) in the auxiliary control cabinet. The FACP monitors the status of the detectors and initiates an alarm if a fire is detected. The panel is set up with fire detection zones for the detectors in the battery enclosures. The FACP is connected to the local strobe and siren unit for alarm annunciation. Internal batteries in the FACP provide backup power if the main power supply is temporarily lost. WESAPDoc3-1 ASC Exhibit B Project Description 2022-10-22, Section 2.0

³⁷ WESAPDoc3-1 ASC Exhibit B Project Description 2022-10-22, Section 3.0.

1 The collector line system and substation would have redundant surge arrestors to deactivate
2 the facility components during unusual operational events that could start fires.

3
4 *Collector Substation*

5
6 The 34.5-kV collector line system carries power generated power to the collector substation
7 which would combine and step up the voltage of energy generated by the solar arrays to the
8 transmission voltage via main power transformer. The substation would include three open-air
9 isolation switches that connect the collector line system to the main 34.5-kV bus, a 34.5-kV
10 main bus open-air isolation switch, the step-up transformer, and a circuit breaker and open-air
11 isolation switch.³⁸ The substation would also include protective relay and metering equipment,
12 utility and customer revenue metering, and a station service transformer to provide power to
13 the substation and substation control house. The substation would also have redundant surge
14 arrestors to deactivate the operation of the proposed facility during unusual operational events
15 that could start fires.

16
17 The main power transformer would use approximately 15,000 gallons of non-polychlorinated
18 biphenyl oil. Additional substation equipment may include circuit-breakers, electrical buses and
19 insulators, disconnect switches, relaying, battery and charger, surge arresters, alternating
20 current and direct current supplies, control enclosure, metering and control equipment,
21 grounding, and associated control wiring. The main power transformer would be ground-
22 mounted, constructed on concrete or gravel pads. As discussed further in Section IV.D., *Soil*
23 *Protection*, transformers would have secondary spill containment traps to minimize the
24 possibility of accidental leakage. The main power transformer at the collector substation may
25 use a reinforced concrete pit to retain any oil that may be accidentally spilt from the
26 transformer and the transformer areas would have a drainage sump for the collection of liquid
27 within the containment and would allow for oil/water separation. A berm and liner solution
28 may be also considered, for oil containment, if it complies with all relevant codes and has a
29 minimum lifespan of 30 years free of maintenance.

30
31 The substation and O&M enclosure would be sited together in a fenced and graveled area on
32 approximately 15 acres, likely on the eastern end of the site boundary. The substation's
33 maximum height would be 30 feet.

34
35 *Switchyard Substation*

36
37 A switchyard substation would be constructed in a separately fenced graveled area adjacent
38 the collector substation. The switchyard may be constructed, owned, and operated by the
39 utility that operates the transmission line that the proposed facility interconnects with (e.g.,

³⁸ Open-air isolation switches allow visual confirmation that electrical disconnects between components have been made and are used during construction, commissioning, and maintenance. WESAPPD03-1 ASC Exhibit B Project Description 2022-10-22, Section 3.0.

1 Umatilla Electric Cooperative, Bonneville Power Administration, or PacifiCorp).³⁹ The switchyard
2 substation would have similar equipment as the collector substation described above including
3 a control house, however instead of a main power transformer the switchyard would include
4 other small transformers for service power and meters. The switchyard substation would also
5 have interconnection facilities including two utility poles that would support the electric line
6 that connects the switchyard to the existing transmission line. The switchyard equipment would
7 have a maximum height of 30 feet.⁴⁰

8
9 *Supervisory Control and Data Acquisition (SCADA) System*

10
11 A Supervisory Control and Data Acquisition (SCADA) system would be installed to collect
12 operating and performance data from the solar array and would allow remote operation of the
13 proposed facility. Smoke/fire detectors would be placed around the site that will be tied to the
14 SCADA System and would contact local firefighting services. Fiber optic cables for the SCADA
15 system operation would be installed with the 34.5 kV collector line system.

16
17 *Operations and Maintenance (O&M) Enclosure*

18
19 The O&M enclosure would consist of a single, 20-foot-tall, 600-square-foot, dry-storage shed
20 located near the collector substation graveled area. The O&M building would include a
21 workspace and storage area. Restroom facilities for employee sanitation would be provided by
22 portable-toilets and a hand-washing station, while operational required water will be trucked in
23 from offsite sources and bottled water, as discussed further in Section IV.R.3., *Water Rights*.

24
25 Small quantities of lubricants, degreasers, herbicides, or other chemicals may be stored in the
26 O&M enclosure according to recommended storage and usage label instructions. During
27 construction, on-site fuel storage (i.e. for backup generators, etc.) may be placed in designated
28 areas within construction staging areas. Secondary containment and refueling procedures for
29 on-site fuel storage will follow the contractor's Spill Prevention, Control, and Countermeasures
30 Plan (SPCC), which is described further in Section IV.D., *Soil Protection*. Any tank, container or
31 drum of oil, diesel or chemical, equal to or greater than 55 gallons would:⁴¹

- 32 • Include secondary containment of at least 110% of the volume of the primary container;
- 33 • Include spill response equipment;
- 34 • Site security to control access to equipment and property.

35
36 *Security Fencing and Gates*

37

³⁹ The applicant includes the Switchyard substation and its interconnection facilities in the ASC to evaluate maximum potential impacts to resources protected under Council standards, therefore, there are site certificate conditions that may apply to the Switchyard substation and its components, if constructed and operated by the applicant.

⁴⁰ WESAPDoc3-1 ASC Exhibit B Project Description 2022-10-22, Section 3.0.

⁴¹ WESAPDoc3-1 ASC Exhibit B Project Description 2022-10-22, Section 2.0.

1 The entire 324-acre site boundary will be fenced with approximately 3 miles (15,400 linear feet)
2 of 6 to 10-foot chain-link perimeter fencing. As stated above, the substation, switchyard, and
3 centralized battery enclosures would have additional 6 to 8-foot-high wire mesh fencing. The
4 perimeter fencing would vehicle and pedestrian access gates with locks, with the primary
5 access point likely on the eastern point of the facility off of S. Edwards Road. A noncombustible,
6 defensible space clearance along the fenced perimeter of the site boundary would be
7 maintained to protect from fire hazards.

8 9 *Site Access and Service Roads*

10
11 As noted above, the anticipated main access point off of S. Edwards Road near the proposed
12 substation. A new driveway off of S. Edwards Road would be required at the access point,
13 which would meet that applicable design standards designated by Umatilla County
14 Development Code (UCDC) and discussed further in Section IV.E., *Land Use*. Approximately 3.4
15 miles of newly constructed roads would be graded and graveled to meet load requirements for
16 all equipment, where road cross sections would consist of 6 inches of compacted gravel
17 supported on 6 inches of compacted native dirt. The driveway and access roads would also be
18 sufficiently sized for emergency vehicle access, where access roads located within the solar
19 array site would be approximately 12 feet to 20 feet wide, depending on location, with an
20 internal turning radius of up to 28 feet.⁴² These roads would also have less than a 10 percent
21 grade, or a similar profile, depending on exact siting which would maintain safety standards as
22 well as help maintain erosion and sediment control. Vegetation would be cleared and
23 maintained along perimeter roads to provide a vegetation clearance for fire safety.

24 25 *Construction Staging Areas*

26
27 During construction, temporary staging areas would be used within the fenced site boundary to
28 support construction and store supplies and equipment. The staging areas would consist of a
29 crushed gravel surface and would be considered a permanent impact.

30 **III.B Description of Construction, Operation, and Retirement Activities**

31 32 *III.B.1 Facility Construction Activities*

33
34 Construction of the facility is anticipated to take 9-12 months, however, under General
35 Standard of Review Condition 1, the Council establishes a three-year construction
36 commencement deadline for the applicant, from site certificate execution, and a 2 year (24
37 months) construction completion deadline, after construction has begun.⁴³ Construction
38 activities would employ an average of 300 people and a maximum of 500 people during peak
39 summer months. Most of the construction workers would be contracted under the applicant or

⁴² WESAPDoc3-1 ASC Exhibit B Project Description 2022-10-22, Section 3.0.

⁴³ ORS 469.300(6) "Construction" means work performed on a site, excluding surveying, exploration or other activities to define or characterize the site, the cost of which exceeds \$250,000.

1 contractor, however, specialized workers would be required for the installations of the solar
2 components and battery storage facilities.

3
4 Construction activities include clearing and grubbing of vegetation in construction staging
5 areas, solar array, and new access roads then the access roads, substation and O&M areas
6 would be graded and the site prepared which includes equipment that would cut, move, and
7 compact the subgrade surface. Soils would be stockpiled for later use and decompaction would
8 be performed as needed prior to final grading for site revegetation, gravel placement or
9 foundation installation.

10
11 Heavy-duty trucks would deliver construction equipment such as bulldozers, graders,
12 compactors, forklifts, and would also carrying gravel and other materials required for site
13 grading and to construct the new site access road segments. Heavy-duty trucks would also carry
14 proposed facility components and materials for the solar module blocks, battery and
15 substation. Lighter-duty trucks would deliver water to the site for dust control during
16 construction and other electrical equipment and materials required for solar panel construction
17 and power transmission. All construction vehicles would be limited to 20 miles per hour on all
18 facility access roads

19
20 If the facility is constructed in phases, in accordance with ORS 469.300(6), preconstruction
21 conditions, if specified, may be satisfied for the applicable phase, facility component or for the
22 facility, as applicable, based on final design and configuration.

23

24 III.B.2 Facility Operational Activities

25

26 The estimated life of the facility is 30 years. The facility would be operated remotely except for
27 routine maintenance and facility repair activities where approximately two to five workers
28 would be deployed to the site for maintenance or repairs of facility components. Facility O&M
29 activities would include routine inspections of the battery storage, transformers, and other
30 electrical equipment, vegetation management, solar panel washing, and changing the lithium-
31 ion batteries and solar panels. Operational water may be trucked in and stored in a water tank
32 or trucked in for specific uses.

33

34 Inspections of the inverters, transformers, and battery system would be conducted according to
35 the manufacturer's recommendations, which are assumed to be monthly inspections.⁴⁴

36 Vegetation and weed management under the solar arrays and other areas within the site
37 boundary that aren't graveled would be implemented through manual, mechanical or chemical
38 (i.e., herbicide) control measures, but vegetation would be low growing or maintained to not
39 overgrow.⁴⁵ The applicant estimates that the solar panels may need to be washed up to twice
40 per year and wash water would be applied via tanker truck without any cleaning solvents added

⁴⁴ WESAPDoc3-9 ASC Exhibit I Soil Conditions 2022-09-28, Section 5.2.

⁴⁵ WESAPDoc3-16 ASC Exhibit P Fish and Wildlife 2022-10-25, Attachment P-5 Draft Weed Management Plan, Sections 2.0 and 2.2.

1 to the water so it may be absorbed into the ground after application. The applicant assumes
2 that the lithium-ion batteries would need to be changed approximately every 10 years or two
3 to three times throughout the life of the proposed facility because they degrade over time,
4 particularly batteries that are more heavily used.⁴⁶ The following procedures would be
5 implemented for the battery replacement:

- 6 • Facility operator would disconnect and de-energy battery systems prior to removal from
7 the installed racks and package the batteries for transport to a licensed recycling facility.
- 8 • At the recycling facility, the qualified contractor would dismantle the battery modules
9 and prepare individual cells for metals recovery.
- 10 • Individual cells would be processed in a furnace to recover metals. Recovered metals
11 may include aluminum, calcium, lithium, and a metal alloy comprising cobalt, copper,
12 nickel, and iron.
- 13 • Recovered metals would be recycled or separated to recover individual metals where
14 economically viable.

15
16 Solar modules and electrical equipment would need to be repaired or replaced over the lifetime
17 of the facility. Solar panels that are nonfunctional or are retired would be recycled to the
18 maximum extent feasible through the Solar Energy Industries Association (SEIA) National PV
19 Recycling Program, as described in Section IV.N., *Waste Minimization*.

20 III.B.3 Facility Retirement Activities

21
22
23 Facility retirement or decommissioning is described in detail in Section IV.G., *Retirement and*
24 *Financial Assurance*, but begins with disconnecting all electrical equipment disassembling
25 equipment and components such and the battery storage units, solar panels and transformers.
26 Larger containers and equipment would be removed, trucked off-site and recycled and
27 disposed of. None of these materials are considered hazardous. Solar panels would be
28 disconnected, and piles would be removed including the excavation of any concrete
29 foundations. Gravel and foundations from the inverters and transformers, O&M structure,
30 substations, and switching station would be removed by trenching and excavation a minimum
31 depth of 3 feet below grade. The facility site would then be restored through minimal grading
32 and revegetation with plants or seed mix consistent with the Draft Noxious Weed Plan
33 (Attachment P-4 of this order) or landowner interests.

34
35 Any hazardous material would be handled by a qualified contractor and adhere to applicable
36 regulations for transport and disposal, including but not limited to 49 Code of Federal
37 Regulations 173.159. The decommissioning of the energy storage system, if used, would involve
38 disposing of battery components at an off-site facility approved for disposal or recycling of
39 batteries, following the same process as replaced batteries during operations. Solar panels
40 would be recycled to the greatest extent feasible at the time of facility retirement and solar
41 panels not recycled would be disposed of at a certified disposal site or program for solar panels.
42

⁴⁶ WESAPDoc3-7 ASC Exhibit G Materials Analysis 2022-09-28, Section 2.2.

1 **III.C Facility Location and Site Boundary**

2

3 The facility is located within Umatilla County, Oregon, approximately 1 mile east of the city
4 limits of Hermiston, Oregon and 1 mile north of the city limits of Stanfield, Oregon, as
5 presented in Figure 2: *Facility Regional Location*.

6

7 The site boundary includes approximately 324 acres of private land zoned as exclusive farm use
8 (EFU). As defined in OAR 345-001-0010, “site boundary” means the perimeter of the site of an
9 energy facility and its related or supporting facilities, all temporary laydown and staging areas
10 and all corridors proposed by the applicant; “site” means all land upon which an energy facility
11 and its related or supporting facilities is located or proposed to be located.⁴⁷

12

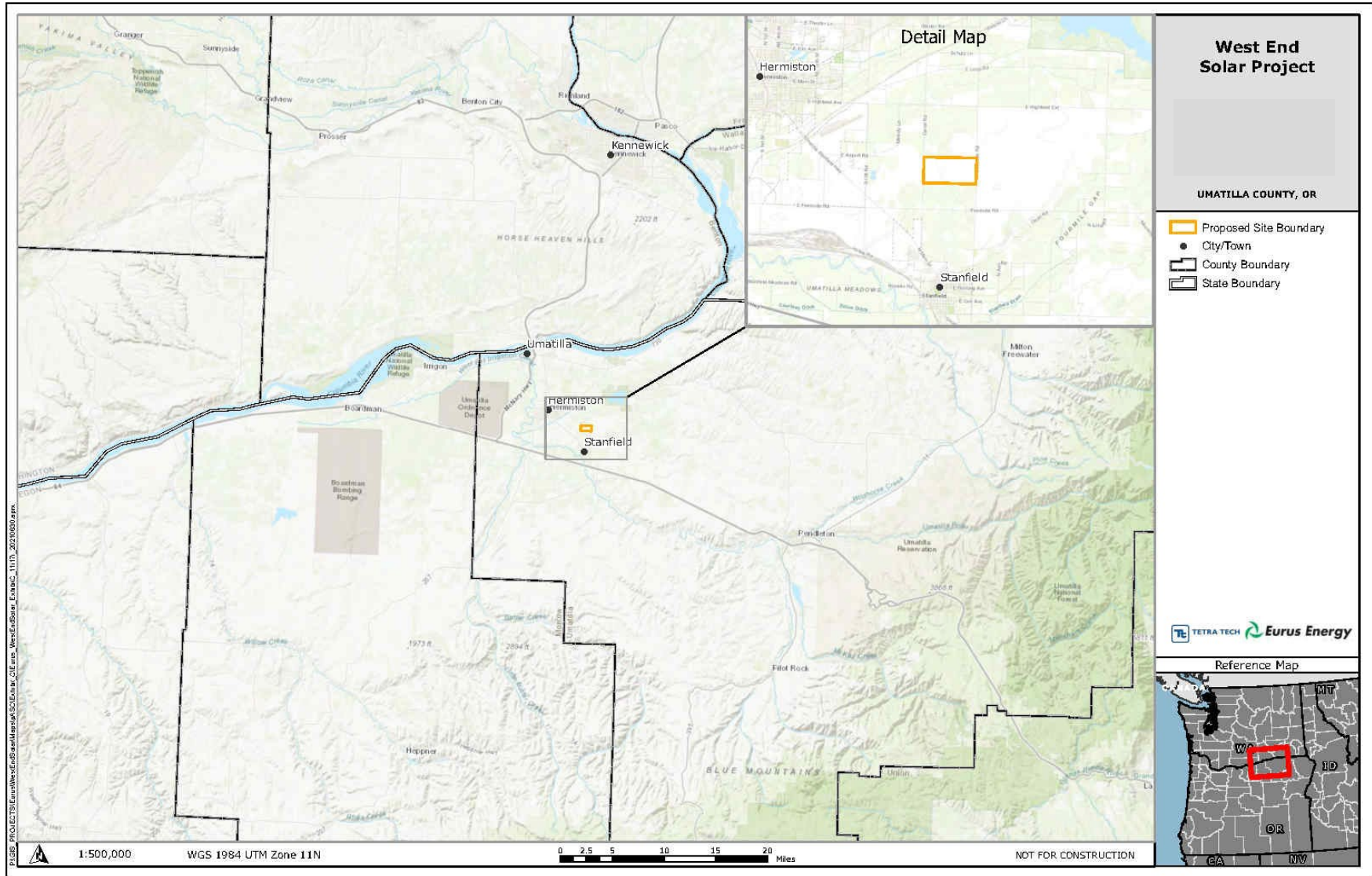
13 The applicant requests and Council finds that the site boundary be considered a “micrositing
14 area” to provide maximum flexibility with siting the location of specific facility components
15 based on final design. Further, the Council finds the site boundary be considered a “micrositing
16 area” because the evaluation in the ASC considers the maximum impact footprint to be the 324
17 acres, including under the Council’s Fish and Wildlife Habitat standard where the applicant
18 represents that the 324 acres would be considered a permanent impact to habitats.⁴⁸ A
19 micrositing corridor, by definition, means a continuous area of land within which construction
20 of facility components may occur, subject to site certificate conditions.⁴⁹ Micrositing corridors
21 or areas are intended to allow some flexibility in specific component locations and design in
22 response to site-specific conditions and engineering requirements to be determined prior to
23 construction. As presented in Section IV., *Evaluation of Council Standards*, based on the
24 applicant’s methodology and assessment of impacts under applicable Council standards,
25 Council authorizes the site boundary as a micrositing area.

⁴⁷ ORS 469.300(25).

⁴⁸ WESAPPD0c3-1 ASC Exhibit B Project Description 2022-10-22, Section 2.0 and WESAPPD0c3-16 ASC Exhibit P
Fish and Wildlife 2022-09-28, Section 6.2.

⁴⁹ OAR 345-001-0010(32).

1 **Figure 2: Facility Regional Location**



2
3

1 **IV. EVALUATION OF COUNCIL STANDARDS**

2
3 As discussed above, ORS 469.320 requires a site certificate from the Energy Facility Siting
4 Council (EFSC or Council) before construction of a “facility.” ORS 469.300(14) defines “facility”
5 as an “energy facility together with any related or supporting facilities.” The proposed facility
6 qualifies as an “energy facility” under the definition in ORS 469.300(11)(a)(D)(i).⁵⁰

7
8 To issue a site certificate for a facility, the Council must determine that “the facility complies
9 with the applicable standards adopted by the Council pursuant to ORS 469.501 or the overall
10 public benefits of the facility outweigh any adverse effects on a resource or interest protected
11 by the applicable standards that the facility does not meet.”⁵¹ The Council must also determine
12 that the facility complies with all other applicable Oregon statutes and administrative rules, as
13 identified in the Project Order, excluding requirements governing design or operational issues
14 that do not relate to siting⁵² and excluding compliance with requirements of federally-delegated
15 programs.⁵³ Nevertheless, the Council may consider these programs in the context of its own
16 standards to ensure public health and safety and protection of the environment.⁵⁴

17
18 Under ORS 469.310, the Council is charged with ensuring that the “siting, construction and
19 operation of energy facilities shall be accomplished in a manner consistent with protection of
20 the public health and safety.” ORS 469.401(2) further provides that the Council must include in
21 the site certificate “conditions for the protection of the public health and safety,” for the time
22 for completion of construction, and to ensure compliance with the standards, statutes and rules
23 described in ORS 469.501 and ORS 469.503.”⁵⁵ The Council implements this statutory
24 framework and ensures the protection of public health and safety by adopting findings of fact,
25 conclusions of law, and conditions of approval concerning the facility’s compliance with the
26 Council’s Standards for Siting Facilities at OAR 345, Divisions 22, 24, 26 and 27.

27
28 This final order provides Council’s analysis of whether the applicant has demonstrated an ability
29 to satisfy each applicable Council Standard (with mitigation and subject to compliance with site
30 certificate conditions, as applicable), based on the information in the ASC, issues raised on the
31 record of the DPO public hearing and supplemental facts and evidence provided by the
32 applicant in response to those issues.

⁵⁰ ORS 469.300(11)(a)(D)(i) defines an EFSC jurisdictional solar photovoltaic power generation facility as using more than 160 acres located on high-value farmland as defined in ORS 195.300.

⁵¹ ORS 469.503(1).

⁵² As stated above, such matters include design-specific construction or operation standards and practices that do not relate to siting, as well as matters relating to employee health and safety, building code compliance, wage and hour or other labor regulations, or local government fees and charges.

⁵³ ORS 469.401(4); ORS 469.503(3).

⁵⁴ The Council does not have jurisdiction over matters that are not included in and governed by the site certificate or amended site certificate. However, the Council may rely on the determinations of compliance and the conditions in the permits issued by these state agencies and local governments in deciding whether the facility meets other standards and requirements under its jurisdiction.

⁵⁵ ORS 469.401(2).

1
2 Where the following language is included in a condition, “before beginning construction of the
3 facility or a facility component,” the certificate holder is authorized to construct in a phased
4 approach. If the facility is to be constructed in separate phases, only conditions, or portions of
5 conditions, related to that phase and related facility components are required to be met to
6 begin construction of that phase.

7
8 **IV.A General Standard of Review: OAR 345-022-0000**

9
10 *(1) To issue a site certificate for a proposed facility or to amend a site certificate, the*
11 *Council shall determine that the preponderance of evidence on the record supports the*
12 *following conclusions:*

13
14 *(a) The facility complies with the requirements of the Oregon Energy Facility Siting*
15 *statutes, ORS 469.300 to ORS 469.570 and 469.590 to 469.619, and the standards*
16 *adopted by the Council pursuant to ORS 469.501 or the overall public benefits of the*
17 *facility outweigh the damage to the resources protected by the standards the facility*
18 *does not meet as described in section (2);*

19
20 *(b) Except as provided in OAR 345-022-0030 for land use compliance and except for*
21 *those statutes and rules for which the decision on compliance has been delegated by*
22 *the federal government to a state agency other than the Council, the facility*
23 *complies with all other Oregon statutes and administrative rules identified in the*
24 *project order, as amended, as applicable to the issuance of a site certificate for the*
25 *proposed facility. If the Council finds that applicable Oregon statutes and rules, other*
26 *than those involving federally delegated programs, would impose conflicting*
27 *requirements, the Council shall resolve the conflict consistent with the public interest.*
28 *In resolving the conflict, the Council cannot waive any applicable state statute.*

29 ***

30 *(4) In making determinations regarding compliance with statutes, rules and ordinances*
31 *normally administered by other agencies or compliance with requirement of the Council*
32 *statutes if other agencies have special expertise, the Department of Energy shall consult*
33 *such other agencies during the notice of intent, site certificate application and site*
34 *certificate amendment processes. Nothing in these rules is intended to interfere with the*
35 *state’s implementation of programs delegated to it by the federal government.*

36
37 **Findings of Fact**

38
39 OAR 345-022-0000 provides the Council’s General Standard of Review and requires the Council
40 to find that a preponderance of evidence on the record supports the conclusion that a facility
41 would comply with the requirements of EFSC statutes and the siting standards adopted by the
42 Council and that a facility would comply with all other Oregon statutes and administrative rules
43 applicable to the issuance of a site certificate for the facility.

1 The requirements of OAR 345-022-0000 are discussed in the sections that follow. The
2 Department consulted with other state agencies, and the Umatilla County Board of
3 Commissioners, as the appointed Special Advisory Group (SAG) for the facility, during review of
4 the preliminary Application for Site Certificate (pASC) and ASC to aid in the evaluation of
5 whether the facility would satisfy the requirements of applicable statutes, rules and ordinances
6 otherwise administered by other agencies. Additionally, in many circumstances the Department
7 relies upon these reviewing agencies' special expertise in evaluating compliance with the
8 requirements of Council standards.

9
10 OAR 345-022-0000(2) and (3) apply to ASCs where an applicant has shown that the facility
11 cannot meet Council standards, or has shown that there is no reasonable way to meet the
12 Council standards through mitigation or avoidance of the damage to protected resources; and,
13 for those instances, establish criteria for the Council to evaluate in making a balancing
14 determination. The applicant does not assert that the facility would not meet an applicable
15 Council standard. Therefore, OAR 345-022-0000(2) and (3) do not apply to this review.

16
17 Certificate Expiration (OAR 345-027-0013)

18
19 ORS 469.370(12) requires the Council to "specify in the site certificate the date by which
20 construction of the facility must begin." ORS 469.401(2) requires that the site certificate contain
21 a condition "for the time for completion of construction." Under OAR 345-025-0006(4), the
22 certificate holder must begin construction on the facility no later than the construction
23 beginning date specified by Council in the site certificate. "Construction" is defined in ORS
24 469.300(6) and OAR 345-010-0010(12) to mean "work performed on a site, excluding surveying,
25 exploration or other activities to define or characterize the site, the cost of which exceeds
26 \$250,000."

27
28 In ASC Exhibit B, the applicant represents a tentative construction schedule that would span a
29 nine-month period. Based on the Council's experience with large energy facilities, a number of
30 unforeseen factors can cause delays to a facility's construction commencement and completion
31 timelines, such as financial, economic, or technological changes. Pre-construction requirements
32 that must be satisfied also require 9-12 months to prepare, submit and obtain agency
33 approvals, as applicable. An applicant is obligated to comply with all applicable pre-construction
34 conditions prior to beginning construction activities. Pre-construction conditions include
35 securing an approximately 240-acre habitat mitigation area, if facility is the full build out,
36 geotechnical investigation and finalization of mitigation plans as included in attachments to this
37 order. Several pre-construction conditions include review and approval by the Department, in
38 coordination with applicable reviewing agencies. Given that the applicant represents a 9-month
39 maximum construction schedule, Council establishes a construction commencement deadline
40 that provides sufficient time for planning and unexpected delays of three years after the
41 issuance of the site certificate, and a two-year (24-month) completion deadline once
42 construction commences.

1 **General Standard of Review Condition 1:** The certificate holder shall begin and complete
2 construction of the facility by the dates specified in the site certificate.

- 3 a. Construction of the facility, facility component or phase, shall commence within three
4 years after the date of Council action March 24, 2023. Within 7 days of construction
5 commencement, the certificate holder shall provide the Department written verification
6 that it has met the construction commencement deadline by satisfying applicable
7 preconstruction conditions and completing at least \$250,000 work at the site.
8 b. Construction of the facility shall be completed within 18-months after the construction
9 commencement date. Within 7 days of construction completion, the certificate holder
10 shall provide the Department written verification that it has met the construction
11 completion deadline.

12 [Mandatory Condition OAR 345-025-0006(4), GEN-GS-01]

13
14 *Mandatory and Site-Specific Conditions in Site Certificates [OAR 345-025-0006 and OAR 345-*
15 *025-0010]*

16
17 OAR 345-025-0006 lists certain mandatory conditions that the Council must adopt in every site
18 certificate. Mandatory conditions OAR 345-025-0006(7) through (9) and (16) are discussed and
19 applied in Section IV.G *Retirement and Financial Assurance* of this order as they relate to the
20 restoration of the site, Council approval of a retirement plan, and bonding requirements.
21 Mandatory conditions OAR 345-025-0006(12) through (14) are discussed and applied in Section
22 IV.C *Structural Standard*, because they are associated with the design, construction and
23 operation of the facility to avoid dangers of seismic hazards, coordination with and notifications
24 to the Department of Geology and Mineral Industries (DOGAMI). In addition, pursuant to OAR
25 345-025-0006(10), the Council shall include as conditions in the site certificate all
26 representations in the ASC and supporting record the Council deems to be binding
27 commitments made by the applicant, as necessary to avoid or minimize a potential impact.
28 Mandatory conditions that are not otherwise addressed in the evaluation of compliance with
29 specific standards are discussed below, in the context of the Council’s General Standard of
30 Review.

31
32 The following are applicable mandatory conditions required pursuant to OAR 345-025-0006:

33
34 **General Standard of Review Condition 2:** The certificate holder shall submit a legal
35 description of the site to the Oregon Department of Energy within 90 days after beginning
36 operation of the facility or any phase of the facility. The legal description required by this
37 rule means a description of metes and bounds or a description of the site by reference to a
38 map and geographic data that clearly and specifically identify the outer boundaries that
39 contain all parts of the facility.

40 [Mandatory Condition OAR 345-025-0006(2), OPR-GS-01]

41
42 OAR 345-025-0006(3) establishes, as a mandatory condition, that the certificate holder design,
43 construct, operate, and retire the facility substantially as described in the site certificate in

1 compliance with the requirements of ORS Chapter 469, applicable Council rules, and applicable
2 state and local laws, rules and ordinances in effect at the time the site certificate is issued.

3
4 **General Standard of Review Condition 3:** The certificate holder shall design, construct,
5 operate and retire the facility:

- 6 a. Substantially as described in the site certificate;
7 b. In compliance with the requirements of ORS Chapter 469, applicable Council rules, and
8 applicable state and local laws, rules and ordinances in effect at the time the site
9 certificate is issued; and
10 c. In compliance with all applicable permit requirements of other state agencies.

11 [Mandatory Condition OAR 345-025-0006(3), GEN-GS-02]
12

13 **General Standard of Review Condition 4:** Except as necessary for the initial survey or as
14 otherwise allowed for wind energy facilities, transmission lines or pipelines under this
15 section, the certificate holder shall not begin construction, as defined in OAR 345-001-0010,
16 or create a clearing on any part of the site until the certificate holder has construction rights
17 on all parts of the site. For the purpose of this rule, “construction rights” means the legal
18 right to engage in construction activities. For the transmission line associated with the
19 energy facility if the certificate holder does not have construction rights on all parts of the
20 site, the certificate holder may nevertheless begin construction, as defined in OAR 345-001-
21 0010, or create a clearing on a part of the site if the certificate holder has construction
22 rights on that part of the site and the certificate holder would construct and operate part of
23 the facility on that part of the site even if a change in the planned route of a transmission
24 line occurs during the certificate holder’s negotiations to acquire construction rights on
25 another part of the site.

26 [Mandatory Condition OAR 345-025-0006(5), PRE-GS-01]
27

28 **General Standard of Review Condition 5:** If the certificate holder becomes aware of a
29 significant environmental change or impact attributable to the facility or any phase of the
30 facility, the certificate holder shall, as soon as possible, submit a written report to the
31 Department describing the impact on the facility and any affected site certificate conditions.

32 [Mandatory Condition OAR 345-025-0006(6), GEN-GS-03]
33

34 **General Standard of Review Condition 6:** Upon completion of construction, the certificate
35 holder shall restore vegetation to the extent practicable and shall landscape all areas
36 disturbed by construction in a manner compatible with the surroundings and proposed use.
37 Upon completion of construction, the certificate holder shall remove all temporary
38 structures not required for facility operation and dispose of all timber, brush, refuse and
39 flammable or combustible material resulting from clearing of land and construction of the
40 facility.

41 [Mandatory Condition OAR 345-025-0006(11), PRO-GS-01]
42

43 **General Standard of Review Condition 7:** Before any transfer of ownership of the facility,
44 any phase of the facility, or ownership of the site certificate holder, the certificate holder

1 shall inform the Department of the proposed new owners. The requirements of OAR 345-
2 027-0400 apply to any transfer of ownership that requires a transfer of the site certificate.
3 [Mandatory Condition OAR 345-025-0006(15), GEN-GS-04]

4
5 *Site Specific Conditions [OAR 345-025-0010]*

6
7 In addition to mandatory conditions imposed on all facilities, the Council rules also include “site
8 specific” conditions at OAR 345-025-0010 that the Council may include in the site certificate to
9 address issues specific to certain facility types or proposed features of facilities.⁵⁶

10
11 Because the facility includes electrical infrastructure, the Council adopts the following site-
12 specific conditions:

13
14 **General Standard of Review Condition 8:** The certificate holder shall:

- 15 a. Design, construct and operate electrical infrastructure in accordance with the
16 requirements of the National Electrical Safety Code as approved by the American
17 National Standards Institute; and
18 b. The certificate holder shall develop and implement a program that provides reasonable
19 assurance that all fences, gates, cattle guards, trailers, or other objects or structures of a
20 permanent nature that could become inadvertently charged with electricity are
21 grounded or bonded throughout the life of the line.
22 c. Design the battery storage system in accordance with the requirements of the National
23 Fire Protection Association’s (NFPA) 855: Standard for the Installation of Stationary
24 Energy Storage Systems (NFPA, 2020) or most current version.

25 [Site Specific Condition OAR 345-025-0010(4), GEN-GS-05]

26
27 As noted above, General Standard Condition 8(c) includes a design requirement applicable to
28 the battery storage system. The battery storage system would be designed in accordance with
29 *NFPA 855: Standard for the Installation of Stationary Energy Storage Systems* (NFPA, 2020).
30 These standards include an evaluation of the fire suppression system and installation methods.

⁵⁶ Site-Specific Conditions at OAR 345-025-0010(1)-(3), and (6)-(7) do not apply to the proposed facility based on facility energy source/type (solar photovoltaic power generation facility with related or supporting facilities including a proposed 230 kV transmission line).

1 *Construction and Operation Rules for Facilities [OAR Chapter 345, Division 26]*
2

3 The Council adopted rules at OAR Chapter 345, Division 26 to ensure that construction,
4 operation, and retirement of facilities are accomplished in a manner consistent with the
5 protection of the public health, safety, and welfare and protection of the environment. These
6 rules include requirements for compliance plans, inspections, reporting and notification of
7 incidents. The applicant must construct the facility substantially as described in the site
8 certificate and the applicant must construct, operate, and retire the facility in accordance with
9 all applicable rules adopted by the Council in OAR Chapter 345, Division 26.⁵⁷

10
11 The Council adopts General Standard Condition 9 and 10, as presented below, to support the
12 Department's review of ongoing site certificate compliance, in accordance with OAR Chapter
13 345, Division 26.

14
15 **General Standard of Review Condition 9:** At least 90 days prior to beginning construction,
16 (unless otherwise agreed to by the Department), the certificate holder shall submit to the
17 Department a compliance plan documenting and demonstrating actions completed or to be
18 completed to satisfy the requirements of all site certificate terms and conditions and
19 applicable statutes and rules. The plan shall be provided to the Department for review and
20 compliance determination for each requirement. The Department may request additional
21 information or evaluation deemed necessary to demonstrate compliance.
22 [OAR 345-026-0048, PRE-GS-02]

23
24 **General Standard of Review Condition 10:** The certificate holder shall:

- 25 a. Within six months after beginning construction, and every six months thereafter during
26 construction, submit a semiannual construction progress report to the Department. In
27 each construction progress report, the certificate holder shall describe any significant
28 changes to major milestones for construction. The certificate holder shall report on the
29 progress of construction and shall address the subjects listed in (b). When the reporting
30 date coincides, the certificate holder may include the construction progress report
31 within the annual report described in this rule.
- 32 b. After January 1 but no later than April 30 of each year after beginning operation of the
33 facility, the certificate holder shall submit an annual report to the Department
34 addressing the following for the calendar year preceding the date of the report:
- 35 i. Facility Status: An overview of site conditions, the status of facilities under
36 construction and a summary of the operating experience of facilities that are in
37 operation. The certificate holder shall describe any unusual events, such as
38 earthquakes, extraordinary windstorms, major accidents or the like that occurred
39 during the year and that had a significant adverse impact on the facility.
- 40 ii. Reliability and Efficiency of Power Production: For electric power plants, the plant
41 availability and capacity factors for the reporting year. The certificate holder shall

⁵⁷ Applicable rule requirements established in OAR Chapter 345, Division 26 include OAR 345-026-0005 to OAR 345-026-0170.

1 describe any equipment failures or plant breakdowns that had a significant impact on
2 those factors and shall describe any actions taken to prevent the recurrence of such
3 problems.

- 4 iii. Status of Surety Information: Documentation demonstrating that bonds or letters of
5 credit as described in the site certificate are in full force and effect and will remain in
6 full force and effect for the term of the next reporting period.
- 7 iv. Monitoring Report: A list and description of all significant monitoring and mitigation
8 activities performed during the previous year in accordance with site certificate terms
9 and conditions, a summary of the results of those activities and a discussion of any
10 significant changes to any monitoring or mitigation program, including the reason for
11 any such changes.
- 12 v. Compliance Report: A report describing the certificate holder's compliance with all
13 site certificate conditions that are applicable during the reporting period. For ease of
14 review, the certificate holder shall, in this section of the report, use numbered
15 subparagraphs corresponding to the applicable sections of the site certificate.
- 16 vi. Facility Modification Report: A summary of changes to the facility that the certificate
17 holder has made during the reporting period without an amendment of the site
18 certificate in accordance with OAR 345-027-0350.
19 [OAR 345-026-0080, GEN-GS-06 and OPR-GS-02]
20

21 **Conclusions of Law**

22
23 Based on the foregoing findings of fact, conclusions of law, and subject to mandatory and site-
24 specific conditions, the Council finds that the facility would satisfy Oregon Energy Facility Siting
25 statutes, ORS 469.300 to ORS 469.570 and 469.590 to 469.619, the standards adopted by the
26 Council pursuant to ORS 469.501, and the facility complies with all other Oregon statutes and
27 administrative rules identified in the project order, as applicable to the issuance of a site
28 certificate.
29

30 **IV.B Organizational Expertise: OAR 345-022-0010**

31
32 *(1) To issue a site certificate, the Council must find that the applicant has the*
33 *organizational expertise to construct, operate and retire the proposed facility in*
34 *compliance with Council standards and conditions of the site certificate. To conclude*
35 *that the applicant has this expertise, the Council must find that the applicant has*
36 *demonstrated the ability to design, construct and operate the proposed facility in*
37 *compliance with site certificate conditions and in a manner that protects public*
38 *health and safety and has demonstrated the ability to restore the site to a useful,*
39 *non-hazardous condition. The Council may consider the applicant's experience, the*
40 *applicant's access to technical expertise and the applicant's past performance in*
41 *constructing, operating and retiring other facilities, including, but not limited to, the*
42 *number and severity of regulatory citations issued to the applicant.*
43

1 (2) *The Council may base its findings under section (1) on a rebuttable presumption that*
2 *an applicant has organizational, managerial and technical expertise, if the applicant*
3 *has an ISO 9000 or ISO 14000 certified program and proposes to design, construct*
4 *and operate the facility according to that program.*

5
6 (3) *If the applicant does not itself obtain a state or local government permit or approval*
7 *for which the Council would ordinarily determine compliance but instead relies on a*
8 *permit or approval issued to a third party, the Council, to issue a site certificate, must*
9 *find that the third party has, or has a reasonable likelihood of obtaining, the*
10 *necessary permit or approval, and that the applicant has, or has a reasonable*
11 *likelihood of entering into, a contractual or other arrangement with the third party*
12 *for access to the resource or service secured by that permit or approval.*

13
14 (4) *If the applicant relies on a permit or approval issued to a third party and the third*
15 *party does not have the necessary permit or approval at the time the Council issues*
16 *the site certificate, the Council may issue the site certificate subject to the condition*
17 *that the certificate holder shall not commence construction or operation as*
18 *appropriate until the third party has obtained the necessary permit or approval and*
19 *the applicant has a contract or other arrangement for access to the resource or*
20 *service secured by that permit or approval.*

21
22 **Findings of Fact**

23
24 *Applicant and Parent Company*

25
26 The applicant, EE West End Solar LLC, is a limited liability company formed in the State of
27 Delaware on September 12, 2018. The applicant is authorized by the Oregon Secretary of State
28 to conduct work in (Registry Number 172382393) and has a registered agent in Oregon.⁵⁸ The
29 applicant has retained a resident attorney-in-fact from Stoel Rives LLP, Ms. Sarah Stauffer
30 Curtiss to support in the preparation and submission of the ASC.

31
32 The applicant is a wholly owned subsidiary of Eurus Solar Holdings, LLC. Eurus Solar Holdings
33 LLC is a wholly owned subsidiary of Eurus Energy America, LLC. Eurus Energy America, LLC is a
34 wholly owned subsidiary of Eurus Energy America Corporation (parent company). The applicant
35 and Eurus Solar Holdings LLC have executed a limited liability company agreement, effective
36 September 1, 2021.⁵⁹ This agreement establishes, in part, the ownership and management of
37 assets and interests by the applicant and its sole Member, Eurus Solar Holdings LLC.

38
39 The applicant's parent company is the North American branch of Eurus Energy Holdings
40 Corporation, an international renewable energy developer owned by Toyota Tsusho

⁵⁸ WESAPDoc3 ASC Exhibit A Applicant Information 2022-09-28. Attachments A-1 and A-2.

⁵⁹ WESAPDoc3 ASC Exhibit A Applicant Information 2022-09-28. Attachment A-3.

1 Corporation and Tokyo Electric Power Company.⁶⁰ The applicant is a project-specific LLC and, as
2 an individual LLC, does not have experience in designing and constructing energy facilities. The
3 applicant relies on the technical experience and financial assurance of its parent LLC and parent
4 company to demonstrate compliance with the standard.

5
6 Senior Legal Counsel for Eurus Energy America Corporation and EE West End Solar LLC, Anthony
7 Cresap, provides an August 9, 2021 letter affirming that based upon review of original or
8 certified copies of books and records, limited liability company records, certificate of public
9 officials, and instruments regarding the applicant, the applicant has the legal authority to
10 construct and operate the proposed facility without violating its articles of organization,
11 covenants or similar agreement.

12
13 Applicant is covered by comprehensive business, property and liability insurance. Applicant will
14 own the facility, which will have an estimated value of \$80 million dollars, and will generate
15 revenue from a power purchase agreement or from selling power into the wholesale market.⁶¹
16

17 Applicant personnel include a President and Chief Executive Officer; Vice President of
18 Development; Assistant Vice President of Development Engineering and Senior Counsel.
19 Qualifications of these individuals include:

- 20
- 21 • President and Chief Executive Officer: a degree in law; 20 years of experience in wind
22 power development; and employed by Euros Energy America for 14 years.
 - 23 • Vice President of Development: degrees in History, Psychology, International
24 Affairs/International Economics and Japan Studies; worked in the field of energy
25 development for 23 years; and employed by Euros Energy America for 10 years.
 - 26 • Assistant Vice President of Development Engineering: degrees in Civil Engineering,
27 Construction Management; 15 years of experience in construction management
 - 28 • Senior Counsel: degree in law, geography and environmental planning; 15 years of
29 experience as a land use attorney and planner; and employed with Euros for 25 years.
- 30

31 *Parent Company Experience in Constructing and Operating Wind and Solar Energy Facilities*

32

33 Parent company has developed over 700 megawatts (MW) of renewable energy generation in
34 the United States. This experience includes 4 wind projects from 1987 through 2012 ranging in
35 size from 41 to 250 MW; and 2 solar projects ranging in size from 2011-2017 ranging from 27 to
36 45 MW.

37
38 Applicant has not selected engineers, manufacturers or contractors.

39 *Compliance History*

40
41

⁶⁰ "Who is Eurus Energy America?" <https://eurusenergy.com/about/>, accessed 6/13/2022.

⁶¹ WESAPDoc3-6 Applicant Response DPO-EFSC Comments 2022-11-17 and 2022-12-02. Page 14 of 192.

1 An LLC owned by the applicant’s parent company received a Notice of Violation (NOV) from the
2 Texas Public Utility Commission in December 2021. The NOV resolution is pending approval by
3 the Texas PUC. The information provided in ASC Exhibit D demonstrates that the applicant and
4 its parent company comply with, or take efforts to resolve, regulatory compliance issues.

5
6 *Opinion*

7
8 Based on compliance with Organizational Expertise Condition 3(c) and (d), (the Department’s
9 ability to review site certificate compliance status to determine the adequacy of the
10 decommissioning estimate which would provide the State protection if the applicant went
11 bankrupt or the Council opted to terminate the site certificate and the applicant was unable to
12 fulfil its facility decommissioning obligation) and the financial assurance letter provided in ASC
13 Exhibit M (Attachment M-2), the Council finds that the applicant has the ability to design,
14 construct, operate and retire the proposed facility in compliance with site certificate conditions
15 and has the ability to obtain a bond or letter of credit in a form and amount necessary to
16 restore the site to a useful, nonhazardous condition.

17
18 The Council imposes the following conditions to ensure that the facility is designed,
19 constructed, operated and retired in a manner that protects public health and safety.

20
21 *General Conditions*

22
23 **Organizational Expertise Condition 1:** Any matter of non-compliance under the site
24 certificate is the responsibility of the certificate holder. Any notice of violation issued under
25 the site certificate will be issued to the certificate holder. Any civil penalties under the site
26 certificate will be levied on the certificate holder.

27 [GEN-OE-01]

28
29 **Organizational Expertise Condition 2:** The certificate holder must notify the Department
30 within 72 hours of any occurrence of the following:

- 31 a. There is an attempt by anyone to interfere with the facility’s safe operation.
32 b. There is a significant nature event such as a fire, earthquake, flood, tsunami or tornado,
33 or human-caused event such as a fire or explosion.
34 c. There is any fatal injury at the facility.

35 [OAR 345-026-0170, GEN-OE-02]

36
37 **Organizational Expertise Condition 3:** The certificate holder shall, as soon as reasonably
38 possible:

- 39 a. Report incidents or circumstances that may violate the terms or conditions of the site
40 certificate, terms or conditions of any order of the Council, or the terms or conditions of
41 any order issued under OAR 345-027-0230, to the Department. In the report to the
42 Department, the certificate holder shall provide all pertinent facts including an estimate
43 of how long the conditions or circumstances existed, how long they are expected to
44 continue before they can be corrected, and whether the conditions or circumstances

- 1 were discovered as a result of a regularly scheduled compliance audit;
- 2 b. Initiate and complete appropriate action to correct the conditions or circumstances and
- 3 to minimize the possibility of recurrence;
- 4 c. Submit a written report within 30 days of discovery to the Department. The report must
- 5 refer to the language in (d) of the condition and contain:
- 6 i. A discussion of the cause of the reported conditions or circumstances;
- 7 ii. The date of discovery of the conditions or circumstances by the responsible party;
- 8 iii. A description of immediate actions taken to correct the reported conditions or
- 9 circumstances;
- 10 iv. A description of actions taken or planned to minimize the possibility of recurrence;
- 11 and
- 12 v. For conditions or circumstances that may violate the terms or conditions of a site
- 13 certificate, an assessment of the impact on the resources considered under the
- 14 standards of OAR Chapter 345 Divisions 22 and 24 as a result of the reported
- 15 conditions or circumstances.
- 16 d. Upon receipt of the written report in sub(c) of this condition, the Department may
- 17 review the facility record for incidents or circumstances reported or reportable under
- 18 sub(a) related to public health and safety, the environment, or other resources
- 19 protected under Council standards. If these incidences are determined by the
- 20 Department to impact the adequacy of the facility decommissioning cost, the
- 21 Department or Council may adjust the contingencies identified in Final Order on ASC
- 22 Table 4 and shall request and receive an updated bond or letter of credit from
- 23 certificate holder in the adjusted amount.

24 [OAR 345-029-0010, GEN-OE-03]

25

26 *Preconstruction Conditions*

27

28 **Organizational Expertise Condition 4:** Prior to construction of the facility, facility

29 component or phase, as applicable, the certificate holder shall select a construction

30 contractor with a low rate of historic environmental and safety compliance citations.

31 Certificate holder shall provide the following documentation to the Department:

- 32 a. Qualifications and contact information of the of the major design, engineering and
- 33 construction contractor(s) and subcontractors, as applicable.
- 34 b. Construction contractor compliance history.
- 35 c. Contract excerpt affirming that contractors are required to comply with the terms
- 36 and conditions of the site certificate, including selecting design layout and
- 37 construction materials that minimize impacts to resources protected under Council
- 38 standards.

39 [PRE-OE-01]

40

41 **Organizational Expertise Condition 5:** Prior to construction, the certificate holder shall

42 provide to the Department the qualifications and contact information of the certificate

43 holder's construction manager.

44 [PRE-OE-02]

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Construction Conditions

- Organizational Expertise Condition 6:** During construction, the certificate holder shall:
- a. Maintain an onsite construction manager.
 - b. Require that the construction manager implement and monitor all applicable construction related site certificate conditions.
 - c. Within six months after beginning construction, and every six months thereafter during construction of the energy facility and related or supporting facilities, the certificate holder shall submit a semiannual construction progress report to the Department. In each construction progress report, the certificate holder shall describe any significant changes to major milestones for construction. The certificate holder shall report on the progress of construction and shall address the following:
 - i. Facility Status: An overview of site conditions, the status of facilities under construction and a summary of the operating experience of facilities that are in operation. The certificate holder shall describe any unusual events, such as earthquakes, extraordinary windstorms, major accidents or the like that occurred during the year and that had a significant adverse impact on the facility.
 - ii. Status of Surety Information: Documentation demonstrating that bonds or letters of credit as described in the site certificate are in full force and effect and will remain in full force and effect for the term of the next reporting period.
 - iii. Compliance Report: A report describing the certificate holder’s compliance with all site certificate conditions that are applicable during the reporting period. For ease of review, the certificate holder shall, in this section of the report, use numbered subparagraphs corresponding to the applicable sections of the site certificate.
 - iv. Facility Modification Report: A summary of changes to the facility that the certificate holder has made during the reporting period without an amendment of the site certificate in accordance with OAR 345-027-0050.

[OAR 345-026-0080(1)(a), CON-OE-01]

Operational Conditions

Organizational Expertise Condition 7: Prior to operation, the certificate holder shall provide to the Department the qualifications and contact information of the individuals responsible for monitoring facility operations, including individuals or third-party entity responsible for onsite maintenance.

[PRO-OE-01]

Organizational Expertise Condition 8: During operations, the certificate holder shall maintain records of operations and maintenance activities and shall make available for Department review upon request.

[OPR-OE-01]

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Public Health and Safety

Facility components including the solar array, substation transformers, transmission line, and battery storage system could result in health and safety impacts from unanticipated fire- and electrical hazards. ASC Exhibit V and Section IV.N., *Wildlife Prevention and Risk Mitigation*, provide an evaluation of potential fire related risks from proposed facility design, construction and operation. Under Wildlife Prevention and Risk Mitigation Conditions 1 through 3, the applicant is required to submit and implement an Emergency Management and Wildfire Mitigation Plan, which has design features, inspections, and emergency protocols which would minimize public health and safety risks. The Council finds that potential risks from handling and transport of spent or damaged battery and battery waste would be minimized by requiring that the applicant secure contracts with third-party operators establishing that applicable federal battery transport requirement be adhered, as presented in the condition below:

Organizational Expertise Condition 9: The certificate holder shall contractually require its third-party contractor used to transport and dispose battery and battery waste to comply with all applicable federal regulations and manufacturer recommendations related to the transport and handling of battery related waste.

[GEN-OE-04]

Ability to Restore the Site to a Useful, Non-Hazardous Condition

The applicant’s ability to restore the site to a useful, non-hazardous condition is evaluated based on the applicant’s experience decommissioning facilities, its environmental compliance history, the adequacy of the facility decommissioning cost estimate provided in ASC Exhibit X, and its ability to obtain a bond or letter of credit in the amount equivalent to the decommissioning estimate.

Applicant and parent company do not have experience in decommissioning energy facilities. Applicant and parent company have not received citations or warning related to spill or other hazardous actions on any of its constructed or operating facilities. A financial institution approved by Council for use in issuing bonds or letter of credits to meet the Retirement and Financial Assurance standard, Sumitomo Mitsui Banking Corporation, provides a letter dated July 7, 2021, that there is a reasonable likelihood of its willingness to provide a letter of credit to the parent company up to \$5.8 million.^{62, 63}

Third-Party Permits

⁶² WESAPPD03-13 ASC Exhibit M Financial Capability 2022-10-24, Attachment M-2.
⁶³ At its January 28, 2022 EFSC Meeting, Council conducted its annual review and approval of financial institutions, where Sumitomo Mitsui Banking Corporation (SMBC, NY Branch) was approved as a financial institution for EFSC projects. WESAPPD08 EFSC Meeting-Item-B-Annual-Financial-Assurance-Update-Staff-Report and Mins 2022-01-28

1 Resources needed for facility construction that will be secured through permits obtained by a
2 third-permit, include:

- 3 • Umatilla County Conditional Use Permit and Zoning Permit(s)
- 4 • Oversize Load Movement Permit
- 5 • Umatilla County Road Access Permit

6 The switchyard substation will be owned and operated by a third-party (the utility that owns
7 the transmission line that will provide grid-interconnection for the facility).

8

9 The applicant has not selected its contractors, nor confirmed the third-party permits that will
10 be required for facility construction and operation. Therefore, no evidence has been provided
11 demonstrating that the applicant can obtain access to the resources secured by the permits.
12 The Council imposes the following condition requiring that adequate evidence be provided for
13 third-party permits and resources prior to construction:

14

15 **Organizational Expertise Condition 10:** The certificate holder shall:

- 16 a. Provide to the Department a list of federal, state and local permits, including any third-
17 party permits related to facility siting; and a schedule for obtaining identified permits.
- 18 b. Once obtained, provide copies of all permits, including third-party permits, required for
19 facility siting to the Department.

20 [GEN-OE-05]

21

22 In addition, the Council requires that, prior to construction, the applicant provide evidence of a
23 shared-use agreement between the third-party and applicant for use of the switching station
24 during facility operation, and acknowledgement of the applicant’s responsibilities under the site
25 certificate for the switching station, a related or supporting facility to the energy facility (see
26 Land Use Condition 6).

27

28 **Conclusions of Law**

29

30 Based on the findings of fact and compliance with conditions, the Council finds that the
31 applicant has the organizational expertise to construct, operate and retire the facility in
32 compliance with the Organizational Expertise standard.

33

34 **IV.C Structural Standard: OAR 345-022-0020**

35

36 *(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the*
37 *Council must find that:*

38

39 *(a) The applicant, through appropriate site-specific study, has adequately*
40 *characterized the seismic hazard risk of the site;*

41

1 ***(b) The applicant can design, engineer, and construct the facility to avoid dangers to***
2 ***human safety and the environment presented by seismic hazards affecting the site,***
3 ***as identified in subsection (1)(a);***
4

5 ***(c) The applicant, through appropriate site-specific study, has adequately***
6 ***characterized the potential geological and soils hazards of the site and its vicinity***
7 ***that could, in the absence of a seismic event, adversely affect, or be aggravated by,***
8 ***the construction and operation of the proposed facility; and***
9

10 ***(d) The applicant can design, engineer and construct the facility to avoid dangers to***
11 ***human safety and the environment presented by the hazards identified in subsection***
12 ***(c).***
13

14 ***(2) The Council may not impose the Structural Standard in section (1) to approve or deny***
15 ***an application for an energy facility that would produce power from wind, solar or***
16 ***geothermal energy. However, the Council may, to the extent it determines appropriate,***
17 ***apply the requirements of section (1) to impose conditions on a site certificate issued for***
18 ***such a facility.***

19 ***64

20
21 **Findings of Fact**
22

23 The analysis area for review of geologic and soil stability, as evaluated under the Council’s
24 Structural Standard, is the area within the site boundary. The analysis area for historic seismic
25 and potentially active faults, as defined by the applicant, extends 50-miles from the site
26 boundary.
27

28 As required under OAR 345-021-0010(1)(h), the applicant identified geological and soil stability
29 within the analysis area, and evaluated seismic and non-seismic hazards which could, adversely
30 affect or be aggravated by the construction or operation of the facility. Seismic Hazards
31 evaluated for the facility include potential fault rupture, earthquake-induced landslides,
32 liquefaction and lateral spread, settlement, and subsidence. Non-Seismic geologic hazards that
33 the applicant evaluated included landslides, volcanic activity, erosion, flooding, and shrinking
34 and swelling soils.
35

36 Council rules at OAR 345-021-0010(1)(h)(B) require applicant consultation with the Oregon
37 Department of Geology and Mineral Industries (DOGAMI) on the appropriate methodology and
38 scope of the seismic hazards, and geology and soil-related hazards assessments, and the
39 appropriate site-specific geotechnical work to be completed to demonstrate compliance with
40 the Council’s Structural Standard. The applicant consulted with DOGAMI and the Department
41 on June 10, 2021, and discussed the methodology for the seismic hazard assessment, and the

⁶⁴ OAR 345-022-0020(3) does not apply to this ASC because the proposed facility would not meet the criteria for a special criteria facility as defined in ORS 469.373(1).

1 appropriate methods to evaluate seismic hazards at the site. Notes from the June 10, 2021
2 consultation were provided as Attachment H-1 of ASC Exhibit H, and summarize DOGAMI's
3 recommendations to the applicant for clear references of sources used for data references, and
4 to look at all the appropriate resources and data sources.⁶⁵
5

6 As described further below, the applicant represents that prior to design and construction, it
7 would conduct a site-specific geotechnical assessment to confirm the anticipated soil conditions
8 including bearing capacity of the soils, address subsurface exploration plans and testing plans,
9 and provide engineering recommendations for the final design of the facility structures.⁶⁶
10

11 *Potential Seismic Hazards*

12

13 OAR 345-022-0020(1)(a) and (b) requires the applicant adequately characterize the seismic
14 hazards of the proposed site, and demonstrate an ability to design, engineer and construct the
15 proposed facility to avoid dangers to human safety and the environment from seismic hazards
16 affecting the site. The applicant identified potential seismic hazards by conducting a literature
17 review that included topographic and geologic maps, aerial photographs, existing geologic
18 reports and data provided by; the Oregon Department of Geology and Mineral Industries
19 (DOGAMI), the Oregon Water Resources Department (OWRD), U.S. Geological Survey (USGS),
20 and the Natural Resources Conservation Service (NRCS). Impacts evaluated by the applicant
21 included fault displacement, ground shaking, liquefaction, behavior of subsurface materials,
22 and adverse effects from groundwater or surface water.
23

24 Based on their literature review, a desktop evaluation, and DOGAMI consultation, the applicant
25 anticipates the risk of seismic hazards at the proposed facility to be low. Data from The National
26 Earthquake Information Center shows no earthquakes within the site boundary. There are no
27 known or active faults mapped within the site boundary. The area is likely not in any landslide
28 hazard zone based on data accessed thus far. DOGAMI agreed there would be no landslides in
29 project area/vicinity and that the area is very flat.
30

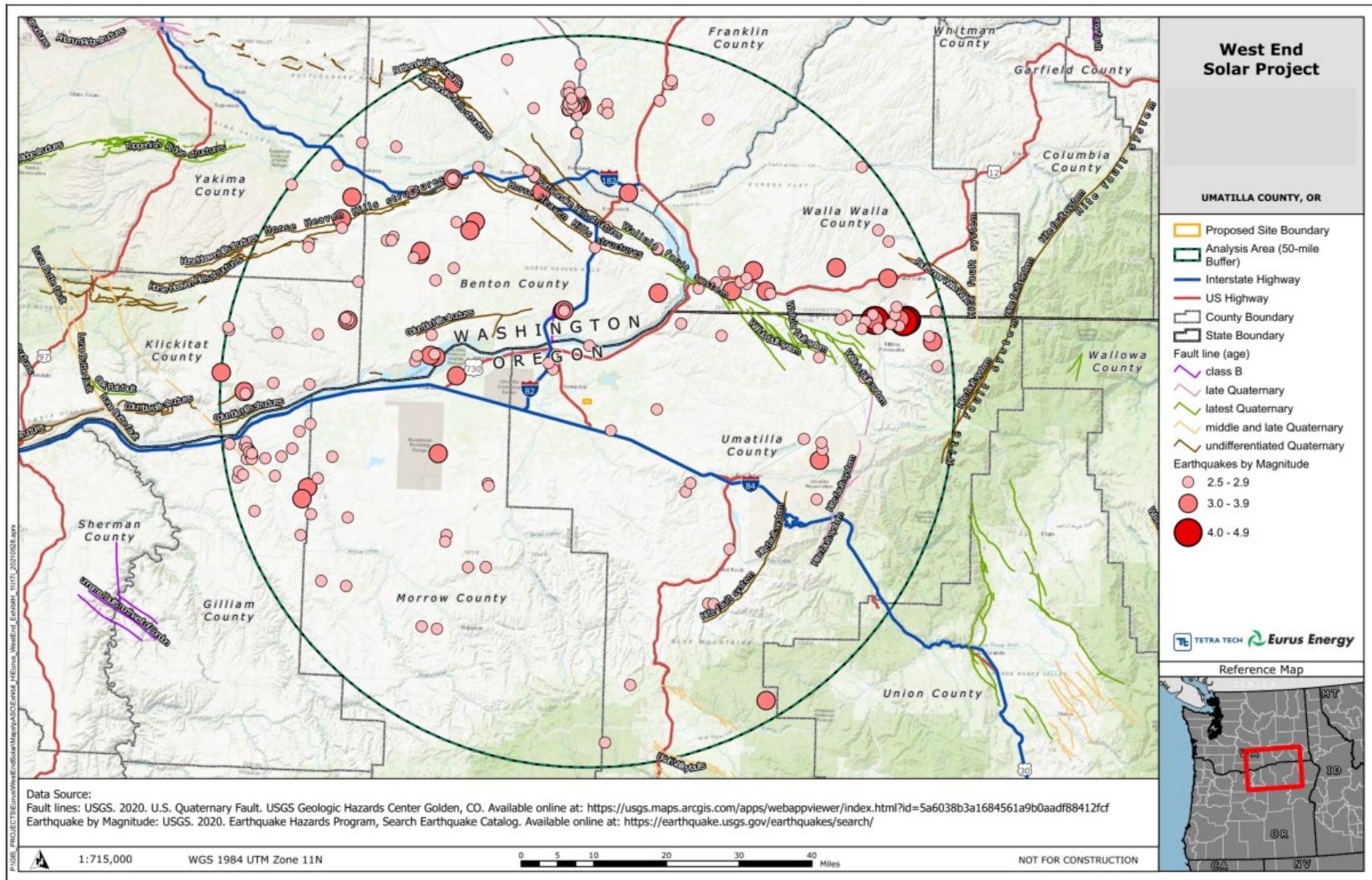
31 A commitment to conduct a site specific geotechnical exploration prior to final design and
32 construction would to ensure safe design, construction, and operation of the facility.
33 Requirements include a description of any potentially active faults within the site boundary and
34 their potential risk to the facility, a determination of the final Site Class for the site boundary
35 area to be applied to final design, and any additional mitigation that will be undertaken by the
36 applicant to ensure safe design, construction, and operation of the facility is imposed by the
37 Council as Structural Standard Condition 1 (below). The criteria of the site-specific geotechnical
38 investigation are the applicant's representations made in ASC Exhibit H, to ensure a safe design,
39 construction, and operation of the proposed facility.
40

⁶⁵ WESAPPD0c3-8 ASC Exhibit H Geological Soil Stability 2022-09-28. Attachment H-1.

⁶⁶ OAR 345-021-0010(1)(h) requires that ASC Exhibit H rely on "reasonably available sources" regarding the geological and soil stability within the analysis area.

- 1 Figure 3 provides the locations of historic seismicity and potentially active faults within the 50-
- 2 mile analysis area, and in relation to the facility site. As shown in the figure, no earthquakes are
- 3 located within 10 miles of the site and the closest earthquakes were fairly small.

1 **Figure 3: Historic seismicity and potentially active faults in relation to the West End Solar Project**



1 Maximum Considered Earthquake Ground Motion under IBC 2015 was considered by the
2 applicant at the proposed site by using a probabilistic seismic hazard analysis from the USGS
3 Unified Hazard Tool (USGS 2020a). Based on the data from the USGS 2020a hazard tool, at the
4 bedrock surface at the center of the site, at 475 and 2,475-year intervals, earthquakes have
5 peak ground acceleration of 0.198g, where “g” is the acceleration of gravity.
6

7 Completion of a site-specific geotechnical analysis prior to construction would be used to
8 evaluate risks of any potentially active faults within the site boundary, determine the soil
9 characteristics and Site Class, and to inform additional mitigation to ensure safe design,
10 construction, and operation of the facility. The Council requires that the geotechnical
11 investigation include a site-specific seismic hazards assessment, unless otherwise approved by
12 the Department in consultation with DOGAMI, to appropriately inform site class design
13 requirements. The Council imposes the following conditions to ensure compliance with the
14 applicants’ commitment to conduct additional Geotechnical analysis:
15

16 **Structural Standard Condition 1:** Before beginning construction, the certificate holder
17 shall submit a site-specific geotechnical investigation report, consistent with the Oregon
18 State Board of Geologist Examiners Guideline for Preparing Engineering Geologic
19 Reports, or newer guidelines if available to the Department, for review in consultation
20 with its third-party consultant or DOGAMI. The site specific geotechnical investigation
21 report shall include information on any potentially active faults within the site
22 boundary, soil characteristic and Site Class determination, and include a site-specific
23 seismic hazards assessment to inform Site Class design.

24 [PRE-SS-01]
25

26 **Structural Standard Condition 2:** The certificate holder shall design, engineer and
27 construct facility components based on Site Class (soils-related category) determined
28 through the site-specific geotechnical investigation (Structural Standard Condition 1), as
29 reviewed and approved by the Department in consultation with its third-party
30 consultant or DOGAMI.

31 [GEN-SS-01]
32

33 Based on review of ASC Exhibit H and consultation with DOGAMI, the Council finds that
34 potential seismic hazards at the site have been adequately characterized and that the applicant
35 will design, construct and operate the facility in a manner that would minimize public health
36 and safety risks from these hazards. Nonetheless, the Council’s Mandatory Conditions at OAR
37 345-025-0006(12) – (14) provide structural related design requirements, which the Council
38 finds sufficient to address the applicant’s ability to design the proposed facility to minimize risks
39 to public health and safety and the environment from a seismic event, as represented below:
40

41 **Structural Condition 3:** The certificate holder must design, engineer and construct the
42 facility to avoid dangers to human safety and the environment presented by seismic
43 hazards affecting the site that are expected to result from all maximum probable seismic
44 events. As used in this rule “seismic hazard” includes ground shaking, ground failure,

1 landslide, liquefaction triggering and consequences (including flow failure, settlement
2 buoyancy, and lateral spreading), cyclic softening of clays and silts, fault rupture,
3 directivity effects and soil-structure interaction. For coastal sites, this also includes
4 tsunami hazards and seismically-induced coastal subsidence.

5 [Mandatory Condition OAR 345-025-0006(12), GEN-SS-02]
6

7 **Structural Condition 4:** The certificate holder must notify the Department, the State
8 Building Codes Division and the Department of Geology and Mineral Industries promptly
9 if site investigations or trenching reveal that conditions in the foundation rocks differ
10 significantly from those described in the application for a site certificate. After the
11 Department receives the notice, the Council may require the certificate holder to
12 consult with the Department of Geology and Mineral Industries and the Building Codes
13 Division to propose and implement corrective or mitigation actions.

14 [Mandatory Condition OAR 345-025-0006(13), GEN-SS-03]
15

16 **Structural Condition 5 (GEN):** The certificate holder must notify the Department, the
17 State Building Codes Division and the Department of Geology and Mineral Industries
18 promptly if shear zones, artesian aquifers, deformations or clastic dikes are found at or
19 in the vicinity of the site. After the Department receives notice, the Council may require
20 the certificate holder to consult with the Department of Geology and Mineral Industries
21 and the Building Codes Division to propose and implement corrective or mitigation
22 actions.

23 [Mandatory Condition OAR 345-025-0006(14), GEN-SS-04]
24

25 *Non-Seismic Geologic Hazards and Design Measures to Avoid Non-Seismic Hazards*
26

27 OAR 345-022-0020(1)(c) and (d) require that the applicant adequately characterize the
28 nonseismic hazards of the proposed site; and, that the applicant demonstrate an ability to
29 design, engineer and construct the proposed facility to avoid dangers to human safety and the
30 environment from the identified hazards.

31
32 To evaluate the presence of non-seismic geologic hazards, the applicant conducted a literature
33 review and field reconnaissance. The literature review evaluated various sources including
34 DOGAMI's Statewide Landslide Information Database for Oregon, Release 2 (SLIDO-2) database,
35 topographic maps, geologic maps and aerial photographs. The field reconnaissance of the
36 facility site was used to evaluate erosion potential and collapsing soils. Based on the sources
37 and field evaluation, the potential non-seismic geologic hazards within the analysis area include
38 landslides/slope instability, erosion, flooding and shrinking and swelling soils.
39

40 The preconstruction geotechnical investigation (Structural Standard Condition 1) will identify
41 any onsite slope stability and shrink-swell soil issues. The applicant is required to avoid any
42 identified slope stability issues or implement remedial measures; and, over-excavate and
43 replace loess soil with structural-fill, wetting and compacting, deep foundations, or avoidance
44 (Structural Standard Condition 2). Wind and water erosion will be mitigated through installation

1 of silt fences, physical controls and other best management practices (as required during
2 construction and operation under Soil Protection Conditions 1, 2 and 3). Onsite flood risk will be
3 avoided by designing access roads and drainages in a manner that directs stormwater runoff
4 away from structures and into drainage ditches and culverts (Land Use Condition 1).
5

6 Based on compliance with the above site certificate conditions, the Council finds that potential
7 nonseismic hazards at the site have been adequately characterized and that the applicant will
8 design, construct and operate the proposed facility in a manner that would minimize public
9 health and safety risks from these hazards.

10 **Conclusions of Law**

11
12
13 Based on the foregoing analysis, and in compliance with OAR 345-022-0020(2), the Council
14 finds that with the inclusion of the conditions listed above, the facility can be constructed and
15 operated in compliance with the requirements of the Structural Standard.
16

17 **IV.D Soil Protection: OAR 345-022-0022**

18
19 *To issue a site certificate, the Council must find that the design, construction and*
20 *operation of the facility, taking into account mitigation, are not likely to result in a*
21 *significant adverse impact to soils including, but not limited to, erosion and chemical*
22 *factors such as salt deposition from cooling towers, land application of liquid effluent,*
23 *and chemical spills.*
24

25 **Findings of Fact**

26
27 The analysis area for the Soil Protection standard is the area within the site boundary, as
28 established in the Expedited Review Project Order.
29

30 *Existing Soil Conditions and Land Use*

31
32 The Natural Resources Conservation Service Soil Data (NRCS) identifies the soil types within the
33 analysis area as Adkins fine sandy loam (which constitutes approximately 73 percent of the 324
34 acre analysis area), and Quincy fine sand (approximately 27 percent of the analysis area). Both
35 soil types are at least seven feet thick, have slopes ranging from zero to five percent, and have
36 low to moderately low runoff. The erosion factor that indicates the susceptibility of a soil to
37 erosion by water, or “K factor” of both soil types, ranges from approximately 0.1 to 0.32, which
38 could be considered slight to moderate erodibility. Wind erosion is moderate for the Adkins fine
39 sandy loam and is severe for the Quincy fine sand. The land within the analysis area is zoned as
40 Exclusive Farm Use by Umatilla County, and uses of the land include fallow agriculture.⁶⁷ Adkins

⁶⁷ The NRCS web soil survey defines fallow as “Cropland left idle in order to restore productivity through accumulation of moisture. Summer fallow is common in regions of limited rainfall where cereal grain is grown. The

1 fine sandy loam is considered prime farmland if irrigated, whereas the Quincy fine sand is not
 2 considered prime farmland.
 3
 4 Soil characteristics including the NRCS capability class and farmland rating of the two soil types
 5 in the analysis area are presented in Table 1: *Soil Characteristics within and Adjacent to the Site*
 6 *Boundary* below.
 7

Table 1: Soil Characteristics within and Adjacent to the Site Boundary

NRCS Soil Unit	NRCS Soil Capability Class (irrigated; nonirrigated)	NRCS Farmland Rating	Water Erosion (K-factor)	Wind Erosion	Permeability
1B -- Adkins fine sandy loam	Class 2; Class 4	Prime if irrigated	0.32 (Moderate)	Moderate	High
74B -- Quincy fine sand	Class 4; Class 7	Not prime	0.1 (Slight)	Severe	Very High

8
 9 *Potential Adverse Impacts to Soil*

10
 11 To evaluate potential adverse impacts to soils, the applicant considers the entire area within
 12 the site boundary (324 acres) subject to temporary or permanent disturbance.

13
 14 *Construction*

15
 16 Facility construction could result in adverse impacts to soils from construction activities such as
 17 site preparation, grading, equipment use, and on-site traffic which can cause erosion,
 18 compaction, loss of vegetation, and soil contamination from spills and leaks.

19
 20 The Oregon Department of Environmental Quality’s (ODEQ) National Pollutant Discharge
 21 Elimination System stormwater discharge permit (NPDES-1200C permit) would not be required
 22 for this facility because there are no surface waters, wetlands, ditches, or conveyance systems
 23 within or adjacent to the site boundary, therefore, there is no possibility of stormwater (rainfall
 24 or snowmelt) running off the site into surface waters of the state or into a conveyance systems
 25 leading to surface waters of the state. The applicant describes best management practices
 26 (BMPs) to reduce and mitigate soil impacts in ASC Exhibit I, Attachment I-1: Erosion Sediment
 27 Control Measures, also attached to this order. Council adopts Soil Protection Condition 1
 28 requiring Erosion Sediment Control Measures to be finalized prior to construction of the facility.
 29 Attachment I-1 also includes additional measures the applicant discusses in Exhibits P (Fish and
 30 Wildlife Habitat), K (Land Use), and U (Public Services). The erosion and sediment control
 31 measures and best management practices (BMP’s) include the following:

soil is tilled for at least one growing season for weed control and decomposition of plant residue.”
<https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>

- 1 • Minimizing to the maximum extent practicable, grading at the site and unnecessary
2 disturbance, while preserving existing vegetation where practical. A scheduled/phased
3 grading approach would minimize soil exposure and prevent exposed inactive areas
4 from becoming a source of erosion, and minimize fugitive dust.
- 5 • Sediment basins and traps will be located at low points below disturbed areas. Earth
6 dikes or swales will be implemented as needed to route drainage from disturbed areas
7 into the basins. Sediment barriers and sediment fences will be placed below small,
8 disturbed areas on gentle to moderate slopes.
- 9 • Vegetate and mulch disturbed areas. Temporary and/or permanent soil stabilization
10 measures immediately on all disturbed areas as grading progresses. Seed and mulch
11 exposed soil as soon as practicable after grading is completed.
- 12 • Implement fugitive dust abatement measures that include the application of water, soil-
13 binding agents, or other dust control techniques to avoid wind-blown soil. If soil-binding
14 agents are used, they will be applied in a way to not travel beyond the site. Fugitive dust
15 from truck traffic would be minimized by applying water to access roads and by keeping
16 paved public rights-of-way (ROW) clean or wet down. Stabilized construction exits will
17 be used to assist with cleaning of truck tires as the vehicles leave unpaved areas.
18 Airborne dust wet suppression system and water spray mist would be required for soil
19 loading, hauling, and backfilling.
- 20 • Areas where soils are stockpiled, a combination of the following measures may be
21 implemented: water spray/mist, soil-binding agents, and/or other dust suppression
22 systems such as covering stockpiles particularly if sustained wind greater than 20 miles
23 per hour are expected.

24
25 In addition to the potential construction related erosion impacts, proposed facility construction
26 may cause localized soil compaction. Haul trucks and heavy equipment would induce soil stress,
27 may compact the native soils on the site. To minimize and mitigate soil compaction, the
28 applicant proposes to scarify and reseed affected areas after construction. The Council imposes
29 Soil Protection Condition 1, to require the certificate holder finalize the Erosion Sediment
30 Control Measures with the Department (in consultation with ODEQ) for review and approval,
31 prior to construction. The Erosion Sediment Control Measures shall be based upon the draft
32 plan provided in Attachment I-1 of Exhibit I.

33
34 **Soil Protection Condition 1:** Prior to construction, the certificate holder shall submit for
35 review and approval to the Department, in consultation with ODEQ, the Erosion Sediment
36 Control Measures to be implemented during construction, consistent with the measures
37 included in Attachment I-1 of the Final Order on the ASC. Components of the plan to be
38 finalized shall take into consideration site specific information obtained during the
39 preconstruction geotechnical investigation, and the final facility design.

40 [PRE-SP-01]

41

1 **Soil Protection Condition 2:** During construction, the certificate holder shall conduct all
2 work in compliance with the final Erosion Sediment Control Measures approved in Soil
3 Protection Condition 1, as modified by the Department, as necessary.

4 **[CON-SP-01]**

5
6 **Soil Protection Condition 3:** During operation, the certificate holder shall conduct all work
7 in compliance with the final Erosion Sediment Control Measures approved in Soil Protection
8 Condition 1, as applicable, and as modified by the Department, as necessary.

9 **[OPR-SP-01]**

10
11 Facility construction activities could result in soil contamination hazards including leakage and
12 spillage of fuels or lubricants associated with construction equipment, or the from other
13 industrial materials including oils, lubricants, and solvents. During construction, on-site fuel
14 storage (i.e., for back-up generators, etc.) may be placed in designated areas within temporary
15 staging areas. Secondary containment and refueling procedures for on-site fuel storage will
16 follow the contractor’s Spill Prevention, Control, and Countermeasures Plan, discussed further
17 below. For the Construction SPCC, the Construction Project Manager or its designee, will assure
18 that for any tank, container or drum of oil, diesel or chemical, equal to or greater than 55
19 gallons, the following prevention and control measures will be provided at all times:

- 20 1. Secondary containment of at least 110 percent of the volume of the primary container.
- 21 2. Routine inspection of fluid levels and containment conditions.
- 22 3. Spill Response equipment and personnel available and prepared to deploy.
- 23 4. Site Security to control access to equipment and property.

24 Spill Prevention, Control, and Countermeasures (SPCC) Plan outline is provided in ASC
25 Attachment B-2. Prior to construction, the applicant will retain a contractor to prepare a SPCC
26 Plan that would comply with 40 CFR 112 (Oil Pollution Prevention), including the safe cleanup of
27 hazardous materials. The SPCC plan will include the following steps that will be followed in the
28 event of a spill:

- 29 1. Eliminate potential ignition sources;
- 30 2. Identify and shut down source of the discharge to stop the flow;
- 31 3. Contain the discharge with sorbents, berms, fences, trenches, sandbags, etc.;
- 32 4. Contact the Facility Manager or his/her alternate;
- 33 5. Contact regulatory authorities and the response organization; and
- 34 6. Collect and dispose of recovered products according to regulation.

35 The Council requires that the applicant develop, maintain, and conduct all work in compliance
36 with an SPCC Plan, by imposing the following Conditions:

37
38 **Soil Protection Condition 4:** Prior to construction, the certificate

1 holder shall prepare and submit to the Department a construction Spill Prevention
2 Control and Countermeasure Plan (SPCC), based on the draft SPCC Plan outline included
3 in Attachment B-2 of the Final Order on the ASC.

4 [PRE-SP-02]
5

6 **Soil Protection Condition 5:** During construction, the certificate holder shall conduct all
7 work in compliance with the final construction SPCC Plan. Certificate holder shall report
8 spill and cleanup activities to the Department within 72 hours and shall make inspection
9 records available to the Department upon request.

10 [CON-SP-02]
11

12 *Operation*

13 Operation activities that could result in negative impacts to soils including erosion, compaction
14 and contamination, would occur from solar panel washing, routine service maintenance of the
15 facility components, and inadvertent spills from facility components.

16
17 Solar panels may be washed twice a year. Washwater from panel washing could negatively
18 impact soils through contamination, if soaps and detergents are used or if paints and finishes
19 are degraded with pressure washing; and, impacts to bioorganisms if overly heated water is
20 used. To minimize these potential impacts, the Council imposes the following condition
21 prohibiting use of chemicals, soaps, and detergents, unless Chemical Safety Data Sheets for low
22 volatile organic compound/biodegradable cleaning chemicals and solvents are submitted to the
23 Department for review and approval. The condition also prohibits use of heated water and
24 authorize pressure washing, so long as it does not remove paint or other finishes.

25
26 **Soil Protection Condition 6:** During facility operation, if solar panel washing is planned
27 to occur, the use of chemicals, soaps, detergents and heated water is prohibited, unless
28 Chemical Safety Data Sheets for low volatile organic compound/biodegradable cleaning
29 chemicals and solvents are submitted to the Department for review and approval.
30 Pressure washing is allowed, so long as it does not remove paint or other finishes.

31 [OPR-SP-02]
32

33 The transformers associated with the solar panels would contain approximately 550 gallons of
34 transformer oil. The main power transformer at the collector substation would contain
35 approximately 14,000 gallons of transformer oil and may use a reinforced concrete pit to retain
36 any oil that may be accidentally spilt from the transformer per applicable code and local
37 requirements. Each transformer area would have a drainage sump for the collection of liquid
38 within the containment. The design would allow for oil/water separation and a berm and liner
39 solution may be considered, for oil containment, if it complies with all relevant codes and has a
40 minimum lifespan of 30 years free of maintenance.

41
42 Hazardous materials used at the site during operation may include fuels, paint, spent oils,
43 solvents, and pesticides will be stored in an operations and maintenance enclosure. Spill kits

1 containing items such as absorbent pads would be located on equipment and in on site
2 temporary storage facilities to respond to accidental spills.

3 The ESS would either include an air or liquid coolant associated with a fire suppression system.
4 Liquid cooled lithium-ion batteries use coolant similar to automotive antifreeze. The coolant, if
5 used, is then recirculated through a closed system to cool the batteries. The battery storage
6 units would also be contained and located upon concrete or gravel pads which would prevent
7 seepage into soils.

8
9 Given the oil-containment capacity of the transformers, secondary containment and an SPCC
10 are required. The Council imposes the following two conditions to ensure that an operational
11 SPCC is developed and implemented to address potential spill-related incidents during
12 operations.

13
14 **Soil Protection Condition 7:** Prior to operation, the certificate holder shall submit to the
15 Department a final copy of an Operational Spill Prevention Control and
16 Countermeasures Plan (SPCC Plan).

17 [PRO-SP-01]

18
19 **Soil Protection Condition 8:** During operations, the certificate
20 holder shall submit any updates of the SPCC Plan in the annual report to the
21 Department. Operational activities shall adhere to the requirements of the SPCC Plan.
22 Certificate holder shall report spill and cleanup activities to the Department within 72
23 hours and shall make inspection records available to the Department upon request.

24 [OPR-SP-03]

25 26 **Conclusions of Law**

27
28 Based on the foregoing findings of fact and conclusions of law, and subject to compliance with
29 the site certificate conditions, the Council finds that the facility would comply with the Soil
30 Protection standard.

31 32 **IV.E Land Use: OAR 345-022-0030**

33
34 *(1) To issue a site certificate, the Council must find that the proposed facility complies*
35 *with the statewide planning goals adopted by the Land Conservation and Development*
36 *Commission.*

37
38 *(2) The Council shall find that a proposed facility complies with section (1) if:*

39
40 *(a) The certificate holder elects to obtain local land use approvals under ORS*
41 *469.504(1)(a) and the Council finds that the facility has received local land use*
42 *approval under the acknowledged comprehensive plan and land use regulations of*
43 *the affected local government; or*

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(b) The applicant elects to obtain a Council determination under ORS 469.504(1)(b) and the Council determines that:

(A) The proposed facility complies with applicable substantive criteria as described in section (3) and the facility complies with any Land Conservation and Development Commission administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646(3);

(B) For a proposed facility that does not comply with one or more of the applicable substantive criteria as described in section (3), the facility otherwise complies with the statewide planning goals or an exception to any applicable statewide planning goal is justified under section (4); or

(C) For a proposed facility that the Council decides, under sections (3) or (6), to evaluate against the statewide planning goals, the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under section (4).

(3) As used in this rule, the "applicable substantive criteria" are criteria from the affected local government's acknowledged comprehensive plan and land use ordinances that are required by the statewide planning goals and that are in effect on the date the applicant submits the application. If the special advisory group recommends applicable substantive criteria, as described under OAR 345-021-0050, the Council shall apply them. If the special advisory group does not recommend applicable substantive criteria, the Council shall decide either to make its own determination of the applicable substantive criteria and apply them or to evaluate the proposed facility against the statewide planning goals.

(4) The Council may find goal compliance for a proposed facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development Commission pertaining to the exception process, the Council may take an exception to a goal if the Council finds:

(a) The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by the rules of the Land Conservation and Development Commission to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

1 *(A) Reasons justify why the state policy embodied in the applicable goal should*
2 *not apply;*

3 *(B) The significant environmental, economic, social and energy consequences*
4 *anticipated as a result of the proposed facility have been identified and adverse*
5 *impacts will be mitigated in accordance with rules of the Council applicable to the*
6 *siting of the proposed facility; and*

7 *(C) The proposed facility is compatible with other adjacent uses or will be made*
8 *compatible through measures designed to reduce adverse impacts.*

9 ***

10 **Findings of Fact**

11 The analysis area for potential land use impacts, as defined in the Project Order, is the area
12 within and extending 0.5-mile from the site boundary.

13
14 The applicant elects for Council to make a determination of compliance with applicable
15 substantive criteria from Umatilla County Development Code (UCDC) pursuant to ORS
16 469.504(1)(b)(B). The Land Use standard therefore requires the Council to find that the
17 proposed facility complies with local applicable substantive criteria and statewide planning
18 goals adopted by the Land Conservation and Development Commission (LCDC) or take an
19 exception to an applicable goal.⁶⁸ Compliance with applicable substantive criteria must be
20 demonstrated for facility components based on the appropriate land use category and zone.
21 The facility includes the following land use category and zone:

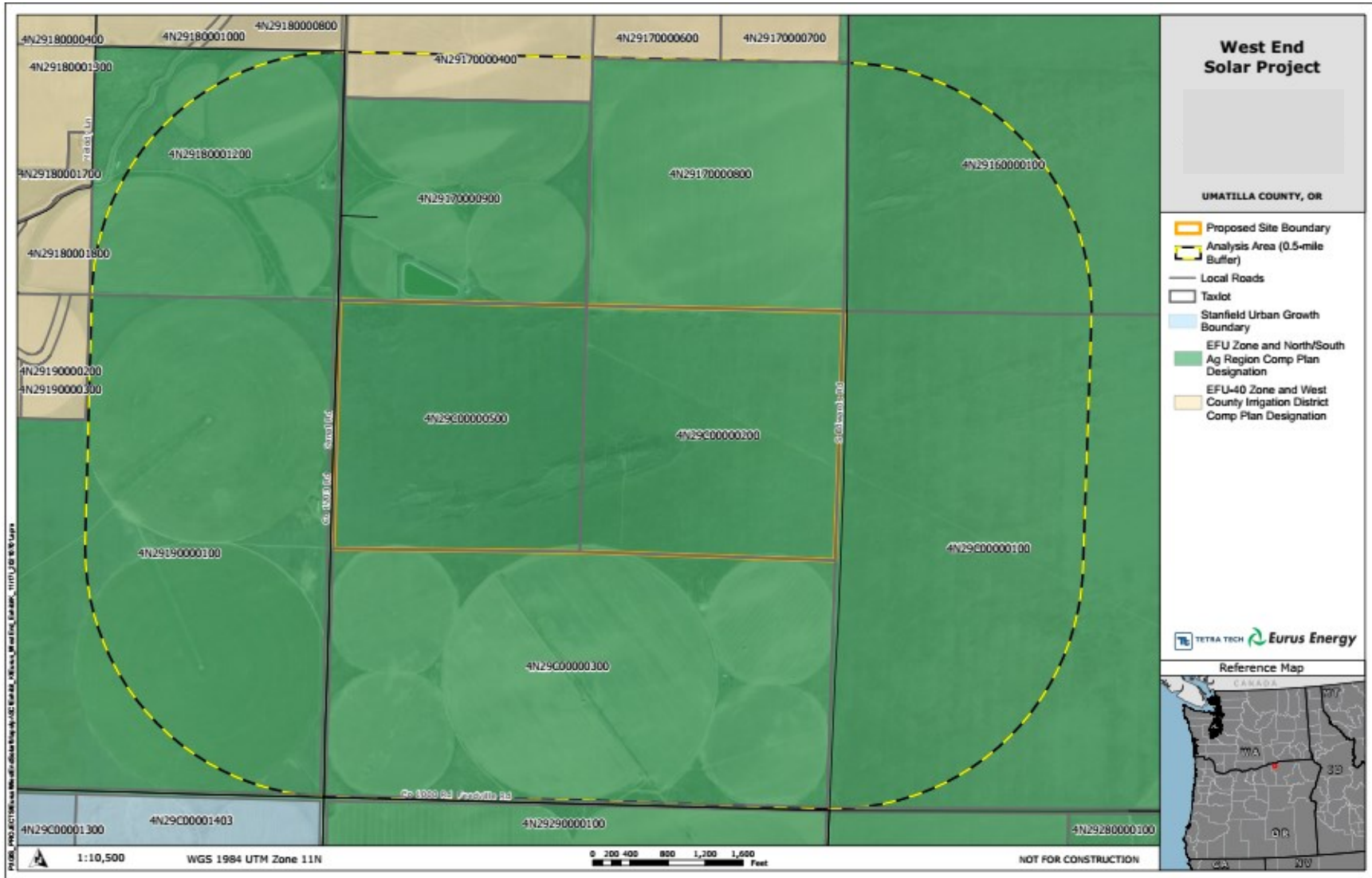
- 22
23 • Commercial solar power generation facility, Exclusive Farm Use (EFU) zone⁶⁹
24 ○ Up to 324 acres of solar PV energy generation components

25
26 Figure 4 below presents the 0.5-mile land use analysis area, the site boundary, the underlying
27 land use zone, comprehensive plan designation and map, and tax lot number.

⁶⁸ The Council must apply the Land Use standard in conformance with the requirements of ORS 469.504.

⁶⁹ As presented in ASC Exhibits B and C, the facility omits an interconnection transmission line because of the interconnection opportunities with 2 existing transmission lines intersecting the site boundary, and an existing transmission line paralleling the eastern site of the site boundary along S. Edwards Road. Therefore, because the facility does not need an interconnection transmission line and the substation/switching station can interconnect to an existing line, on site or in direct proximity to the site, the requirements for a “utility necessary for public service” under UCDC 152.059(C) and 152.617(II)(7) are not applicable to the land use evaluation. WESAPDoc7-2 Reviewing Agency Comment SAG Umatilla County_Waldher 2022-10-26.

1 **Figure 4: Land Use Analysis Area, Facility Site Boundary and Zoning/Comprehensive Plan Designations**



IV.E.1 Applicable Substantive Criteria

“Applicable substantive criteria” are criteria from the affected local government’s (Umatilla County) acknowledged comprehensive plan and land use ordinance, which then must satisfy two requirements. The criteria within the acknowledged comprehensive plan and land use regulations must 1) be required by the statewide planning goals applicable to the facility based on facility type or facility component and land use zone, and 2) be in effect on the date the applicant submits the preliminary application for site certificate (pASC), which in this instance occurred on November 5, 2021.⁷⁰

For this ASC, the applicant requests a Council determination under ORS 469.504(1)(b)(B), which requires:

(B) For an energy facility or a related or supporting facility that must be evaluated against the applicable substantive criteria pursuant to subsection (5) of this section, that the proposed facility does not comply with one or more of the applicable substantive criteria but does otherwise comply with the applicable statewide planning goals, or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section.

ORS 469.504(1)(b)(B), as presented above, allows for Council to find that an applicant has satisfied the requirements of the Land Use standard, even if the proposed facility cannot comply with one or more “applicable substantive criteria” if the proposed facility otherwise complies with applicable statewide planning goals or demonstrates that an exception to the applicable statewide planning goal is justified. Strict compliance with “applicable substantive criteria” is therefore not required if compliance with statewide planning goals is demonstrated or Council finds that an exception is justified.

The affected local governments include the governing bodies of the jurisdictions for which facility components would be located, which in this instance includes the governing bodies of Umatilla County – Umatilla Board of County Commissioners, appointed as a special advisory group (SAG) on November 19, 2021.⁷¹

Table 2 below provides the applicable substantive criteria recommended by the SAG.⁷²

Table 2: Umatilla County Development Code (UCDC)¹

Code Section	Title
Exclusive Farm Use (EFU) Zone Requirements	
§152.025	Zoning Permit
§152.060	Conditional uses permitted
§152.061	Standards for all conditional uses

⁷⁰ OAR 345-022-0030(3); ORS 469.504(1)(b)(A).

⁷¹ WESAPPD0c3 West End Solar SAG Appointment Order Umatilla County 2021-11-19.

⁷² WESAPPD0c6-2 pASC Reviewing Agency Comment SAG Umatilla County Murdock 2021-12-15.

Table 2: Umatilla County Development Code (UCDC)¹

§152.063	Development standards
§152.010	Access to Buildings, Private Driveways and Easements
§152.011	Vision Clearance
§152.015	Fences
§152.615	Additional Conditional Use Permit Restrictions
Umatilla County Comprehensive Plan (UCCP)²	
Chapter 6: Agriculture Policies 1, 8 and 17	
Chapter 8: Open Space, Scenic and Historic Areas, and Natural Areas Policies 1(a), 5(a & b), 6(a), 8(a), 9(a), 10(c, d & e), 20 (a), 20(b)(1-8), 22, 23(a), 24(a), 26, 37 & 38(a-c), 39(a) and 42(a)	
Chapter 9: Air, Land, and Water Quality Policies 1, 7 and 8	
Chapter 10: Natural Hazards Policies 1 and 4	
Chapter 11: Recreational Needs Policy 1	
Chapter 12: Economy of the County Policies 1, 4 and 8(a-f)	
Chapter 14: Public Facilities and Services Policies 1(a-d), 2, 9 and 19	
Chapter 15: Transportation Policies 18 and 20	
Chapter 16: Energy Conservation Policy 1	
Notes:	
1. Umatilla County confirmed that UCDC 152.562(l) (1-7) consists of parking lot design standards intended to apply to publicly accessible businesses. Because the facility is not a public-use facility the parking lot design standards do not apply to the facility. These criteria have been removed from list of “applicable substantive criteria” in Table 2 of the final order and from the land use evaluation in Section IV.E.1 (resulting in removal of Land Use Condition 2(d)). ⁷³	
2. Rather than findings on the broad policies and goals articulated in the Comprehensive Plan that are not specific to locations, activity or use, the Council makes findings on compliance with the land use ordinance provisions that implement the relevant sections of the Comprehensive Plan. See ORS 197.175(2) and 197.015(11).	

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Applicable Umatilla County Development Code Provisions

UCDC §152.025 Zoning Permit

(A) Prior to the construction, reconstruction, addition to or change of use of a structure, or the change of use of a lot, or the installation or replacement of a mobile home on a lot, a zoning permit shall be obtained from the County Planning Department. An amended zoning permit must be obtained when changes to an approved zoning permit occur. Changes include, but are not limited to, the size of the proposed structure, relocation of a structure or changes in the model year of a proposed manufactured home, etc.

⁷³ WESAPDoc1-1 Proposed Order Agency Consultation SAG Umatilla County 2022-12-09.

1 As presented in the subsections below, the conditional use criteria for the solar facility
2 components require that conditional use and zoning permits, per tax lot, be obtained from
3 Umatilla County.

4
5 To ensure that zoning permits are obtained prior to construction of all applicable structures the
6 Council imposes the following condition:

7
8 **Land Use Condition 1:** Prior to construction of facility structures, as applicable, subject
9 to the Council’s jurisdiction and authority pursuant to ORS 469.504(1), the certificate
10 holder shall obtain conditional use permits and zoning permits issued by the Planning
11 Director, per affected tax lot, from Umatilla County Planning Department; copies of
12 permits shall be provided to the Department.

13 [PRE-LU-01]

14
15 Based on compliance with the above condition, the Council finds that the applicant will comply
16 with UCDC §152.025 requirements.

17
18 UCDC §152.060 Conditional Uses Permitted

19
20 *In an EFU zone the following uses may be permitted conditionally via administrative review*
21 *(§ 152.769), subject to the requirements of this section, the applicable criteria in § 152.061,*
22 *§§ 152.610 through 152.615, 152.617 and §§ 152.545 through 152.562. A zoning permit is*
23 *required following the approval of a conditional use pursuant to §152.025. Existing uses*
24 *classified as conditional uses and listed in this section may be expanded subject to*
25 *administrative review and subject to the requirements listed in OAR 660, Division 033.*

26 ***

27 *(FF) Photovoltaic solar power generation facility as provided in OAR 660-033-0130(38).*

28
29 UCDC §152.060 establishes conditional use requirements for permissible land used within EFU-
30 zoned land, including land uses meeting the definition of a “photovoltaic solar power
31 generation facility.” This proposed land use is subject to the requirements of UCDC §152.060,
32 UCDC §152.061 and §152.615. A conditional use permit and zoning permits, per taxlot, are also
33 required – local permits are addressed above and will be required per Land Use Condition 1.

34
35 Under UCDC §152.060(FF), a solar PV facility may be permitted conditionally in the EFU zone as
36 provided in OAR 660-033-0130(38). The evaluation of compliance with OAR 660-033-0130(38) is
37 presented in Section IV.E.2 *Directly Applicable State Laws and Statutes*.

38
39 UCDC §152.061 Conditional Uses Permitted

40
41 *The following limitations shall apply to all conditional uses in an EFU zone. Uses may be*
42 *approved only where such uses:*

43

- 1 (A) Will not force a significant change in accepted farm or forest practices on surrounding
2 lands devoted to farm or forest use; and
3 (B) Will not significantly increase the cost of accepted farm or forest practices on lands
4 devoted to farm or forest use.

5
6 There are no forest lands within the 0.5-mile land use analysis area, as shown in Figure 4, *Land*
7 *Use Analysis Area, Facility Site Boundary and Zoning/Comprehensive Plan Designations*.
8 Surrounding lands on the north, west and southern perimeters of the site boundary are used
9 for irrigated agriculture. In the area of the facility, farmed crops include wheat, corn, potatoes
10 and other row crops and the harvest season can extend 5 months.⁷⁴

11
12 There are four property owners within the analysis area. Accepted farm practices on these
13 properties are summarized below.

14
15 Windblown Ranch - owns the tax lots immediately west, east, and northeast of the site
16 boundary.

- 17
18 • Windblown Ranch leases its land to Castle Rock Farming LLC. The tax lot west of the
19 site boundary has been used for cultivation of wheat, grass seed, alfalfa, and most
20 recently for potatoes.
21 • The tax lots east and northeast of the site boundary have historically had no
22 irrigation and were uncultivated. However, recently these tax lots were added into the
23 East Improvement Irrigation District boundary and have been planted
24 with peas, corn, and potatoes.⁷⁵

25
26 Walchli Farms - owns the tax lots immediately north of the eastern half of the site
27 boundary.

- 28
29 • Walchli Farms rotates their crops as most farmers in this area and are known to
30 cultivate wheat, potatoes, corn, and watermelons on irrigated parcels in the analysis
31 area.⁷⁶

32
33 Stanfield Hutterian Brethren - owns the tax lots immediately north and northwest of
34 the western half of the site boundary.

- 35
36 • Stanfield Hutterian Brethren rotates their crops as most farmers in this area and are
37 known to cultivate wheat, potatoes, and corn on irrigated parcels in the analysis area.⁷⁷

⁷⁴ WESAPDoc6-7 pASC Reviewing Agency Comment SAG Umatilla County Shafer 2022-02-09, p.1.

⁷⁵ In 2018, water rights were secured for Mr. Prior's lands (4N29160000100 and 4N29C00000100) from a newly formed East Improvement District (EID). Mr. Prior's Tract 1 was excluded from the EID boundary because it is site constrained by the existing Bonneville Power Administration and PacifiCorp transmission lines and located farther from the existing EID irrigation infrastructure than his other parcels.

⁷⁶ WESAPDoc3-6 Applicant Response DPO-EFSC Comments 2022-11-17 and 2022-12-02, Attachment K-9.

⁷⁷ Id.

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Windy River - owns the tax lot immediately south of the site boundary

- Windy River leases its land to Castle Rock Farming LLC. They are known to cultivate potatoes, wheat, corn, and grass seed on this irrigated tax lot.

Potential impacts from facility construction to the above-referenced farm practices on surrounding lands include: construction related traffic congestion; local road damage due to heavy construction-related vehicular traffic; noxious weed infestation; wildfire risk; and, offsite erosion and dust. Potential impacts from facility operations to the above-referenced farm practices on surrounding lands include: noxious weed infestation; and, offsite erosion and dust.

The Council imposes numerous conditions to address these potential impacts:

- Soil Protection Conditions 1, 2 and 3 (development and implementation of an erosion and sediment control plan)
- Land Use Conditions 7 and 8 (phased grading plan and onsite erosion materials)
- Land Use Condition 7 (landowner consultation on construction schedule and harvest season, and demonstration of adjustment of heavy traffic congestion during peak harvest season)
- Land Use Conditions 9, 10 and 11 (pre, during and post-construction noxious weed control plan)
- Public Services Condition 1 and 2 (finalization and implementation of a Traffic Management Plan, and secured road use agreement with county)
- Wildfire Prevention and Risk Mitigation Condition 1 and 2 (finalization and implementation of Wildfire Mitigation Plans during construction and operation)

Based on compliance with the above conditions, the Council finds that the facility would comply with the requirements of UCDC 152.061(A) and (B) and would not significantly impact accepted farm practices, or the cost thereof, on surrounding properties used for agricultural purposes.

UCDC §152.063 Development Standards

In the EFU zone, the following dimensional and development standards shall apply:

- (A) *Minimum parcel frontage. A parcel shall have a minimum street or road frontage of 30 feet*
- (B) *Front yard setbacks. All buildings shall be set back from front property lines and side or rear property lines adjoining county roads, public roads, state highways, or public or private access easements as follows:*
 - (1) *At least 30 feet from the property line or easement boundary; or*
 - (2) *At least 60 feet from the center line of the road, highway, or easement, whichever is greater.*

- 1 (C) *Side and rear yard setbacks. Except as provided in division (B) above, the*
2 *following standards shall apply for side and rear yard setbacks:*
3 *(1) The minimum yard setback for farm or non-farm dwellings shall be 20 feet.*
4 *(2) The minimum yard setback for accessory buildings or structures, for both*
5 *farm and non-farm uses, shall be five feet, except as otherwise provided in*
6 *applicable conditions of approval, or as constrained by division (D) below.*
7 *(3) Special minimum yard setbacks may be established for an approved*
8 *conditional use to protect the public health, safety and welfare and to*
9 *mitigate possible adverse impacts to adjacent land uses*
- 10 (D) *Distance maintained from aggregate mining operations. A dwelling shall not be*
11 *located within 500 feet of an existing aggregate mining operation unless the*
12 *owner of the property of the proposed dwelling:*
13 ******
- 14 (E) *Stream setback. To permit better light, air, vision, stream pollution control, to*
15 *protect fish and wildlife areas, and to preserve the natural scenic amenities and*
16 *vistas along the streams, lakes, and wetlands, and to prevent construction in*
17 *flood prone areas along streams not mapped as part of the National Flood*
18 *Insurance Program, the following setbacks shall apply:*
19 *(1) All sewage disposal installations such as septic tanks and drainfields shall be*
20 *set back from the mean water line or mark along all streams, lakes or*
21 *wetlands a minimum of 100 feet, measured at right angles to the high water*
22 *line or mark. In those cases, where practical difficulties preclude the location*
23 *of the facilities at a distance of 100 feet, and the DEQ sanitarian finds that a*
24 *chosen location will not endanger health, the Planning Director may permit*
25 *the location of these facilities closer to the stream, lake, or wetland, but in no*
26 *case closer than 50 feet.*
27 *(2) All structures, buildings or similar permanent fixtures shall be set back from*
28 *the high water line along all streams, lakes or wetlands a minimum of 100*
29 *feet measured at right angles to the high water line or mark, except that this*
30 *setback can be reduced to 20 feet if all of the following criteria are met:*
31 ******
- 32 (F) *Other development standards. All development shall be subject to the regulations*
33 *contained in §§ 152.010 through 152.017, §§ 152.545 through 152.562, and to*
34 *the exceptions standards of §§ 152.570 through 152.577, including but not*
35 *limited to: vision clearance, signs, off street parking, access, fences, wetland*
36 *drainage, and maintenance, removal and replacement of riparian vegetation.*
37 *(Ord. 2005-02, passed 1-5-05)*

38
39 Two county roads adjacent to the facility site, S. Edwards Road and Canal Road, are considered
40 “front yards”. Therefore, facility structures, not including the perimeter fence,⁷⁸ shall be setback

⁷⁸ On March 13, 2022, through email correspondence to the applicant’s consultant (Tetra Tech, Leslie McLain), Umatilla County planner, Carol Johnson confirmed that fencing is not required to meet a property line or boundary setback.

1 60 feet from the centerline of the road or 30 feet to the property line, whichever is greater in
2 order comply with UCDC §152.063(B) front yard setbacks.

3
4 Facility structures shall be setback a minimum of 5-feet from property boundaries on the
5 northern and southern sides of the site boundary in order comply with UCDC §152.063(C) side
6 and rear yard setbacks.

7
8 The applicant has not proposed any aggregate mining and has demonstrated that there are no
9 streams or wetlands within the site boundary.⁷⁹ Therefore, the development standards under
10 UCDC §152.063(D) and (E) do not apply. The applicable development standards referenced in
11 UCDC §152.063(F) are evaluated separately in this section.

12
13 To ensure that the final facility layout and design complies with the applicable UCDC §152.063
14 Development Standards, the Council imposes the following condition:

15
16 **Land Use Condition 2:** Prior to construction of the facility, facility component or phase,
17 as applicable, the certificate holder shall submit to the Department and Umatilla County
18 a site plan that adheres to the following development standards:

- 19 a. For the property line parallel to S. Edwards Road and Canal Road, facility structures
20 shall be set back 60 feet from the centerline of the road or 30 feet to the property
21 line, whichever is greater. This setback does not apply to the perimeter fence.
22 b. On the north and south sides of the site boundary, facility structures shall be setback
23 a minimum of 5 feet from the property line. This setback does not apply to
24 underground collector lines or internal access roads.
25 c. On the interior boundary between the two adjacent properties within the site
26 boundary, facility structures shall be set back a minimum of 5 feet from the property
27 line. This setback does not apply to underground collector lines or internal access
28 roads.

29 [PRE-LU-02]

30
31 Based on compliance with the above condition, the Council finds that the applicant will comply
32 with the applicable UCDC §152.063 Development Standards.

33
34 UCDC §152.010 Access to Buildings; Private Driveways and Easements

35
36 *(A) Every building hereafter erected or moved shall be on a lot that abuts a public street or a*
37 *recorded easement. All structures shall be so located on lots as to provide safe and*
38 *convenient access for servicing, fire protection, and required off-street parking. In*
39 *commercial and industrial zones, access points shall be minimized. To accomplish this,*

⁷⁹ WESAPDoc3-10 ASC Exhibit J Wetlands 2022-09-28. Section 4.0 states, “There are no WOS within the site boundary..,” and from an Oregon Department of State Lands (DSL) response letter for an Offsite Determination, DSL concurs that, “Based on available offsite information and additional information provided by the applicant, it is unlikely that jurisdictional wetlands or waterways are present on the property.” WESAPDoc6-10 pASC Reviewing Agency Comment Offsite Determination No Wetlands_DSL_Ryan 2022-07-28.

1 *access shall be limited to one every 200 feet and shall be reviewed during the design*
2 *review stage or the conditional use hearing. If necessary to accomplish this, driveways*
3 *may be shared between two lots.*

4 *(B) Private driveways and easements that enter onto a public or county road or state or*
5 *federal highway shall be constructed of at least similar if not the same material as the*
6 *public or county road or state or federal highway to protect the edge of the road from*
7 *rapid deterioration. The improvements shall extend at least 25 feet back from the edge*
8 *of the existing travel lane surface. (Ord. 83-4, passed 5-9-83)*

9
10 The facility includes a driveway that would provide access to the site from S. Edwards Road.
11 UCDC §152.010(B) requires that the driveway be constructed with the same, or similar, material
12 as S. Edwards Road and that the driveway extend at least 25 feet back from the edge of the
13 existing travel lane surface.

14
15 **Land Use Condition 3:** Prior to submission of a zoning permit application to Umatilla
16 County for the driveway off of S. Edwards Road, the certificate holder shall submit to
17 Umatilla County, and the Department, the final design of the driveway in compliance
18 with the following:

- 19 a. Construction materials shall be similar, or the same, as S. Edwards Road.
20 b. Driveway shall extend at least 25 feet back from the edge of the existing travel lane
21 surface of S. Edwards Road.
22 c. Driveway shall include a minimum 10 foot vision clearance area (triangular area on
23 the lot at the intersection of driveway and S. Edwards Road).

24 [PRE-LU-03]

25
26 Based on compliance with the above condition ((a) and (b)), the Council finds that the applicant
27 will comply with the applicable UCDC §152.010(D) private driveway requirements. See also
28 Public Services Condition 1 for additional requirements related to the certificate holder’s
29 obligation to obtain directly or through a third-party applicable road and access permits from
30 ODOT and Umatilla County Public Works Department.

31
32 UCDC §152.011 Vision Clearance

33
34 *Vision clearance areas shall be provided with the following distance establishing the size of*
35 *the vision clearance area:*

36 *(A) In an Agricultural or Residential Zone, the minimum distance shall be 30 feet or, at*
37 *intersections including an alley, 10 feet;*

38 *(B) In all other zones the minimum distance shall be 15 feet or, at intersections including an*
39 *alley, 10 feet, except when the angle of intersection between streets is less than 30° the*
40 *distance shall be 25 feet;*

41 *(C) The vision clearance area shall not contain any planting, wall, structure, or obstruction of*
42 *any kind exceeding two and one-half feet in height measured from the grade of the*
43 *street centerline. (Ord. 83-4, passed 5-9-83)*

1 UCDC §152.011(A) establishes minimum vision clearance distances of 10 feet, applicable to the
2 triangular area on the lot of the facility driveway and S. Edwards Road. The Council imposes
3 Land Use Condition 3(c) to ensure the final facility design adheres to the vision clearance
4 requirements. Based on compliance with Land Use Condition 3(c), the Council finds that the
5 applicant will comply with the applicable UCDC §152.011(A) vision clearance requirements.
6

7 UCDC §152.015 Fences
8

9 *Fences are allowed in any zone and do not require a zoning permit for construction*
10 *unless located in a Special Flood Hazard Area. Fences located in a Special Flood*
11 *Hazard Area require an approved Floodplain Development Permit and Zoning Permit.*
12 *Fences must meet vision clearance requirements and zoning height limitation for structures.*
13 *Fences shall meet all Oregon Uniform Building Code requirements. (Ord.*
14 *83-4, passed 5-9-83; Ord. 2010-05, passed 8-3-10; Ord. 2019-03, passed 4-3-2019)*
15

16 UCDC §152.015 establishes that fencing, when not located in Special Flood Hazard Area, must
17 meet vision clearance requirements, zoning height limitations and Oregon Uniform Building
18 Code requirements. The facility will include approximately 3 miles (15,400 linear feet) of 6 to
19 10-foot chain-link perimeter fencing. There are no structure or height restrictions established in
20 UCDC within EFU zoned land. Therefore, the applicable requirements include vision clearance
21 and Oregon Uniform Building Code. The Council imposes the following condition to comply with
22 UCDC §152.015.
23

24 **Land Use Condition 4:** Prior to submission of a zoning permit application for the facility,
25 facility component or phase, the certificate holder shall submit to Umatilla County, and
26 the Department, the final site plan of the facility demonstrating that:

- 27 a. Perimeter fence will include a minimum 10 foot vision clearance area (triangular
28 area on the lot to any offsite roadway intersections).
29 b. Perimeter fence complies with Oregon Uniform Building Code requirements.

30 [PRE-LU-04]

31 Based on compliance with Land Use Condition 4, the Council finds that the applicant will
32 comply with the applicable UCDC §152.015 fencing requirements.
33

34 UCDC §152.615 Additional Conditional Use Permit Restrictions
35

36 *In addition to the requirements and criteria listed in this subchapter, the Hearings Officer,*
37 *Planning Director or the appropriate planning authority may impose the following*
38 *conditions upon a finding that circumstances warrant such additional restrictions: [list of*
39 *conditions omitted for brevity]*
40

41 The Council has the authority to impose additional conditions under UCDC 152.615. The
42 County, however, has not recommended any additional conditions under this provision, and
43 Council does not impose any additional conditions under this provision.
44

1 IV.E.2 Directly Applicable State Laws and Statutes

2

3 The facility must demonstrate compliance with the requirements under LCDC OAR 660-033-
4 0130(38).

5

6 The site is located within land classified as high-value farmland per ORS 195.300(10) (f) because
7 the property is located within the Columbia Valley American Viticulture Area designation and
8 criteria. The facility would use, occupy, or cover 261 acres of high-value farmland.⁸⁰ The facility
9 would not be located on any high value farmland soils as defined under OAR 660-033-
10 0020(8)(b)-(e).

11

12 *OAR 660-033-0130 – Minimum Standards Applicable to the Schedule of Permitted and*
13 *Conditional Uses*

14

15 *(38) A proposal to site a photovoltaic solar power generation facility shall be subject to the*
16 *following definitions and provisions:*

17

18 ****81*

19 *(g) For high-value farmland described at ORS 195.300(10), a photovoltaic solar power*
20 *generation facility shall not use, occupy, or cover more than 12 acres unless:*

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OAR 660-033-0130(38)(g) restricts a photovoltaic solar power generation facility from using, occupying, or covering more than 12 acres of high value farmland unless the provisions of OAR 660-033-0130(38)(h)(H) are satisfied or the County adopts (and the applicant satisfies) land use provisions authorizing projects subject to a dual-use development plan.⁸² The applicant acknowledges, and the Council agrees, that the solar facility components would not meet either one of these exemptions. As provided under OAR 660-033-0130(38)(k), a solar PV facility that exceeds the threshold established by OAR 660-033-0130(38)(g) requires a goal exception.

⁸⁰ WESAPDoc3-11 ASC Exhibit K Land Use 2022-10-22. Table K-2.

⁸¹ OAR 660-033-0130(38)(a)-(e) contain definitions. The provisions begin at (g).

⁸² Land use provisions adopted by a county pursuant to this paragraph may not allow a project in excess of 20 acres. OAR 660-033-0130(38)(g)(B).

1 OAR 660-033-0130(38)(h)(A) – (D) requires a demonstration that the facility components would
2 not create unnecessary negative impacts to agricultural operations, soil erosion or loss, soil
3 compaction, or the unabated introduction or spread of noxious weeds.

4
5 *(A) The proposed photovoltaic solar power generation facility will not create*
6 *unnecessary negative impacts on agricultural operations conducted on any*
7 *portion of the subject property not occupied by project components. Negative*
8 *impacts could include, but are not limited to, the unnecessary construction of*
9 *roads dividing a field or multiple fields in such a way that creates small or*
10 *isolated pieces of property that are more difficult to farm, and placing*
11 *photovoltaic solar power generation facility project components on lands in a*
12 *manner that could disrupt common and accepted farming practices;*

13
14 The facility site is located on lands that are not currently, nor in the last 50 years, been used for
15 agricultural operations. Therefore, the Council finds that construction and operation of the
16 facility will not create unnecessary negative impacts on agricultural operations conducted on
17 any portion of the subject property and therefore would satisfy the requirements under OAR
18 660-033-0130(38)(h)(A).

19
20 *(B) The presence of a photovoltaic solar power generation facility will not result in*
21 *unnecessary soil erosion or loss that could limit agricultural productivity on the*
22 *subject property. This provision may be satisfied by the submittal and county*
23 *approval of a soil and erosion control plan prepared by an adequately qualified*
24 *individual, showing how unnecessary soil erosion will be avoided or remedied.*
25 *The approved plan shall be attached to the decision as a condition of approval;*

26
27 This provision is consistent with Council’s Soil Protection standard, where the Council imposes a
28 condition requiring that, during facility construction, the applicant be required to adhere to the
29 requirements of a Department approved Erosion and Sediment Control Plan (see Soil Protection
30 Conditions 1 and 2) and implementation of a Noxious Weed Plan, prior to and during
31 construction and operation (see Land Use Conditions 9, 10 and 11). This plan includes best
32 management practices to be implemented during construction and operation designed to
33 reduce and minimize unnecessary soil erosion or loss that could limit agricultural productivity
34 within the facility site and on adjacent EFU zoned land.

35
36 Based upon compliance with the site certificate conditions, the Council concludes that the
37 facility will satisfy the requirements under OAR 660-033-0130(38)(h)(B).

38
39 *(C) Construction or maintenance activities will not result in unnecessary soil*
40 *compaction that reduces the productivity of soil for crop production. This*
41 *provision may be satisfied by the submittal and county approval of a plan*
42 *prepared by an adequately qualified individual, showing how unnecessary soil*
43 *compaction will be avoided or remedied in a timely manner through deep soil*

1 *decompaction or other appropriate practices. The approved plan shall be*
2 *attached to the decision as a condition of approval;*

3
4 This provision is consistent with Council’s Soil Protection standard, where Council imposes
5 conditions requiring that the applicant minimize compaction through scarification and
6 reseeding following site disturbance (see Soil Protection Conditions 1, 2 and 3 and associated
7 Attachment I-1 of this order).

8
9 Based upon compliance with these conditions, the Council concludes that the facility will satisfy
10 the requirements under OAR 660-033-0130(38)(h)(C).

11
12 *(D) Construction or maintenance activities will not result in the unabated*
13 *introduction or spread of noxious weeds and other undesirable weed species. This*
14 *provision may be satisfied by the submittal and county approval of a weed control*
15 *plan prepared by an adequately qualified individual that includes a long-term*
16 *maintenance agreement. The approved plan shall be attached to the decision as a*
17 *condition of approval;*

18
19 Noxious weed control is required to ensure the impacts to adjacent agricultural lands are
20 minimized and that revegetation and site stabilization within areas of disturbance are achieved.

21
22 Land Use Conditions 9, 10 and 11 requires that the applicant implement a Noxious Weed Plan,
23 which includes requirements for noxious weed control, prior to and during construction and
24 operation. Elements of the noxious weed control requirements include preconstruction
25 identification and treatment of infestation locations; flagging, avoiding and monitoring of
26 infestation areas during construction; and long-term monitoring and treatment during
27 operations. All of these requirements would be reported to the Department and Umatilla
28 County Weed Department and allow for the Department to require additional treatment and
29 monitoring given reported results. Based upon compliance with the condition, the Council
30 concludes that the facility would not result in unabated introduction or spread of noxious
31 weeds and other undesirable weed species and would satisfy the requirements under OAR 660-
32 033-0130(38)(h)(D).

33
34 *(E) Except for electrical cable collection systems connecting the photovoltaic solar*
35 *generation facility to a transmission line, the project is not located on those high-*
36 *value farmland soils listed in OAR 660-033-0020(8)(a);*

37
38 As defined in OAR 660-033-0020(8)(a), high value farmland means land in a tract composed
39 predominately of soils that are either irrigated and classified prime, unique, Class I or II soils; or,
40 not irrigated and classified prime, unique, Class I or Class II soils.

41
42 As shown in ASC Exhibit K, Figure K-8, the site boundary is predominately not located on Class I
43 or II soils and is not located within an irrigation district. There are approximately 4 acres of Class
44 II soils within the site boundary that will be required to be avoided under Land Use Condition

1 12. Because the subject tracts are not irrigated and are not located within an irrigation district,
2 it is not considered irrigated farmland and is therefore not prime farmland.

3
4 The Council finds that the facility will not be located on high-value farmland soils listed in OAR
5 660-033-0020(8)(a), consistent with OAR 660-033-0130(38)(h)(E).

6
7 *(F) The project is not located on those high-value farmland soils listed in OAR 660-
8 033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:*

9 *(i) Non high-value farmland soils are not available on the subject tract;*

10 *(ii) Siting the project on non high-value farmland soils present on the subject
11 tract would significantly reduce the project’s ability to operate successfully; or*

12 *(iii) The proposed site is better suited to allow continuation of an existing
13 commercial farm or ranching operation on the subject tract than other possible
14 sites also located on the subject tract, including those comprised of non high
15 value farmland soils; and*

16
17 The site boundary would not be located on high-value farmland soils listed in OAR 660-033-
18 0020(8)(b)-(e), which include certain high-value farmland tracts⁸³ outside the Willamette Valley
19 growing specified perennials, and certain soils located in other areas that are far from the site
20 boundary (specifically, within the Willamette Valley, west of the Coast Range, and west of U.S.
21 Highway 101). The site boundary would, however, be located on arable soils (Class IV), so the
22 applicant must demonstrate that the facility can meet one of the factors listed in (i) through
23 (iii).

24
25 Siting the facility on non-arable soils (Class VII) to avoid arable soils would significantly reduce
26 the acreage available to develop the project, resulting in less than 88 available acres that are
27 laid-out in a long narrow pattern within the subject tracts.⁸⁴ Because the subject tracts are
28 limited to the site boundary and do not extend or offer more area than is under review, the
29 Council finds that the facility site satisfies OAR 660-033-0130(38)(f)(ii).

30
31 *(G) A study area consisting of lands zoned for exclusive farm use located within one
32 mile measured from the center of the proposed project shall be established and:*

33 *(i) If fewer than 48 acres of photovoltaic solar power generation facilities have
34 been constructed or received land use approvals and obtained building permits
35 within the study area, no further action is necessary.*

36 *(ii) When at least 48 acres of photovoltaic solar power generation facilities have
37 been constructed or received land use approvals and obtained building permits,
38 either as a single project or as multiple facilities within the study area, the local
39 government or its designate must find that the photovoltaic solar power*

⁸³ As defined in OAR 660-033-0020, “tract” means one or more contiguous lots or parcels under the same ownership. The Department highlights that because OAR 660-033-0130(38)(g)(A) requires an evaluation of soil conditions on the “subject tract,” that such an evaluation may require the review of areas outside of the site boundary area.

⁸⁴ WESAPDoc3-11 ASC Exhibit K Land Use 2022-10-22, Table K-1 and Section 7.1.2.

1 *generation facility will not materially alter the stability of the overall land use*
2 *pattern of the area. The stability of the land use pattern will be materially*
3 *altered if the overall effect of existing and potential photovoltaic solar power*
4 *generation facilities will make it more difficult for the existing farms and*
5 *ranches in the area to continue operation due to diminished opportunities to*
6 *expand, purchase or lease farmland, acquire water rights, or diminish the*
7 *number of tracts or acreage in farm use in a manner that will destabilize the*
8 *overall character of the study area.*

9
10 OAR 660-033-0130(38)(h)(G) requires an evaluation of photovoltaic solar power generation
11 facility development within 1-mile of the site boundary. The applicant asserts that no
12 photovoltaic solar power generation facilities have been constructed or received land
13 use approvals and obtained building permits within the 1-mile study area.⁸⁵ ASC Exhibit C Figure
14 C-3 shows operating solar facilities within 10 miles of the site boundary, all of which are farther
15 than 1 mile away. Based on a review of aerial imagery, the Council confirms that there are
16 fewer than 48 acres of other solar PV facilities within 1-mile of the facility. Therefore the
17 Council finds that no further action is necessary, consistent with OAR 660-033-0130(38)(h)(G)(i).

18
19 *(H) A photovoltaic solar power generation facility may be sited on more than 12 acres of*
20 *high-value farmland described in ORS 195.300 (Definitions for ORS 195.300 to*
21 *195.336)(10)(f)(C) without taking an exception pursuant to ORS 197.732 (Goal*
22 *exceptions) and OAR chapter 660, division 4, provided the land:*

23 *(i) Is not located within the boundaries of an irrigation district;*

24 *(ii) Is not at the time of the facility's establishment, and was not at any time during*
25 *the 20 years immediately preceding the facility's establishment, the place of use*
26 *of a water right permit, certificate, decree, transfer order or ground water*
27 *registration authorizing the use of water for the purpose of irrigation;*

28 *(iii) Is located within the service area of an electric utility described in ORS 469A.052*
29 *(Large utility renewable portfolio standard)(2);*

30 *(iv) Does not exceed the acreage the electric utility reasonably anticipates to be*
31 *necessary to achieve the applicable renewable portfolio standard described*
32 *in ORS 469A.052 (Large utility renewable portfolio standard)(3); and*

33 *(v) Does not qualify as high-value farmland under any other provision of law; or*

34
35 The facility does not satisfy OAR 660-033-0130(38)(h)(H)(iii) and (iv) and therefore does not
36 qualify for the acreage exception.

37
38 *(i) For arable lands, a photovoltaic solar power generation facility shall not use, occupy, or*
39 *cover more than 20 acres. The governing body or its designate must find that the*

⁸⁵ WESAPDoc3-11 ASC Exhibit K Land Use 2022-09-28, p.35.

1 *following criteria are satisfied in order to approve a photovoltaic solar power generation*
2 *facility on arable land.*

3
4 *(A) Except for electrical cable collection systems connecting the photovoltaic solar*
5 *generation facility to a transmission line, the project is not located on those high-*
6 *value farmland soils listed in OAR 660-033-0020 (Definitions)(8)(a);*
7

8 As defined in OAR 660-033-0020(8)(a), high value farmland means land in a tract composed
9 predominately of soils that are either irrigated and classified prime, unique, Class I or II soils; or,
10 not irrigated and classified prime, unique, Class I or Class II soils.

11
12 As shown in ASC Exhibit K Figure K-8, the proposed site boundary is predominately not located
13 on Class I or II soils and is not located within an irrigation district. There are approximately 4
14 acres of Class II soils within the site boundary that will be required to be avoided, under Land
15 Use Condition 12. Because the subject tracts are not irrigated and are not located within an
16 irrigation district, it is not considered irrigated farmland and is therefore not prime farmland.

17
18 The Council finds that the facility will not be located on high-value farmland soils listed in OAR
19 660-033-0020(8)(a), consistent with OAR 660-033-0130(38)(i)(A).

20
21 *(B) The project is not located on those high-value farmland soils listed in OAR 660-033-*
22 *0020 (Definitions)(8)(b)-(e) or arable soils unless it can be demonstrated that:*

23
24 *(i) Nonarable soils are not available on the subject tract;*

25 *(ii) Siting the project on nonarable soils present on the subject tract would*
26 *significantly reduce the project’s ability to operate successfully; or*

27 *(iii) The proposed site is better suited to allow continuation of an existing commercial*
28 *farm or ranching operation on the subject tract than other possible sites also*
29 *located on the subject tract, including those comprised of nonarable soils;*
30

31 The site boundary would not be located on high-value farmland soils listed in OAR 660-033-
32 0020(8)(b)-(e), which include certain high-value farmland tracts⁸⁶ outside the Willamette Valley
33 growing specified perennials, and certain soils located in other areas that are far from the site
34 boundary (specifically, within the Willamette Valley, west of the Coast Range, and west of U.S.
35 Highway 101). The site boundary would, however, be located on arable soils (Class IV), so the
36 applicant must demonstrate that the facility can meet one of the factors listed in (i) through
37 (iii).

38
39 Siting the facility on non-arable soils (Class VII) to avoid arable soils would significantly reduce
40 the acreage available to develop the project, resulting in less than 88 available acres that are

⁸⁶ As defined in OAR 660-033-0020, “tract” means one or more contiguous lots or parcels under the same ownership. The Department highlights that because OAR 660-033-0130(38)(g)(A) requires an evaluation of soil conditions on the “subject tract,” that such an evaluation may require the review of areas outside of the site boundary area.

1 laid-out in a long narrow pattern within the subject tracts.⁸⁷ Because the subject tracts are
2 limited to the site boundary and do not extend or offer more area than is under review, the
3 Council finds that the facility site satisfies OAR 660-033-0130(38)(i)(B)(ii).

4
5 *(C) No more than 12 acres of the project will be sited on high-value farmland soils*
6 *described at ORS 195.300 (Definitions for ORS 195.300 to 195.336)(10));*
7

8 The facility will be sited on more than 12 acres of high-value farmland as defined in ORS
9 195.300(10)(f) because the property is located within the located within the Columbia Valley
10 American Viticulture Area designation and criteria. Therefore, the facility requires an exception
11 to Statewide Planning Goal 3, as evaluated in Section IV.E.3 *Goal Exception* of this order.
12

13 *(D) A study area consisting of lands zoned for exclusive farm use located within one mile*
14 *measured from the center of the proposed project shall be established and:*

15 *(i) If fewer than 80 acres of photovoltaic solar power generation facilities have been*
16 *constructed or received land use approvals and obtained building permits within*
17 *the study area, no further action is necessary.*

18 *(ii) When at least 80 acres of photovoltaic solar power generation facilities have*
19 *been constructed or received land use approvals and obtained building permits,*
20 *either as a single project or as multiple facilities within the study area, the local*
21 *government or its designate must find that the photovoltaic solar power*
22 *generation facility will not materially alter the stability of the overall land use*
23 *pattern of the area. The stability of the land use pattern will be materially altered*
24 *if the overall effect of existing and potential photovoltaic solar power generation*
25 *facilities will make it more difficult for the existing farms and ranches in the area*
26 *to continue operation due to diminished opportunities to expand, purchase or*
27 *lease farmland, acquire water rights, or diminish the number of tracts or acreage*
28 *in farm use in a manner that will destabilize the overall character of the study*
29 *area; and*
30

31 OAR 660-033-0130(38)(i)(D) requires an evaluation of photovoltaic solar power generation
32 facility development within 1-mile of the proposed site boundary. The applicant asserts that no
33 photovoltaic solar power generation facilities have been constructed or received land
34 use approvals and obtained building permits within the 1-mile study area.⁸⁸ ASC Exhibit C Figure
35 C-3 shows operating solar facilities within 10 miles of the site boundary, all of which are farther
36 than 1 mile away. Based on a review of aerial imagery, the Council confirms that there are
37 fewer than 48 acres of other solar PV facilities within 1-mile of the facility. Therefore the
38 Council finds that no further action is necessary, consistent with OAR 660-033-0130(38)(h)(i)(D).
39

40 *(E) The requirements of OAR 660-033-0130 (Minimum Standards Applicable to the*
41 *Schedule of Permitted and Conditional Uses)(38)(h)(A), (B), (C) and (D) are satisfied*

⁸⁷ WESAPDoc3-11 ASC Exhibit K Land Use 2022-10-22, Table K-1 and Section 7.1.2.

⁸⁸ WESAPDoc3-11 ASC Exhibit K Land Use 2022-09-28, p.35.

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As presented in the subsections above, the Council finds that the facility would comply with OAR 660-033-0130(38)(h)(A), (B) and (D). OAR 660-033-0130(38)(h)(C) requires that solar facility component use or occupy no more than 12 acres of high-value farmland described at ORS 195.300(10). Because the facility would be sited on more than 12 acres of high-value farmland described at ORS 195.300(10), the applicant requests an exception to Statewide Planning Goal 3. The Council’s analysis of the exception request is provided in Section IV.E.3. *Goal 3 Exception* of this order.

(j) For nonarable lands, a photovoltaic solar power generation facility shall not use, occupy, or cover more than 320 acres. The governing body or its designate must find that the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on nonarable land:

The facility would use, occupy, or cover approximately 68 acres of nonarable lands, far less than the 320-acre threshold established by OAR 660-033-0130(38)(j). The Council finds that the facility would comply with the 320 acreage threshold for nonarable lands pursuant to OAR 660-033-0130(38)(j).

(A) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);

As defined in OAR 660-033-0020(8)(a), high value farmland means land in a tract composed predominately of soils that are either irrigated and classified prime, unique, Class I or II soils; or, not irrigated and classified prime, unique, Class I or Class II soils.

As shown in ASC Exhibit K Figure K-8, the site boundary is predominately not located on Class I or II soils and is not located within an irrigation district. There are approximately 4 acres of Class II soils within the site boundary that will be required to be avoided (see Land Use Condition 12). Because the subject tracts are not irrigated and are not located within an irrigation district, it is not considered irrigated farmland and is therefore not prime farmland.

The Council finds that the facility will not be located on high-value farmland soils listed in OAR 660-033-0020(8)(a), consistent with OAR 660-033-0130(38)(j)(A).

(B) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:

(i) Siting the project on nonarable soils present on the subject tract would significantly reduce the project’s ability to operate successfully; or

(ii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract as compared to

1 *other possible sites also located on the subject tract, including sites that are*
2 *comprised of nonarable soils;*

3
4 The site boundary would not be located on high-value farmland soils listed in OAR 660-033-
5 0020(8)(b)-(e), which include certain high-value farmland tracts⁸⁹ outside the Willamette Valley
6 growing specified perennials, and certain soils located in other areas that are far from the site
7 boundary (specifically, within the Willamette Valley, west of the Coast Range, and west of U.S.
8 Highway 101). The site boundary would, however, be located on arable soils (Class IV), so the
9 applicant must demonstrate that the facility can meet one of the factors listed in (i) or (ii)

10
11 Siting the facility on non-arable soils (Class VII) to avoid arable soils would significantly reduce
12 the acreage available to develop the project, resulting in less than 88 available acres that are
13 laid-out in a long narrow pattern within the subject tracts.⁹⁰ Because the subject tracts are
14 limited to the site boundary and do not extend or offer more area than is under review, the
15 Council finds that the facility site satisfies OAR 660-033-0130(38)(j)(B)(i).

16
17 *(C) No more than 12 acres of the project will be sited on high-value farmland soils*
18 *described at ORS 195.300(10);*

19
20 The facility will be sited on more than 12 acres of high-value farmland as defined in ORS
21 195.300(10)(f) because the property is located within the located within the Columbia Valley
22 American Viticulture Area designation and criteria. Therefore, the facility requires an exception
23 to Statewide Planning Goal 3, as evaluated in Section IV.E.3 *Goal Exception* of this order.

24
25 *(D) No more than 20 acres of the project will be sited on arable soils;*

26
27 The facility will be sited on more than 20 acres of arable soils as defined in OAR 660-033-
28 0130(38)(b). Therefore, the facility requires an exception to Statewide Planning Goal 3, as
29 evaluated in Section IV.E.3 *Goal Exception* of this order.

30
31 *(E) The requirements of OAR 660-033-0130(38)(h)(D) are satisfied;*

32
33 As presented in the subsections above, the Council finds that the facility would comply with
34 OAR 660-033-0130(38)(h)(D) (noxious weed control).

35
36 *(F) If a photovoltaic solar power generation facility is proposed to be developed on*
37 *lands that contain a Goal 5 resource protected under the county's*
38 *comprehensive plan, and the plan does not address conflicts between energy*
39 *facility development and the resource, the applicant and the county, together*

⁸⁹ As defined in OAR 660-033-0020, "tract" means one or more contiguous lots or parcels under the same ownership. The Department highlights that because OAR 660-033-0130(38)(g)(A) requires an evaluation of soil conditions on the "subject tract," that such an evaluation may require the review of areas outside of the site boundary area.

⁹⁰ WESAPDoc3-11 ASC Exhibit K Land Use 2022-10-22, Table K-1 and Section 7.1.2.

1 *with any state or federal agency responsible for protecting the resource or*
2 *habitat supporting the resource, will cooperatively develop a specific resource*
3 *management plan to mitigate potential development conflicts. If there is no*
4 *program present to protect the listed Goal 5 resource(s) present in the local*
5 *comprehensive plan or implementing ordinances and the applicant and the*
6 *appropriate resource management agency(ies) cannot successfully agree on a*
7 *cooperative resource management plan, the county is responsible for*
8 *determining appropriate mitigation measures; and*
9

10 Neither the applicant nor Umatilla County have identified Goal 5 resources within the site
11 boundary. Therefore, the Council finds that the facility will satisfy the requirements under OAR
12 660-033-0130(38)(j)(F)

13
14 *(G) If a proposed photovoltaic solar power generation facility is located on lands*
15 *where, after site specific consultation with an Oregon Department of Fish and*
16 *Wildlife biologist, it is determined that the potential exists for adverse effects to*
17 *state or federal special status species (threatened, endangered, candidate, or*
18 *sensitive) or habitat or to big game winter range or migration corridors, golden*
19 *eagle or prairie falcon nest sites or pigeon springs, the applicant shall conduct a*
20 *site-specific assessment of the subject property in consultation with all*
21 *appropriate state, federal, and tribal wildlife management agencies. A*
22 *professional biologist shall conduct the site-specific assessment by using*
23 *methodologies accepted by the appropriate wildlife management agency and*
24 *shall determine whether adverse effects to special status species or wildlife*
25 *habitats are anticipated. Based on the results of the biologist's report, the site*
26 *shall be designed to avoid adverse effects to state or federal special status*
27 *species or to wildlife habitats as described above. If the applicant's site-specific*
28 *assessment shows that adverse effects cannot be avoided, the applicant and the*
29 *appropriate wildlife management agency will cooperatively develop an*
30 *agreement for project-specific mitigation to offset the potential adverse effects*
31 *of the facility. Where the applicant and the resource management agency*
32 *cannot agree on what mitigation will be carried out, the county is responsible*
33 *for determining appropriate mitigation, if any, required for the facility.*
34

35 ASC Exhibits P and Q and Sections IV.H., *Fish and Wildlife Habitat* and IV.I, *Threatened and*
36 *Endangered Species*, of this order provide information relevant to this criterion. The applicant
37 consulted with ODFW's district biologist and the Department on the appropriate field survey
38 protocols and performed a site-specific assessment of potential adverse impacts to special
39 status species and fish and wildlife habitat. As presented in Section IV.H., *Fish and Wildlife*
40 *Habitat* and IV.I, *Threatened and Endangered Species* of this order, the Council finds that based
41 on the evidence provided in ASC Exhibits P and Q, and compliance with conditions, the site
42 would be designed to mitigate adverse impacts to special status wildlife species and associated
43 wildlife habitat, consistent with OAR 660-033-0130(38)(j)(G).
44

1 (k) An exception to the acreage and soil thresholds in subsections (g), (h), (i), and (j) of this
2 section may be taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

3
4 As previously discussed, the facility would exceed the 12-acre threshold established at OAR
5 660-033-0130(38)(g) for high-value farmland described at ORS 195.300(10) because it would
6 use, occupy, or cover 252 acres of high-value farmland. In addition, the facility would exceed
7 the 20-acre threshold established by OAR 660-033-0130(38)(i) for arable lands, because the
8 facility would use, occupy, and cover 235.3 acres of arable lands.

9
10 The facility therefore triggers the need for a goal exception through both the OAR 660-033-
11 0130(38)(g) threshold exceedance and the OAR 660-033-0130(38)(i) threshold exceedance.

12
13 The Council’s evaluation of the applicant’s Goal 3 exception request is provided below, in
14 Section IV.E.3. *Goal 3 Exception* of this order, where Council finds that an exception to Goal 3 is
15 justified.

16
17 (l) The county governing body or its designate shall require as a condition of approval for a
18 photovoltaic solar power generation facility, that the project owner sign and record in the
19 deed records for the county a document binding the project owner and the project owner's
20 successors in interest, prohibiting them from pursuing a claim for relief or cause of action
21 alleging injury from farming or forest practices as defined in ORS 30.930(2) and (4).

22
23 Subject to compliance with the condition, the Council finds that the facility would comply with
24 OAR 660-033-0130(38)(l).

25
26 **Land Use Condition 5:** Prior to operations, the certificate holder, and underlying
27 landowners on whose property the solar facility components are located, shall record in
28 the real property records of Umatilla County a Covenant Not to Sue with regard to
29 generally accepted farming practices on adjacent farmland. Copies of the recorded
30 covenants shall be provided to the Department.

31 [PRO-LU-01]

32
33 (m) Nothing in this section shall prevent a county from requiring a bond or other security
34 from a developer or otherwise imposing on a developer the responsibility for retiring the
35 photovoltaic solar power generation facility.

36
37 OAR 660-033-0130(38)(m) allows for the governing body to require a bond or letter of credit for
38 the amount necessary to retire the facility during decommissioning. Retirement and Financial
39 Assurance Condition 4 would require that, prior to construction, the applicant obtain and
40 provide to the Department a bond or letter of credit in the specified amount required by
41 considered by Council as satisfactory for facility decommissioning. Based upon compliance with
42 this condition, the Council concludes that the requirements under OAR 660-033-0130(38)(m)
43 would be satisfied.

1 IV.E.3 Goal 3 Exception
2

3 The facility would use, occupy or cover approximately 261 acres of high-value farmland/arable
4 soils,⁹¹ approximately 235 acres of arable (NRCS Class IV) soil; and 88 acres of nonarable (NRCS
5 Class VII) soils as illustrated below in Figure 6: *High-Value Farmland within 0.5-Mile Land Use*
6 *Analysis Area/Subject Tracts within Site Boundary*.⁹² Therefore, the solar facility components
7 would not comply with OAR 660-033-0130(38)(g) and (i), which prohibit a photovoltaic solar
8 power generation facility from using, occupying or covering more than 12 acres of high-value
9 farmland or 20 acres of arable land, respectively. Pursuant to ORS 469.504(2), if a facility does
10 not comply with an applicable substantive criterion, the facility must otherwise comply with the
11 applicable statewide planning goal (here, Goal 3 Agricultural Lands) or seek an exception to the
12 statewide planning goal. Pursuant to ORS 469.504(1)(b)(B), non-compliance with a statewide
13 planning goal requires a determination by the Council that an exception to the goal is
14 warranted under ORS 469.504(2). The intent of Goal 3, *Agricultural Lands*, is “To preserve and
15 maintain agricultural lands. Agricultural lands shall be preserved and maintained for farm use,
16 consistent with existing and future needs for agricultural products..” Taking a goal exception for
17 an energy facility does not re-zone the land, yet allows for a specific use for an energy facility
18 for the duration of the life of the facility, after which the facility would be retired and land
19 would be restored to a useful nonhazardous condition.
20

21 The Council’s Land Use standard at OAR 345-022-0030(4), repeats the language of ORS
22 469.504(2), stating:
23

24 *(4) The Council may find goal compliance for a facility that does not otherwise comply with*
25 *one or more statewide planning goals by taking an exception to the applicable goal.*
26 *Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining*
27 *to the exception process or any rules of the Land Conservation and Development*
28 *Commission pertaining to the exception process goal, the Council may take an exception to a*
29 *goal if the Council finds:*

- 30 *(a) The land subject to the exception is physically developed to the extent that the*
31 *land is no longer available for uses allowed by the applicable goal;*
32 *(b) The land subject to the exception is irrevocably committed as described by the*
33 *rules of the Land Conservation and Development Commission to uses not allowed*
34 *by the applicable goal because existing adjacent uses and other relevant factors*
35 *make uses allowed by the applicable goal impracticable; or*
36 *(c) The following standards are met:*
37 *(A) Reasons justify why the state policy embodied in the applicable goal should*
38 *not apply;*
39 *(B) The significant environmental, economic, social and energy consequences*
40 *anticipated as a result of the facility have been identified and adverse*

⁹¹ High-value farmland per ORS 195.300(10)(f).

⁹² WESAPDoc3-11 ASC Exhibit K Land Use 2022-10-22, Table K-1.

1 *impacts will be mitigated in accordance with rules of the Council applicable to*
2 *the siting of the facility; and*
3 *(C) The facility is compatible with other adjacent uses or will be made compatible*
4 *through measures designed to reduce adverse impacts.*

5
6 The applicant seeks an exception under OAR 345-022-0030(4)(c) based on the following five
7 reasons:

- 8
- 9 1. Consistency with Local and State Energy Policies
- 10 2. Locational Dependency (interconnection opportunities, minimal impacts to agriculture,
- 11 minimal impacts to other sensitive resources, existing site access)
- 12 3. Lack of Agricultural Use and Value
- 13 4. Minimal Impact to Agriculture
- 14 5. Local Economic Benefit

15
16 Council considers the merits of each reason as separate and distinct reasons and uses the same
17 “reason” description used for prior Council decisions, for “reasons” that have been reviewed in
18 prior Council Orders.⁹³ The reasons accepted by Council for this facility goal exception are
19 described and organized based on the following:

- 20
- 21 1. Consistency with Local and State Energy Policies
- 22 2. Locational Dependency (interconnection opportunities, ~~minimal impacts to agriculture,~~
23 ~~minimal impacts to other sensitive resources,~~ existing site access)
- 24 3. ~~Lack of Agricultural Use and Value~~ Minimal Direct Impacts to Agriculture within Subject
25 Tracts
- 26 4. ~~Minimal Impact to Agriculture~~ Minimal Indirect Impacts to Agricultural within
27 Surrounding Area
- 28 5. Minimal Impacts to Resources Protected by Council standards
- 29 6. Local Economic Benefit

30
31 Based on the evaluation presented in this order and the preponderance of evidence submitted
32 on the record of the application for site certificate, the Council finds that a goal exception under
33 OAR 345-022-0030(4)(c) is appropriate.

34 35 **Consistent with Implementing Local and State Energy Policies**

36
37 The applicant requests that Council consider the facility’s consistency with local and state
38 energy policies as a reason that justifies taking an exception to the statewide policy embodied
39 in Goal 3, *Agricultural Lands*.

⁹³ 2018 Final Order on ASC for Boardman Solar Energy Facility (p.92-94); 2020 Final Order on ASC for Bakeoven Solar Project (pp.109-111); 2018 Final Order on RFA1 for Carty Generating Station (pp.65-73); 2021 Final Order on ACS for Madras Solar Energy Facility (pp.102-103); 2019 Final Order on Amendment 4 of Montague Solar Facility (p.97); 2022 Final Order on ASC for Obsidian Solar Center (p,85-86); 2019 Final Order on Amendment 4 of Wheatridge Wind Energy Facility (pp.63-64).

1
2 The referenced local and state energy policies include: LCDC’s Statewide Planning Goal
3 embodied in Goal 13, Energy Conservation (utilize renewable energy sources), which is
4 reflected in UCCP Chapter 16; and Oregon House Bill 2021 (large investor-owned utilities and
5 electricity service suppliers must reduce greenhouse gas emissions by 100 percent by 2040).
6 Council has repeatedly rejected this proposed reason.⁹⁴

7
8 Neither Goal 13 nor House Bill 2021 require renewable energy to be procured from Oregon-
9 based resources, nor do they address where renewable energy facilities should be located, let
10 alone suggest such facilities may be placed on agricultural lands as an exception to Goal 3. To
11 the contrary, the Oregon Court of Appeals has expressly held that Goal 13 does not provide a
12 basis for a reasons exception to Goal 3.⁹⁵ Further, the applicant has not provided a power
13 purchase agreement or similar assurance to document that the facility would provide power
14 related to an investor-owned utility (IOU) in Oregon order to achieve goals under Oregon House
15 Bill 2021.

16
17 Based on the analysis presented above, the Council rejects the applicant’s reason that the
18 proposed facility would be “consistent with local and state energy policies” as justifying taking
19 an exception to Goal 3.

20
21 **Locationally Dependent**

22
23 The applicant requests that Council consider that the facility site is “locationally dependent”
24 and that the site’s locational dependency is a reason that justifies taking an exception to the
25 statewide policy embodied in Goal 3, *Agricultural Lands*. “Locationally dependent” factors
26 include that the site would not require new transmission lines; it would not impact active
27 agricultural operations⁹⁶ or sensitive species, habitat or wetlands; and is located directly off of a
28 primary road, S. Edwards Road which feeds directly from US-395. As noted above, the

⁹⁴ BSPAPP Final Order Application for Site Certificate on Bakeoven Solar Project. 2020-04-24. p.113.

⁹⁵ “We agree with LUBA’s conclusion that Goal 13 does not require counties to develop or facilitate the development of energy facilities. . . . Neither the text of the goal nor its guidelines ‘require’ the county to develop or facilitate the development of any particular land use, much less large solar power generation facilities. [footnote omitted]. Instead, Goal 13 requires that *all* development on land be ‘managed and controlled’ to conserve energy. The text of the goal and its guidelines do not directly or indirectly require the development of energy facilities. . . . Or Solar’s exception request was to the requirement in Goal 3 that authorizes counties to approve ‘farm uses and those nonfarm farm uses defined by [LCDC] rule’ and to the requirement in OAR 660-033-0130(38) that the facility be not more than 12 acres in size when located on high-value farmland. Thus, the exception was to justify an energy facility of a particular size, and Goal 13 has no bearing on that justification. *1000 Friends of Oregon v. Jackson Cnty.*, 292 Or. App. 173, 192-193, 423 P.3d 793, 804-805 (2018) (emphasis in original).

⁹⁶ In ASC Exhibit K, the applicant identifies 4 acres of irrigated agricultural (pivot circles along southern edge of site boundary) within the site boundary. Soils on irrigated lands are considered high-value farmland under ORS 195.300(10)(a), which has not been evaluated or represented directly in ASC Exhibit K. Applicant affirms that the facility will be designed to avoid these 4 acres. The representation is imposed in Land Use Condition 12 with a 10-foot setback on the southern fence line. The land use evaluation is based on avoidance of ORS 195.300(10)(a) high-value farmland.

1 information related to minimal impacts to agriculture and sensitive species, habitat and
2 wetlands is evaluated under the reason, “minimal impacts to agriculture – tract-level analysis”
3 and “minimal impacts to resources protected by Council standards” and is not duplicated here.
4

5 *Site Provides Existing Opportunities for Grid Interconnection – Omits New Transmission*
6 *Lines*
7

8 There are three existing transmission lines with interconnection capability for the facility within
9 or adjacent to the site, as presented in Figure 5 below: two existing transmission line rights-of-
10 way, including BPA’s McNary to Roundup 230-kV Transmission and PacifiCorp’s Pendleton to
11 Hermiston 69-kV line; and, UEC 115-kV transmission line (parallel to eastern edge of site
12 boundary). The facility does not include a grid interconnection transmission line because of the
13 existing transmission lines within and adjacent to the site boundary; the applicant anticipates
14 interconnecting and utilizing the existing UEC 115-kV transmission line for grid
15 interconnection.⁹⁷
16

17 The Council agrees that three existing transmission lines, with interconnection potential by the
18 facility, which cross or parallel the site boundary offers a substantial benefit for the use of this
19 specific site for use by an industrial facility. To ensure that this representation is realized, the
20 Council imposes a condition (sub(a)) below) requiring that, prior to construction of the facility,
21 the applicant provide an executed interconnection agreement between applicant and one of
22 the three existing utilities operating the identified lines.
23

24 **Land Use Condition 6:** Prior to operation, the certificate holder shall provide to the
25 Department:

- 26 a. An executed interconnection agreement with Umatilla Electric Cooperative,
27 Bonneville Power Administration or PacifiCorp demonstrating that the facility has an
28 interconnection agreement for the life of the facility, to one of the existing
29 transmission lines, as presented in the Site Certificate, Figure 1.
30 b. An executed shared use agreement with Umatilla Electric Cooperative, Bonneville
31 Power Administration or PacifiCorp (third-party) for shared use of the switchyard
32 substation.
33 i. If the third-party proposes to substantially modify the shared switchyard
34 substation, certificate holder shall submit an amendment determination request
35 to obtain a determination from the Department on whether a site certificate
36 amendment is required or request for site certificate amendment to account for
37 any significant change in the decommissioning amount required under
38 Retirement and Financial Assurance Condition 4.

39 [PRO-LU-02]
40

⁹⁷ WESAPDoc3-1 ASC Exhibit B Project Description 2022-09-28, p.2.

1 **Figure 5: Existing Transmission Lines within Site Boundary**



2

3

1 *Site Provides Existing Access – Omits New External Access Roads*

2
3 The facility site omits the need for new external access roads or major local road
4 improvements. A local road, South Edwards Road, parallels the east side of the site boundary,
5 as presented in Figure 5, *Existing Transmission Lines within Site Boundary* above and offers
6 direct access to the site, only requiring that a driveway be constructed for site access. South
7 Edwards Road has an existing level of service (LOS) A-rating, with volume to capacity ratio of
8 0.10 to 0.25.⁹⁸ Based on the level of anticipated construction traffic at 445 to 890 one-way trips
9 per day (average and maximum, respectively), South Edwards Road has sufficient carrying
10 capacity to support construction traffic while maintaining an A-rating LOS.

11
12 Based on the above-described facts, the Council finds that the significant advantages of the site
13 support the reason that the site is “locationally dependent” and is one of four reasons that
14 cumulatively justify taking an exception to Goal 3.

15
16 **Minimal Direct Impacts to Agriculture within Subject Tracts**

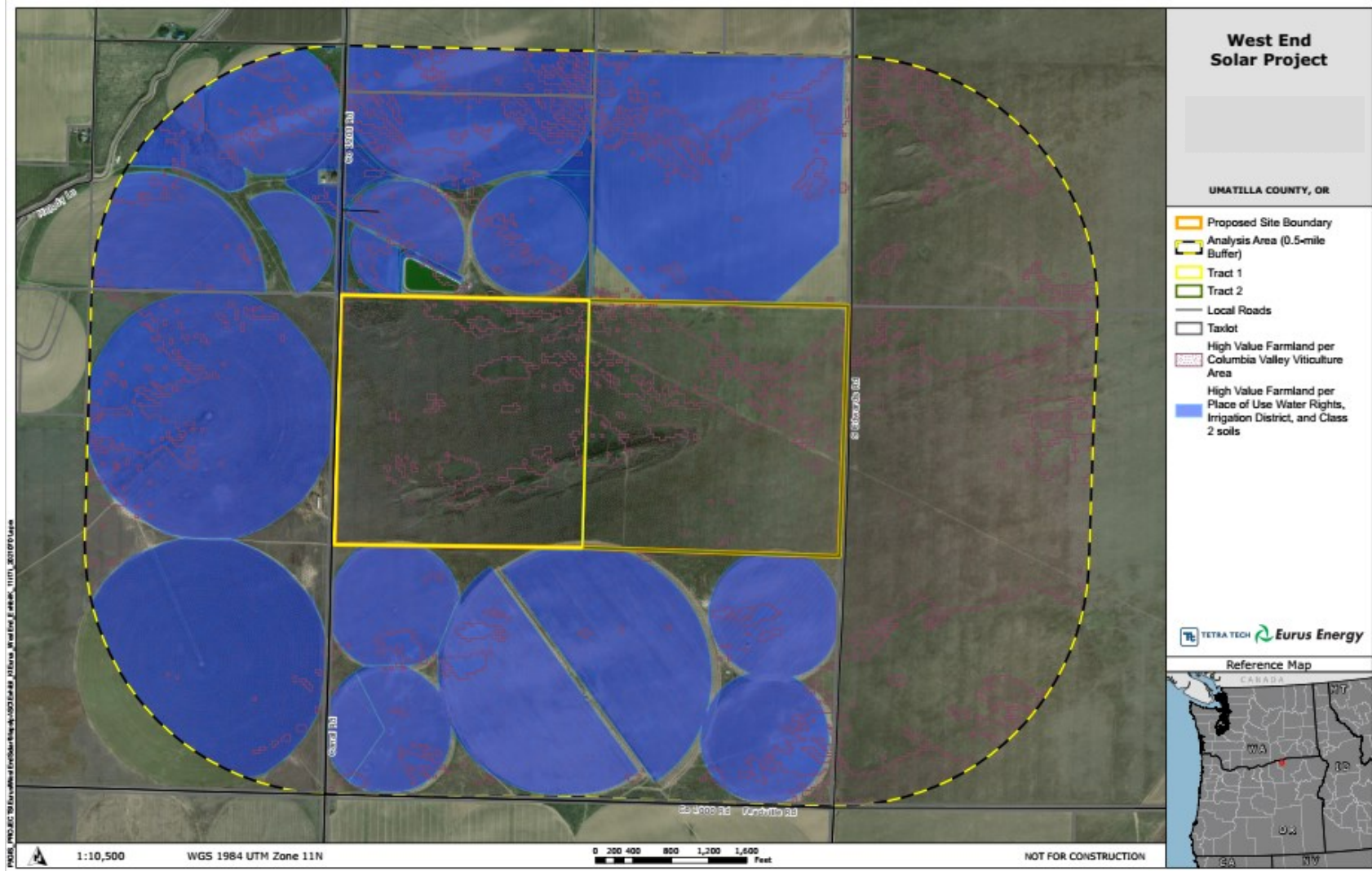
17
18 The applicant requests that Council find that a reason justifying taking an exception to the
19 statewide policy embodied in Goal 3, *Agricultural Lands*, is that the site lacks agricultural use
20 and value.

21
22 The site boundary includes approximately 261 acres of high-value farmland as defined under
23 ORS 195.300(10)(f) within two adjacent tracts, as presented in Figure 6 below.⁹⁹ Figure 7
24 illustrates the irrigation status (inclusion in a water district and/or ground water rights) of the
25 adjacent tracts as well as the agricultural uses on adjacent lands and subject tracts.

⁹⁸ WESAPPD03-21 ASC Exhibit U Public Services 2022-09-28. Table U-8, p.23.

⁹⁹ OAR 660-033-0020(14) defines “tract” as “one or more contiguous lots or parcels under the same ownership.”

1 **Figure 6: High-Value Farmland within 0.5-Mile Land Use Analysis Area/Subject Tracts within Site Boundary**



2

1 **Figure 7: Subject Tract Proximity to Adjacent Agricultural Uses and Irrigation Status**



2

3

1 The tracts are owned by two landowners, Arthur Prior of Windblown Solar (Tract 1) and Steve
2 and Wanda Scott (Tract 2). While the soils are considered high-value farmland under ORS
3 195.300(10)(f) due to the site’s location within the Columbia Valley viticulture area and location
4 above mean sea level, slope and aspect, the site is not currently used for viticulture or other
5 form of agriculture. The subject tracts are primarily composed of 1B Adkins fine sandy loam
6 soils (Tract 1: 102 acres, 63 percent of parcel; Tract 2: 133 acres, 82 percent of parcel) and are
7 soils classified by the Natural Resources Conservation Service (NRCS) as Class 4 - the lowest of
8 the arable soil classifications.¹⁰⁰ The soil classification for the remaining 88 acres of both tracts is
9 Class 7 (Quincy fine sand) which has very high permeability and is not prime farmland.

10
11 Both tracts are currently fallow. Neither tract has a water right. A water right transfer to Tracts
12 1 and 2 does not appear likely due to limited water availability in Umatilla County, exclusion
13 from boundaries of irrigation districts and technological and financial implications of operating
14 pivot irrigation equipment with the existing BPA and PacifiCorp transmission line rights-of-way
15 traversing across each tract.¹⁰¹

16
17 In a signed letter dated June 14, 2021, underlying landowner Arthur Prior of Windblown Solar
18 LLC states,

19
20 “We have not used the proposed facility site for any type of agricultural enterprise or
21 farming operation. The facility has never had water rights or been irrigated.” “Because
22 of the lack of irrigation the land is not useful to use for agricultural purposes.”¹⁰²

23
24 Testimonial declaration of property owner Arthur Prior confirms that he owns Tract 1 of the
25 subject properties. He also confirms that he is the owner of Windblown Ranch Inc. and owns
26 and farms several irrigated parcels located west and east of Tract 1.¹⁰³ See Figure 7: *Subject*
27 *Tract Proximity to Adjacent Agricultural Uses and Irrigation Status*. Testimonial declaration of
28 property owner Arthur Prior confirms that his property (Tract 1) is not viable for farm use
29 without a water right, as represented below:

- 30
31 • Mr. Prior acquired Tract 1 in 1990 and has not used the land for cultivation because of
32 the lack of available water, marginal production capacity, and because he focuses his
33 farm use on productive lands.¹⁰⁴

¹⁰⁰ WESAPPDoc3-6 Applicant Response DPO-EFSC Comments 2022-11-17 and 2022-12-02, Page 9 of 192.

¹⁰¹ WESAPPDoc3-11 ASC Exhibit K Land Use 2022-09-28. p. 45. In ASC Exhibit K, the applicant states that
“Windblown Ranch made the decision to not allocate some of its limited water rights to Tract 1 because the parcel
is obstructed by the existing Bonneville Power Administration transmission line and the PacifiCorp transmission
line. These obstructions would limit a center pivot to a partial circle thus increasing the per-acre cost to irrigate the
parcel. This is because the infrastructure costs are the same for a center pivot irrigation system regardless if the
pivot covers a full 360-degree circle or a partial circle.”

¹⁰² WESAPPDoc3-11 ASC Exhibit K Land Use 2022-09-2. Attachment K-1

¹⁰³ WESAPPDoc3-6 Applicant Response DPO-EFSC Comments 2022-11-17 and 2022-12-02, Attachment 2.

¹⁰⁴ WESAPPDoc4-1 DPO Hearing Recording 2022-11-17, at approx.. 1:33:15, 1:37:00, and 1:42:00

- 1 • Dryland wheat farming is not economically feasible on Tract 1 given the limited acreage
2 of arable soils (102 acres), lack of existing or ability to obtain a water right, the low
3 potential for dryland crop yield, and the high costs of wheat cultivation (i.e., fertilizer,
4 fuel, herbicides).
- 5 • Adkins fine sandy loam soils (102 acres 63% of parcel) is extremely limiting for dryland
6 cultivation and can actually be detrimental due to risk of wind erosion.
- 7 • Tract 1 has no irrigation water or water rights:
 - 8 ○ Tract 1 is located within the Stage Gulch Critical Groundwater Area; therefore,
9 acquisition of new groundwater irrigation water rights is not allowed.
 - 10 ○ Tract 1 is not located within the Stanfield Irrigation District or the Hermiston
11 Irrigation District and inclusion into either one of these districts is highly unlikely
12 due to the unavailability of water and the need to go through a federal boundary
13 adjustment processes.

14
15 In a signed letter dated July 5, 2021, underlying landowners Steve and Wanda Scott of S&W
16 Scott Properties LLC state,

17
18 “..land..has not been suitable for farming.” “We do not have water rights for irrigation
19 and we do not get enough rain to raise any type of a viable crop. The soil is very sandy
20 and without irrigation is not good for farming.”¹⁰⁵

21
22 Testimonial declaration of property owner Steve Scott which concludes that his property (Tract
23 2) is not viable for farm use without a water right, is included below¹⁰⁶:

- 24 • Mr. Scott attempted to cultivate dryland wheat twice on Tract 2 – once in 2013 and
25 once in 2015;¹⁰⁷
- 26 • Dryland wheat production in 2013 produced about 14 bushels per acre. In 2015, they
27 averaged 11 bushels per acre;¹⁰⁸
- 28 • Costs of farming land exceeded the value in crops and is not economically feasible for
29 the landowner;
 - 30 ○ For instance, Mr. Scott attempted dryland wheat farming in 2013 and in 2015. In
31 2015, Mr. Scott received \$5.55/bushel for total of \$8,097 revenue. However,
32 costs of producing the 2015 crop was approximately \$16,370, which is a loss of
33 approximately \$8,273 (not including losses from fixed costs.)¹⁰⁹
- 34 • Landowner has left land fallow because lack of profitability.
- 35 • Landowner has not been able to secure water rights:

¹⁰⁵ WESAPPD0c3-11 ASC Exhibit K Land Use 2022-09-2. Attachment K-2.

¹⁰⁶ WESAPPD0c3-6 Applicant Response DPO-EFSC Comments 2022-11-17 and 2022-12-02, Attachment 1.

¹⁰⁷ ORS 215.203(2)(b)(B).

¹⁰⁸ WESAPPD0c3-6 Applicant Response DPO-EFSC Comments 2022-11-17 and 2022-12-02, Page 181 of 192.
Attachment 5: USDA Economic Research Service. Wheat Production Costs and Returns Per Planted
Acre, Excluding Government Payments. Updated: October 03, 2022.

¹⁰⁹ WESAPPD0c3-6 Applicant Response DPO-EFSC Comments 2022-11-17 and 2022-12-02, Page 18 of 192.
Attachment 1. Testimonial declaration of property owner Steve Scott.

- 1 ○ The land is located within the Stage Gulch Critical Groundwater Area, acquisition
2 of new groundwater irrigation water rights is not allowed, and landowner has
3 not been able to get water rights to irrigate the parcel. This is evidenced by an
4 Oregon Water Resources Department (DWR) map of the Stage Gulch Critical
5 Groundwater Area and in a copy of the *Final Order Before the Water Resources*
6 *Department of Oregon In the Matter of the Determination of a Critical*
7 *Groundwater Area in the Stage Gulch Area*. On page 5 of this final order is a map
8 of the Stage Gulch Critical Groundwater Area (CGWA) with the approximate
9 location of the Project site boundary outlined in red and located in subarea A. On
10 page 16 of the Final Order it states “It is FURTHER ORDERED that no new
11 application for a permit to appropriate water from either the upper or the deep
12 basalt groundwater reservoirs within the Stage Gulch Critical Groundwater Area
13 be accepted for filing.”¹¹⁰
- 14 ○ The legal recording of the Landowner’s Notice of East Improvement District,
15 adopted December 4, 2018, lists all of the parcels included in the East
16 Improvement Irrigation District. The two tax parcels that make up the facility site
17 boundary (4N29C0000500 and 4N29C0000200) are not included in the East
18 Improvement District.

19
20 Oregon Water Resources Department (DWR) confirms the location of the facility site within the
21 Stage Gulch Critical Groundwater Area and that no new water rights can be issued within the
22 designated area, and this is unlikely to change in the future due to ongoing substantial declines
23 in groundwater availability. Further, DWR indicated water rights in the East Improvement
24 Irrigation District can be re-located but the lands within that boundary do not necessarily
25 receive and/or have access to this water as it is limited by membership and physical limitations
26 such as necessary infrastructure to deliver water to all lands covered, such as the facility site,
27 which lacks infrastructure.¹¹¹

28 29 *Regional Wheat Price and Cost Assessment*

30
31 The EFU-zoned land proposed for use by the facility includes high-value farmland; and arable
32 and non-arable soils. The intent of Goal 3 is to preserve and maintain agricultural lands for farm
33 use. ORS 215.203(2)(a) defines “farm use” as the current employment of land for the primary
34 purpose of obtaining a profit in money by raising, harvesting and selling crops.¹¹² The only
35 arable soils located within the site boundary are the 1B Adkins fine sandy loam soils, which
36 have the lowest capability class (Class 4) of the arable soils definition. Adkins fine sandy loam
37 soils, similar soils as adjacent lands, do well for certain irrigated crops as the sandy loam drains
38 well, reducing risk of disease or rot and making it easy to dig/harvest root crops. But for dryland

¹¹⁰ WESAPDoc3-6 Applicant Response DPO-EFSC Comments 2022-11-17 and 2022-12-02, Page 179 of 192.
Attachment 4, Final Order Before the Water Resources Department of Oregon In the Matter of the Determination
of a Critical Groundwater Area in the Stage Gulch Area, Umatilla County.

¹¹¹ WESAPDoc1 Proposed Order Agency Consultation ODWR Kowitz 2022-12-10.

¹¹² See also OAR 660-033-0020(7)(a) .ORS 215.203(2)(b)(B) “current employment” of land for farm use includes:
Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry...

1 cultivation, this soil type is extremely limiting and cultivation of these soils can actually be
2 detrimental due to risk of wind erosion. According to NRCS, the Adkins series are suitable for
3 “dryland wheat, irrigation cropland, and range.” Tract 1 and Tract 2 have no irrigation water
4 rights, the only suitable agricultural use for the limited Class 4 arable soils located in the site
5 boundary would likely be dryland wheat or range/grazing.¹¹³

6
7 Landowner testimony on the limited profitability of their cultivation efforts is supported by
8 United States Department of Agriculture (USDA) data provided by the applicant, as summarized
9 below¹¹⁴:

10
11 Oregon’s historic average yield for dryland winter wheat includes:¹¹⁵

- 12 • 2013: 62 bushels per acre
- 13 • 2015: 47 bushels per acre
- 14 • 2021: 45 bushels per acre

15
16 The ten-year average production costs include:¹¹⁶

- 17 • Wheat seed = \$19.39 per acre
- 18 • Fertilizer = \$54.55 per acre
- 19 • Chemicals/herbicide = \$24.29 per acre
- 20 • Fuel/lube/electricity = \$14.92 per acre.

21
22 Using these average costs per acre and applying them to the site boundary acreage of 323
23 acres, would equal an average cost of \$113.15 per acre, or a total of \$36,545.84 per crop.
24 Assuming the site boundary were to yield 13 bushels per acre (the NRCS average assigned to
25 the Adkins Soil Series) for a total harvest of 4,199 bushels, and assuming the ten-year average
26 price wheat at \$5.61 per bushel, we can estimate a gross return of \$23,556.39. Using these ten-
27 year averages of both costs and returns would equal a net loss of \$12,989.45 per crop. Using
28 the ten-year average price of wheat per bushel and the ten-year average of the costs illustrated
29 above, the land within the site boundary would need to produce a minimum of 21 bushels per
30 acres to come close to breaking even. The low production yield associated with the Atkins Soil
31 Series severely limits the economic viability of cultivating dryland wheat within the site
32 boundary, analysis area, and within lands in the region that may have similar soils.

¹¹³ WESAPPD3-6 Applicant Response DPO-EFSC Comments 2022-11-17 and 2022-12-02. Page 9 of 192.

¹¹⁴ WESAPPD3-6 Applicant Response DPO-EFSC Comments 2022-11-17 and 2022-12-02, Attachment 5.
Additional information supporting demonstration why the site boundary is not viable for dry land agricultural
production.

¹¹⁵ USDA National Agricultural Statistics Service. Small Grains Summary for 2013, 2015, and 2021. Available at
<https://downloads.usda.library.cornell.edu/usda-esmis/files/5t34sj573/zs25xc125/1r66j372m/SmalGraiSu-09-30-2013.pdf> and
<https://downloads.usda.library.cornell.edu/usdaesmis/files/5t34sj573/s7526f71r/x346d670c/SmalGraiSu-09-30-2016.pdf> and https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=OREGON

¹¹⁶ October 2022 USDA Economic Research Service cost and return estimates for major production regions of the
US, including the “Basin and Range” production region (which includes the Columbia Basin and Umatilla County)
and WESAPPD3-6 Applicant Response DPO-EFSC Comments 2022-11-17 and 2022-12-02, Attachment 5.

1
2 Based on the above facts, reasoning and analysis, the Council finds that “minimal direct impacts
3 to agriculture within the subject tracts” is one of four reasons that cumulatively justify taking an
4 exception to Goal 3.

5
6 **Minimal Indirect Impacts to Agriculture within Surrounding Area**

7
8 The applicant requests that Council find that a reason justifying taking an exception to the
9 statewide policy embodied in Goal 3, *Agricultural Lands* is that there would be minimal impacts
10 to agriculture within the surrounding area.

11
12 The facility will not require relocating access roads or farm infrastructure on neighboring
13 properties. The facility will not displace any jobs or impact any ancillary businesses related to
14 agriculture goods and services because the site is not currently nor in the last 50 years has it
15 been used for or in support of agricultural activity.

16
17 Based on the statements provided by the underlying landowners affirming current and historic
18 use and benefit of the land, the Council finds that the indirect impact to agricultural goods and
19 services within the county would be minimal or none. Therefore, the Council finds that
20 “minimal direct impacts to agriculture within the surrounding area” is one of four reasons that
21 cumulatively justify taking an exception to Goal 3.

22
23 **Minimal Impacts to Resources Protected by Council Standards**

24
25 The applicant requests that Council find that a reason justifying taking an exception to the
26 statewide policy embodied in Goal 3, *Agricultural Lands* is that there would be minimal impacts
27 to other resources protected by Council standards.¹¹⁷

28
29 As evaluated in Section IV.F. *Protected Areas* of this order, construction and operation of the
30 facility will not impact any protected areas. As evaluated in Section IV.J. *Scenic Resources* of this
31 order, construction and operation of the facility will not impact any important or significant
32 scenic resources. As evaluated in Section IV.K. *Historic, Cultural and Archeological Resources* of
33 this order, construction and operation of the facility will not impact any NRHP-eligible historic,
34 cultural or archeological resources. As evaluated in Section IV.L. *Recreation* of this order,
35 construction and operation of the facility will not impact any important recreational
36 opportunities. As evaluated in Section IV.R.2 *Removal-Fill Law* of this order, construction and
37 operation of the facility will not impact any wetlands or waters of the state, because there is
38 not WOS or wetlands present onsite.

39
40 Because the site is not used for agricultural purposes and is largely comprised of eastside
41 grasslands and shrub-steppe, the lands are considered fish and wildlife habitat under the

¹¹⁷ In ASC Exhibit K, this reason is embedded within the evaluation of “locational dependency”; the Council evaluates minimal impacts to resources protected by Council standards as a separate and distinct reason.

1 Council’s Fish and Wildlife Habitat standard (OAR 345-022-0060). The habitat is suitable for
2 Washington Ground Squirrel (WGS) and Laurence’s milkvetch, state-listed threatened and
3 endangered species and plants, however, surveys conducted in 2020 and 2021 at the site
4 identified no presence of these species. Based on consultation with ODA on October 21, 2022,
5 the 2021-22 surveys for Laurence’s milkvetch may be relied upon to determine a low likelihood
6 of any changes to the potential of the species to occur onsite.

7
8 Preconstruction surveys, required under Threatened and Endangered Species Condition 1,
9 would require that the certificate holder re-evaluate suitable habitat within and extending
10 1,000-feet from the site boundary to determine whether any changes have occurred in
11 presence of WGS colonies or burrows. If any WGS colonies or borrows are identified during the
12 preconstruction surveys, Threatened and Endangered Species Condition 2 would then require
13 avoidance of the identified WGS habitat.

14
15 A site that is large enough to construct and operate a utility scale energy facility, while having
16 minimal impacts to resources protected by Council standards offers a substantive advantage.
17 Therefore, the Council finds that “minimal impacts to resources protected by Council
18 standards” is one of four reasons that cumulatively justify taking an exception to Goal 3.

19
20 **Local Economic Benefit**

21
22 The applicant requests that Council consider that the “local economic benefit” realized from
23 construction and operation of the facility be a reason that justifies taking an exception to the
24 statewide policy embodied in Goal 3, *Agricultural Lands*.

25
26 The 324 acres proposed for use by the facility currently provide no economic benefit to the
27 underlying property owners because no agricultural activity occurs or has occurred there due to
28 the poor-quality soils. ASC Exhibit K Attachments K-1 and K-2 include letters from the two
29 underlying landowners. In a signed letter dated June 14, 2021, underlying landowner Arthur
30 Prior of Windblown Solar LLC states,

31
32 “We have not used the proposed facility site for any type of agricultural enterprise or
33 farming operation. The facility has never had water rights or been irrigated.” “Because
34 of the lack of irrigation the land is not useful to use for agricultural purposes.”¹¹⁸

35
36 In a signed letter dated July 5, 2021, underlying landowners Steve and Wanda Scott of S&W
37 Scott Properties LLC state,

38
39 “..land..has not been suitable for farming.” “We do not have water rights for irrigation
40 and we do not get enough rain to raise any type of a viable crop. The soil is very sandy
41 and without irrigation is not good for farming.”¹¹⁹

¹¹⁸ WESAPPD03-11 ASC Exhibit K Land Use 2022-09-28. Attachment K-1

¹¹⁹ WESAPPD03-11 ASC Exhibit K Land Use 2022-09-28. Attachment K-2.

1
2 Applicant states that the facility will provide local economic benefits through full-time jobs,
3 construction jobs, compensation to landowners via lease agreements, improvements to local
4 road networks, and community service fees.

5
6 The Council rejects the applicant’s “local economic benefit” as a reason justifying taking an
7 exception to Goal 3 based on the following analysis.

- 8 • The applicant has not selected a contractor and therefore has not provided any
9 evidence that full-time¹²⁰ or construction jobs will be filled with local workers or that
10 hired workers will use goods and services within Umatilla County.
- 11 • Any improvements to local roads would be required under the road use agreement with
12 the county, to ensure that public service providers are not impacted (see Public Services
13 Conditions 1 and 2), and therefore it is not a unique result of the facility.
- 14 • The Council has previously expressed disagreement that lease agreements with
15 landowners is a supportive reason for justifying local economic benefit as a reason.¹²¹
- 16 • The applicant simply refers to “community service fees” but does not explain or offer
17 any evidence of coordination with Umatilla County – therefore the Council does not
18 have the ability to evaluate whether this would provide a local economic benefit or
19 whether it is even an available option.

20
21 **Summary of Reasons Council Justifies the Exception Request**

22
23 Summary of Justifiable Reasons

24
25 The Council finds that 1) locational dependency, 2) minimal direct impacts to agriculture within
26 subject tracts, 3) minimal indirect impacts to agricultural within surrounding area; and 4)
27 minimal impacts to other resources protected by Council standards as four reasons that justify
28 taking an exception to the statewide policy embodied in Goal 3.

29
30 **Environmental, Socioeconomic and Energy Consequences (ESEE Analysis)**

31
32 Under OAR 345-022-0030(4)(c)(B) and ORS 469.504(2)(c)(B), in order for the Council to
33 determine whether to grant an exception to a statewide planning goal, the applicant must
34 show that “the significant environmental, economic, social and energy consequences” of the
35 solar facility have been identified and mitigated in accordance with Council standards.

36
37 *Environmental Consequences*

¹²⁰ WESAPDoc3-21 ASC Exhibit U Public Services. 2022-09-28, Section 3.2.1.2 states, “Since the Project can be operated remotely, is it anticipated that only two to five workers would be deployed to the site when necessary for maintenance. It’s anticipated that the operation and maintenance (O&M) staff will be hired locally (within 3-hour radius of the Project site); however, positions that require previous experience working at solar facilities may be hired from non-local areas (outside a 3-hour radius of the Project site).”

¹²¹ WRWAMD4. Final Order on Request for Amendment 4 of the Wheatridge Wind Energy Facility Site Certificate. 2019-11-22. p. 64.

1
2 The facility must satisfy the requirements of all applicable EFSC standards, rules and statutes.
3 Applicable environmental EFSC standards include: General Standard of Review; Soil Protection
4 standard; Protected Areas standard; Recreation Standard; Scenic Resources standard; Fish and
5 Wildlife Habitat standard; and the Threatened and Endangered Species standard, as evaluated
6 in this order. Based on the findings of fact, conclusions of law, and conditions of approval
7 presented in this order related to environmental EFSC standards, the Council finds that the
8 facility, including mitigation, would not cause significant adverse environmental consequences
9 or impacts.

10
11 *Economic Consequences*

12
13 The facility would create a level of tax revenue in Oregon from construction- jobs; it would
14 result in lease payments for the two underlying landowners; and, would result in property taxes
15 to Umatilla County. The facility is not anticipated to create negative economic impacts to public
16 services, based on letters from Umatilla County Sheriff’s Office and Umatilla County Fire District
17 #1 provided in in ASC Exhibit U Attachments U-5 and U-6.

18
19 Based on these facts, the Council finds that the facility, including mitigation, would have a
20 beneficial economic impact.

21
22 *Social Consequences*

23
24 Social consequences are evaluated within the context of impacts on a community from a
25 proposed facility, such as impacts from facility visibility, noise, traffic, or demand on providers
26 of public services. As presented in this order, the facility components would not be expected to
27 result in significant adverse visual or noise impacts on any scenic resource, protected areas, or
28 important recreational opportunity within the analysis areas; NRHP-eligible historic, cultural
29 and archeological resources or to public services.

30
31 Based on the findings of fact and conclusions of law, and conditions of compliance as presented
32 in this order under the Council’s Scenic Resources standard; Historic, Cultural and Archeological
33 standard; Public Services standard; and Recreation standard, the Council finds that the facility
34 would not cause significant adverse social consequences.

35
36 *Energy Consequences*

37
38 The facility would produce up to 50 MW of renewable, emissions-free energy. Therefore, the
39 Council concludes that the facility would not cause significant adverse energy consequences
40 and would provide a positive energy consequence by producing clean, renewable electricity.

41
42 Compatibility with Adjacent Land Use

43

1 Under OAR 345-022-0030(4)(c)(C) (and ORS 469.504(2)(c)(C)), in order for the Council to
2 determine whether to grant an exception to a statewide planning goal, the applicant must
3 show that the facility is compatible with other adjacent land uses or will be made compatible
4 through mitigation measures.

5
6 The site boundary is surrounded by EFU-zoned land. Adjacent land uses directly north, west and
7 south of the site farming have a water right and are used for irrigated agriculture. Potential
8 impacts from facility construction to adjacent agricultural activities include: traffic congestion
9 on local roads, wind and water-related erosion, offsite dust and noxious weed infestations.

10
11 To minimize these impacts, the applicant represents that it will:

- 12
- 13 • Coordinate with adjacent landowners on construction and harvest schedules to
 - 14 minimize construction-related traffic impacts
 - 15 • Apply water or other dust control measures
 - 16 • Implement a weed control plan
- 17

18 The minimization measures addressing construction-related traffic, erosion and dust control,
19 and noxious weeds are represented in Public Services Condition 1 and 2, Soil Protection
20 Conditions 1 and 2 and Land Use Conditions 7, 8, 9, 10 and 11.

21
22 Because adjacent farm practices on the north, west and southern end of the site boundary are
23 active, irrigated agricultural operations, the Council requires, in addition to the measures
24 represented above, that the applicant be required to prepare a site preparation and grading
25 plan in consideration of harvest schedules and the availability of onsite dust and erosion control
26 measures. The intent of the grading plan is to minimize unnecessary disturbance, preserve
27 existing vegetation and ensure that grading only occurs there is adequate dust control at the
28 site. Adequate dust control shall be informed based on DEQ's Fugitive Dust Control
29 Regulation.¹²²

¹²² OAR 340-208-0210(1) No person may cause or permit any materials to be handled, transported, or stored; or a building, its appurtenances, or a road to be used, constructed, altered, repaired or demolished; or any equipment to be operated, without taking reasonable precautions to prevent particulate matter from becoming airborne. Such reasonable precautions may include, but not be limited to the following:

- (a) Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land;
- (b) Application of water or other suitable chemicals on unpaved roads, materials stockpiles, and other surfaces which can create airborne dusts;
- (c) Full or partial enclosure of materials stockpiles in cases where application of water or other suitable chemicals are not sufficient to prevent particulate matter from becoming airborne;
- (d) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials;
- (e) Adequate containment during sandblasting or other similar operations;
- (f) Covering, at all times when in motion, open bodied trucks transporting materials likely to become airborne;

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Land Use Condition 7: Prior to construction of the facility, facility component or phase, as applicable, the certificate holder shall:

- a. Provide evidence to the Department of coordination with landowners of active agricultural operations on property adjacent to the site boundary on construction schedule, including site preparation and grading activities, road construction and heavy equipment and worker traffic periods.
- b. Provide to the Department a site preparation and grading plan, based on final facility design, that includes phased levels of disturbance as necessary based on landowner consultation and availability of dust and erosion control measures.

[PRE-LU-05]

Land Use Condition 8: During construction of the facility, facility component or phase, as applicable, the certificate holder shall:

- a. Adhere to the site preparation and grading plan and any necessary phased levels of disturbance to minimize dust and erosion impacts to adjacent farm practices.
- b. Ensure adequate dust and erosion control measures are onsite prior to and during any grading and other ground disturbing activities.
- c. Adhere to the requirements of the Traffic Management Plan under Public Services Condition 1.

[CON-LU-01]

The Council imposes conditions requiring that, prior to and during construction, and during facility operation, the applicant implement a Noxious Weed Plan, as follows:

Land Use Condition 9: Prior to construction, the certificate holder shall complete all applicable preconstruction requirements established in the Noxious Weed Plan (Attachment P-4 of the Final Order on the ASC).

[PRE-LU-06]

Land Use Condition 10: During construction, the certificate holder shall implement and adhere to the requirements of the Noxious Weed Plan (Attachment P-4 of the Final Order on the ASC or as approved to be amended by the Department).

[CON-LU-02]

Land Use Condition 11: During operation, the certificate holder shall implement and adhere to the applicable requirements of the Noxious Weed Plan (Attachment P-4 of the Final Order on the ASC or as approved to be amended by the Department).

[OPR-LU-01]

(g) The prompt removal from paved streets of earth or other material that does or may become airborne.

1 On figures and calculations presented in the ASC, approximately 4 acres of high-value Class I
2 and II NRCS soils are mapped within the site boundary. The applicant commits to avoiding these
3 soils entirely. To ensure that the irrigated agriculture (pivot circle) on the northern perimeter of
4 the site boundary is avoided, the Council imposes the following condition:

5
6 **Land Use Condition 12:** Prior to construction, the certificate holder shall provide to the
7 Department final facility design/layout maps that include at least a 10-foot setback of
8 the southern perimeter fenceline to the pivot irrigation operation on taxlot
9 4N29000000300.
10 [PRE-LU-07]

11
12 Based upon the zone and type of adjacent land uses, and compliance with the above-
13 referenced conditions, the Council finds that the facility would be compatible with adjacent
14 land uses.

15
16 Therefore, the Council finds an exception to Goal 3 is justified under OAR 345-022-0030(4)(c)
17 and ORS 469.504(2)(c).

18
19 **Conclusions of Law**

20
21 Based on the foregoing findings of fact, the evidence in the record, and subject to compliance
22 with the site certificate conditions, the Council finds an exception to Goal 3 is justified under
23 OAR 345-022-0030(4)(c) and ORS 469.504(2)(c). As such, subject to the conditions, the Council
24 finds that the facility would comply with the Council's Land Use standard.

25
26 **IV.F Protected Areas: OAR 345-022-0040**

27
28 *(1) Except as provided in sections (2) and (3), the Council shall not issue a site certificate*
29 *for a proposed facility located in the areas listed below. To issue a site certificate for a*
30 *proposed facility located outside the areas listed below, the Council must find that,*
31 *taking into account mitigation, the design, construction and operation of the facility are*
32 *not likely to result in significant adverse impact to the areas listed below. References in*
33 *this rule to protected areas designated under federal or state statutes or regulations are*
34 *to the designations in effect as of May 11, 2007:*

35
36 *(a) National parks, including but not limited to Crater Lake National Park and Fort*
37 *Clatsop National Memorial;*

38
39 *(b) National monuments, including but not limited to John Day Fossil Bed National*
40 *Monument, Newberry National Volcanic Monument and Oregon Caves National*
41 *Monument;*
42

1 (c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131 et
2 seq. and areas recommended for designation as wilderness areas pursuant to 43
3 U.S.C. 1782;

4
5 (d) National and state wildlife refuges, including but not limited to Ankeny, Bandon
6 Marsh, Baskett Slough, Bear Valley, Cape Meares, Cold Springs, Deer Flat, Hart
7 Mountain, Julia Butler Hansen, Klamath Forest, Lewis and Clark, Lower Klamath,
8 Malheur, McKay Creek, Oregon Islands, Sheldon, Three Arch Rocks, Umatilla, Upper
9 Klamath, and William L. Finley;

10
11 (e) National coordination areas, including but not limited to Government Island,
12 Ochoco and Summer Lake;

13
14 (f) National and state fish hatcheries, including but not limited to Eagle Creek and
15 Warm Springs;

16
17 (g) National recreation and scenic areas, including but not limited to Oregon Dunes
18 National Recreation Area, Hell's Canyon National Recreation Area, and the Oregon
19 Cascades Recreation Area, and Columbia River Gorge National Scenic Area;

20
21 (h) State parks and waysides as listed by the Oregon Department of Parks and
22 Recreation and the Willamette River Greenway;

23
24 (i) State natural heritage areas listed in the Oregon Register of Natural Heritage
25 Areas pursuant to ORS 273.581;

26
27 (j) State estuarine sanctuaries, including but not limited to South Slough Estuarine
28 Sanctuary, OAR Chapter 142;

29
30 (k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers
31 designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed
32 as potentials for designation;

33
34 (l) Experimental areas established by the Rangeland Resources Program, College of
35 Agriculture, Oregon State University: the Prineville site, the Burns (Squaw Butte) site,
36 the Starkey site and the Union site;

37
38 (m) Agricultural experimental stations established by the College of Agriculture,
39 Oregon State University, including but not limited to: Coastal Oregon Marine
40 Experiment Station, Astoria Mid-Columbia Agriculture Research and Extension
41 Center, Hood River Agriculture Research and Extension Center, Hermiston Columbia
42 Basin Agriculture Research Center, Pendleton Columbia Basin Agriculture Research
43 Center, Moro North Willamette Research and Extension Center, Aurora East Oregon
44 Agriculture Research Center, Union Malheur Experiment Station, Ontario Eastern

1 *Oregon Agriculture Research Center, Burns Eastern Oregon Agriculture Research*
2 *Center, Squaw Butte Central Oregon Experiment Station, Madras Central Oregon*
3 *Experiment Station, Powell Butte Central Oregon Experiment Station, Redmond*
4 *Central Station, Corvallis Coastal Oregon Marine Experiment Station, Newport*
5 *Southern Oregon Experiment Station, Medford Klamath Experiment Station, Klamath*
6 *Falls;*

7
8 *(n) Research forests established by the College of Forestry, Oregon State University,*
9 *including but not limited to McDonald Forest, Paul M. Dunn Forest, the Blodgett*
10 *Tract in Columbia County, the Spaulding Tract in the Mary's Peak area and the*
11 *Marchel Tract;*

12
13 *(o) Bureau of Land Management areas of critical environmental concern,*
14 *outstanding natural areas and research natural areas;*

15
16 *(p) State wildlife areas and management areas identified in OAR chapter 635,*
17 *Division 8.*

18 *****

19 *(3) The provisions of section (1) do not apply to transmission lines or natural gas*
20 *pipelines routed within 500 feet of an existing utility right-of-way containing at least one*
21 *transmission line with a voltage rating of 115 kilovolts or higher or containing at least*
22 *one natural gas pipeline of 8 inches or greater diameter that is operated at a pressure of*
23 *125 psig.*

24
25 **Findings of Fact**

26
27 The Protected Areas standard requires the Council to find that, taking into account mitigation,
28 the design, construction and operation of a facility are not likely to result in significant adverse
29 impacts to any protected area as defined by OAR 345-022-0040.

30
31 As required under OAR 345-021-0010(1)(L), the applicant identified the protected areas within
32 the analysis area and evaluated potential impacts to those protected areas during construction
33 and operation of the facility in Exhibit L of the Application for Site Certificate. Impacts evaluated
34 by the applicant included visual impacts as well as impacts from noise, increased traffic, water
35 use, and wastewater disposal.

36
37 As shown in Table 3: *Protected Areas within 20-mile Analysis Area*, there are twelve protected
38 areas within 20-miles of the proposed facility site boundary. The protected area located nearest
39 to the facility site boundary is the Cold Spring National Wildlife Refuge, which is located
40 approximately 2.4 miles northeast of the facility site. The next closest protected area is the
41 Hermiston Agricultural Research and Extension Center which is located approximately 3.2 miles
42 west of the facility site. The remaining protected areas are located six or more miles from the
43 facility site. Figure 8 shows the location of the protected areas in relation to the facility site and

- 1 includes the results of the applicant’s visibility analysis for protected areas within the analysis
- 2 area.
- 3

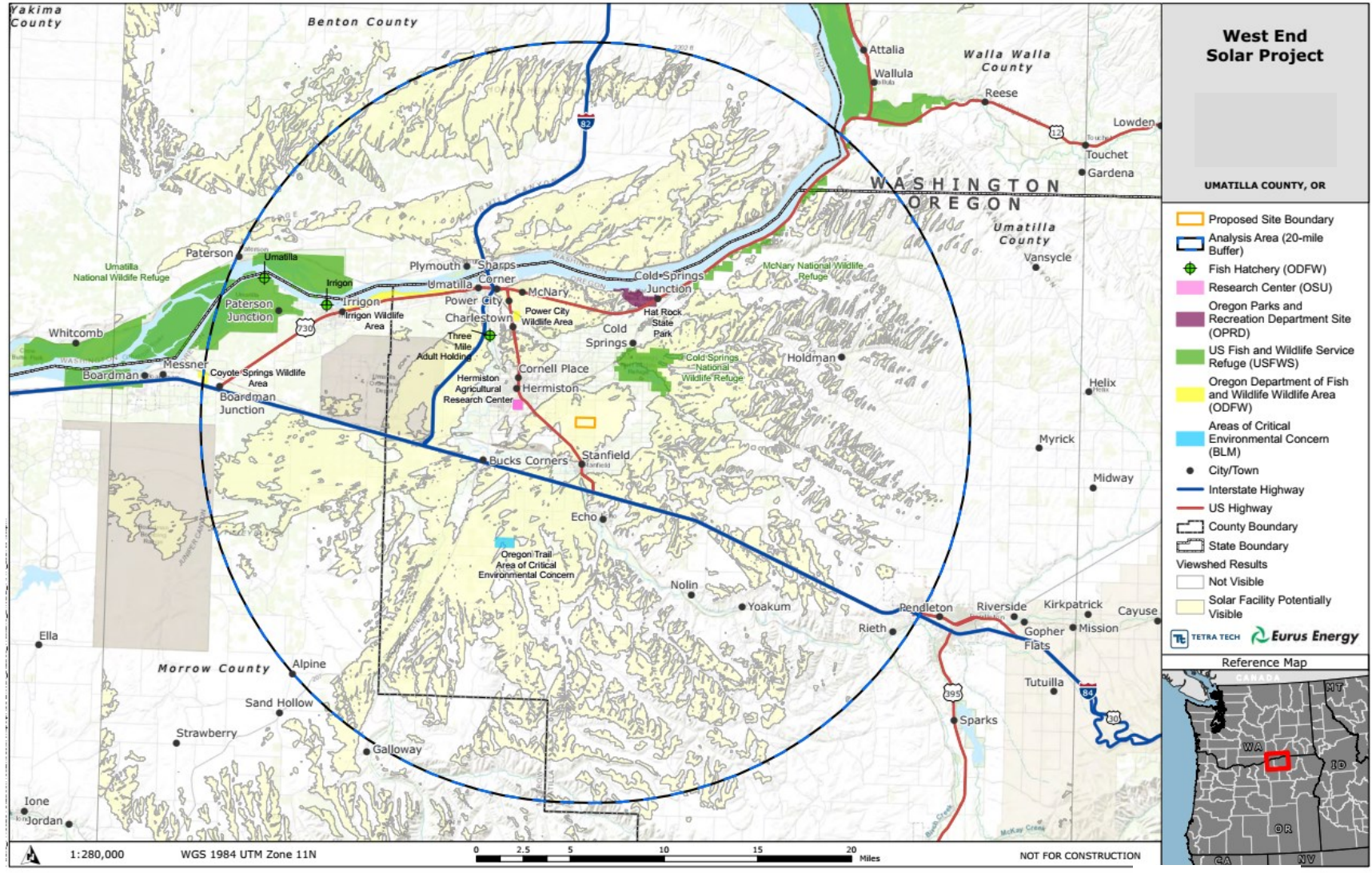
Table 3: Protected Areas within 20-mile Analysis Area

Protected Area	Approx. Distance from Proposed Site Boundary (miles)	Direction from Proposed Site Boundary	Basis for Protection OAR 345-022-0040(1)
Cold Spring National Wildlife Refuge	2.4	NE	(d)
Hermiston Agricultural Research and Extension Center	3.2	W	(m)
Power City Wildlife Area	6.0	NW	(p)
Three Mile Adult Holding Facility	6.3	NW	(f)
Hat Rock State Park	6.3	N	(h)
Echo Meadows Site, Oregon Trail Area of Critical Environmental Concern	6.8	SW	(o)
McNary National Wildlife Refuge	7.9	NE	(d)
Irrigon Wildlife Area	9.1	NW	(p)
Umatilla National Wildlife Refuge	13.8	NW	(d)
Irrigon Fish Hatchery	14.6	NW	(f)
Umatilla Fish Hatchery	18.2	NW	(f)
Coyote Springs Wildlife Area	19.7	W	(p)

- 4
- 5
- 6

1

Figure 8: Protected Areas within 20-miles of the West End Solar Project



2

1 *Potential Visual Impacts of Facility Structures*
2

3 The applicant conducted a zone of visual influence (ZVI) analysis to determine whether the
4 facility would potentially be visible from the protected areas in the analysis area. The ZVI
5 analysis assumed that the facility would include solar arrays with a maximum height of 16 feet
6 and a substation with associated equipment, including two interconnection utility poles, with a
7 maximum height of 30 feet. The impacts of these modeled components were expected to be
8 representative of impacts from other facility components. The analysis used a “bare-earth”
9 modeling approach, meaning that it only considers the effects of topography and does not
10 account for the effects of distance, lighting, weather, atmospheric attenuation factors,
11 vegetation, or buildings. The Council finds that the ZVI analysis used sufficient assumptions to
12 adequately predict potential visibility of facility components within the potentially affected
13 viewshed.
14

15 The results of the ZVI analysis are shown about in Figure 8: *Protected Areas within 20-miles of*
16 *the West End Solar Project*. Based on the ZVI analysis, the facility would be potentially visible or
17 partially visible from five of the protected areas identified in the analysis area, including: the
18 Cold Springs National Wildlife Refuge, the Power City Wildlife Area, Hat Rock State Park, the
19 Echo Meadows Site of the Oregon Trail ACEC, and the McNary National Wildlife Refuge. The ZVI
20 analysis indicates that the facility would not be visible from the remaining seven protected
21 areas in the analysis area. Because the facility is not likely to be visible from these areas, the
22 Council finds that no visual impacts to these areas are expected.
23

24 *Cold Springs National Wildlife Refuge*
25

26 The Cold Springs National Wildlife Refuge is a 3,117-acre wildlife refuge overlaying the Bureau
27 of Reclamation Cold Springs Reservoir. The Bureau of Reclamation manages the reservoir to
28 provide water for irrigation in the surrounding areas, and the U.S. Fish and Wildlife Service
29 manages refuge lands to provide habitat and nesting areas for native birds, migratory
30 waterfowl, and other species. According to the U.S. Fish and Wildlife Service recreational use of
31 the refuge is low, and most users are local residents engaged in hunting and fishing activities,
32 with birdwatching, horseback riding and day-use (e.g., picnicking, social gathering) accounting
33 for additional visitor use days.¹²³
34

35 The refuge is located approximately 2.4 miles to the northeast of the facility site. From the
36 refuge, the facility will be viewed at a middleground distance (0.5 to 5 miles). Applicant explains
37 that at a middleground distance, viewers would potentially be able to distinguish individual
38 forms within the facility and that the texture and color of facility components would be
39 identifiable but would be muted and would lack detail.¹²⁴ Applicant further explains that in
40 portions of the refuge, views of the facility will be screened by vegetation and structures. In the

¹²³ US Fish and Wildlife Service. “Cold Springs National Wildlife Refuge.” Accessed June 27, 2022 at:
<https://www.fws.gov/refuge/cold-springs>

¹²⁴ Exhibit L, Section 4.4.1

1 portions of the refuge where the facility would be visible, it would be viewed in context with
2 existing urban and industrial development and would not be a prominent feature in the
3 viewshed.¹²⁵

4
5 The facility may be visible from portions of the Cold Springs National Wildlife Refuge but
6 impacts to views from the refuge would be mitigated by distance and screening by vegetation
7 and existing structures. Where visible, the facility would be viewed in context with existing
8 urban and industrial development and would not be visually dominant within the landscape.
9 Further, the National Wildlife Refuge (NWR), is managed for preserving and breeding gourds
10 foe native birds, which would be precluded by the construction and operation of the facility.
11 Based on the limited visibility, viewing distance, and low visual contrast, and the management
12 directive for the NWR, the Council finds that visual impacts of the facility on Cold Springs
13 National Wildlife Refuge would be less than significant.

14
15 *Power City Wildlife Area*

16
17 The Power City Wildlife Area is a 100-acre state wildlife area situated immediately adjacent to
18 Highway 395 between Hermiston and Power City.¹²⁶ The Power City Wildlife Area is located
19 approximately 6-miles from the proposed facility.

20
21 The applicant explains that at a background distance (greater than 5 miles), the shape and size
22 of solar arrays may be visible but will create limited contrast and will lack texture and
23 distinguishable color. The applicant further explains that existing views from the Power City
24 Wildlife Area include existing industrial and urban development, highways, and transmission
25 lines.¹²⁷

26
27 The facility may be visible from portions of the Power City Wildlife Area but impacts to views
28 from the refuge would be mitigated by distance and screening by vegetation and existing
29 structures. Where visible, the facility would be viewed in context with existing urban and
30 industrial development and would not be visually dominant within the landscape. Based on the
31 limited visibility, viewing distance, and low visual contrast, the Council finds that visual impacts
32 of the facility on the Power City Wildlife Area would be less than significant.

33
34 *Hat Rock State Park*

35
36 Hat Rock State Park is located nine miles east of the city of Umatilla off U.S. Highway 730. The
37 park lies on the south shore of Lake Wallula behind McNary Dam on the Columbia River.¹²⁸ The
38 park is named for a distinctive 70-foot tall basalt formation located in the northern portion of

¹²⁵ Exhibit L, Section 4.4.2.1

¹²⁶ ODFW. Columbia Basin Wildlife Areas Management Plan. December 2021. pg. 7

¹²⁷ Exhibit L, Section 3.0, Table L-1.

¹²⁸ Oregon Parks and Recreation Department. "Hat Rock State Park." Accessed 6/30/2022 at:
<https://stateparks.oregon.gov/index.cfm?do=park.profile&parkId=12>

1 the park. A trail provides park users with access to the base of Hat Rock but access to the
2 formation itself is restricted. Hat Rock, along with two other Basalt formations within the park
3 and the wetlands and islands to the north of the Park boundary are designated as primary
4 protection areas in part for their scenic values.¹²⁹

5
6 Hat Rock State Park is located 6.3 miles to the north of the facility site. The applicant explains
7 that at a background distance (greater than 5 miles), the shape and size of solar arrays may be
8 visible but will create limited contrast and will lack texture and distinguishable color.¹³⁰ The
9 applicant explains that the facility may only be visible from higher elevation areas within the
10 park and would not be visible from developed use areas. Applicant further explains that existing
11 views from Hat Rock State Park in the direction of the proposed facility include existing
12 industrial and urban development, highways, and transmission lines.¹³¹

13
14 Visibility of the facility from Hat Rock State Park would be limited, and where visible, impacts
15 would be mitigated by distance and screening by vegetation and existing structures. Where
16 visible, the facility would be viewed in context with existing urban and industrial development
17 and would not be visually dominant within the landscape. Based on the limited visibility,
18 viewing distance, and low visual contrast, the Council finds that visual impacts of the facility on
19 Hat Rock State Park would be less than significant.

20
21 *Echo Meadows Site of the Oregon Trail ACEC*

22
23 The Echo Meadows Site is a 320-acre site managed by the Bureau of Land Management. The
24 site is located off of State Highway 320 west of the City of Echo. The site includes an
25 interpretive site and a path to a one-mile long stretch of wagon swales created by emigrants on
26 the Oregon Trail.

27
28 The Echo Meadows Site is located approximately 6.8 miles to the southwest of the facility.
29 Applicant explains that at a background distance (greater than 5 miles), the shape and size of
30 solar arrays may be visible but will create limited contrast and will lack texture and
31 distinguishable color.¹³² Applicant further explains that existing views from the Echo Meadows
32 Site in the direction of the facility include existing agricultural structures, transmission lines, and
33 highways.¹³³ Applicant states that the primary orientation of visitors away from the facility site
34 will further mitigate visual impacts; however, the Council does not find this argument to be
35 compelling given the northwesterly orientation of the access path from the interpretive site to
36 the Oregon Trail segments.

37

¹²⁹ Oregon Parks and Recreation Department. Hat Rock State Park Master Plan. 1983. Accessed 6/30/2022 from:
<https://www.oregon.gov/oprd/PRP/Documents/PLA-Adopted-Hatrock-1983.pdf>

¹³⁰ Exhibit L, Section 4.4.1

¹³¹ Exhibit L, Section 3.0, Table L-1.

¹³² Exhibit L, Section 4.4.1

¹³³ Exhibit L, Section 3.0, Table L-1.

1 Visibility of the proposed facility from the Echo Meadows Site would be limited, and where
2 visible, impacts would be mitigated by distance and screening by topography, vegetation, and
3 existing structures. Where visible, the proposed facility would be viewed in context with
4 existing agricultural development and other infrastructure, and would not be visually dominant
5 within the landscape. Based on the limited visibility, viewing distance, and low visual contrast,
6 the Council finds that visual impacts of the facility on the Echo Meadows Site would be less
7 than significant.

8
9 *McNary National Wildlife Refuge*

10
11 The McNary National Wildlife Refuge consists of approximately 15,666 acres of refuge lands
12 administered by the US Fish and Wildlife Service. The majority of refuge lands are located in
13 Washington State and are outside of the 20-mile analysis area for Protected Areas. The Juniper
14 Canyon and Stateline Units of the refuge, which are located within the analysis area, consist of
15 approximately 1692 acres of isolated parcels extending along the southern bank of the
16 Columbia River in both Oregon and Washington.

17
18 The Applicant's ZVI analysis indicates that the facility would only be potentially visible from
19 limited areas within the McNary Wildlife Refuge and this visibility would likely be further
20 reduced by vegetation and existing development.

21
22 The facility would only be visible from isolated parcels within the McNary National Wildlife
23 Refuge, and where visible, impacts from the facility would be mitigated by distance and
24 screening by vegetation and existing structures. Based on the limited visibility, the Council finds
25 that visual impacts of the facility on the McNary National Wildlife Refuge would be less than
26 significant.

27
28 *Potential Visual Impacts of Emissions*

29
30 Operation of the facility is not expected to result in emissions. Construction of the facility could
31 result in some dust emissions during road construction, foundation installation, final cleanup,
32 reclamation, and restoration. Applicant proposes to implement dust control measures
33 consistent with the best management practices identified in Attachment I-1: Erosion Sediment
34 Control Measures, attached to this order and discussed further in Section IV.D., *Soil Protection*.

35
36 *Potential Noise Impacts (Construction and Operation)*

37
38 Potential noise impacts from construction and operation of the facility are discussed in Section
39 IV.Q.1 of this Order. Noise from construction and operation of the facility will not be
40 distinguishable from background noise levels at a distance of 2 miles from the facility site.
41 Because all protected areas are located more than 2 miles from the site, the Council finds that
42 the construction and operation of the facility are not likely to result in significant noise impacts
43 to any protected areas.

1 *Traffic Impacts (Construction and Operation)*

2

3 The primary transportation routes for workers and deliveries to the facility site include
4 Interstate 82 (I-82) and Interstate 84 (I-84). U.S. Route 395 (US-395) and sections of US-730,
5 County Road 1000, and S. Edwards Road, which provides access to the site, could also be
6 affected by increased traffic during construction of the facility.

7

8 As discussed in Section IV.M., *Public Services*, of this order, the applicant estimates that there
9 will be approximately 45 round trips to the site for truck deliveries and 240 round trips to the
10 site by worker vehicles per day on average, with worker traffic increasing to 400 round trips per
11 day during peak construction periods. This volume of traffic is not expected to significantly
12 affect travel times on the primary transportation routes. Traffic during operation of the facility
13 is expected to be minimal.

14

15 Most protected areas in the analysis area are located to the north of the site and are primarily
16 accessed by I-84, I-82, US-730 and Oregon Route 207. Travel to these areas is not expected to
17 be significantly impacted by traffic associated with construction of the facility. The two
18 exceptions are the Power City Wildlife Area and the Oregon State University Agriculture
19 Research and Extension Center at Hermiston, which are both located along US-395. Increased
20 traffic could result in some short-term delays due to increased traffic on US-395, but that these
21 delays would be intermittent and temporary in nature.

22

23 Applicant also argues that traffic impacts to these protected areas would be less than
24 significant because there may be alternate routes to access the site but does not explain how or
25 when travelers would be informed that alternate routes are advised. As a result, the Council
26 does not rely on the availability of alternate routes as a mitigating factor.

27

28 The applicant is required to enter into a Road Use Agreements with Umatilla County, and as
29 described in Public Services Condition 1 and 2, would be required to implement best
30 management practices to minimize traffic impacts due to construction, traffic congestion,
31 flagging needs, road closures, and large equipment and deliveries. The BMPs are further
32 described in the draft Traffic Management Plan provided as ASC Attachment U-1. The Road Use
33 Agreement would also provide for the mitigation of any damage to roads that occurs during
34 construction.

35

36 Traffic associated with construction of the facility could result in intermittent, short-term delays
37 for visitors to the Power City Wildlife Area and the Oregon State University Agriculture
38 Research and Extension Center at Hermiston. These impacts will be minimized through the
39 implementation of a Traffic Management Plan, as required by Public Services Conditions 1 and
40 2. Based on the intermittent and temporary nature of the impacts and taking the proposed
41 mitigation into account, the Council finds that the construction and operation of the facility is
42 not likely to result in significant traffic impacts to any Protected Areas.

43

44 *Water Use and Wastewater Disposal (Construction and Operation)*

1
2 As discussed further in Section IV.Q.3., *Water Rights*, the applicant estimates that
3 approximately 12.8 million gallons of water will be required for the construction of the
4 proposed facility, and that the facility will use an additional 1.65 million gallons of water per
5 year for sanitation and washing solar modules.

6
7 Some protected areas within the analysis area, including the Cold Springs National Wildlife
8 Refuge, are protected for wildlife habitat that is dependent on surface water availability and
9 could be impacted by additional withdrawals or diversions. The applicant has represented that
10 this would be obtained from the City of Hermiston, which has existing water rights that are
11 sufficient to meet this demand, and that no additional ground or surface water withdrawals will
12 be needed for water use at the site.

13
14 As described in Section IV.D., *Soil Protection*, impacts from the construction of roads,
15 foundations, and other related or supporting facilities would be minimized by the
16 implementation of dust control measures consistent with the best management practices
17 identified in Attachment I-1: Erosion Sediment Control Measures, attached to this order. In
18 addition, the facility is not expected to discharge into waters of the state that would directly or
19 indirectly connect to a protected waterway.

20
21 The applicant does not propose to construct or operate a septic system or other water disposal
22 system for industrial water or sewage at the site. Sanitation wastewater will be contained in
23 portable toilets and disposed of by a licensed contractor. Because no industrial or sanitation
24 wastewater will be disposed at the site no water quality impacts from these types of
25 wastewater are expected.

26
27 Because no additional ground or surface water withdrawals are required for the construction
28 and operation of the facility, stormwater discharges would be minimized by best management
29 practices, and no other wastewater discharges are expected, the Council finds that the
30 construction and operation of the facility is not likely to result in significant adverse impacts to
31 water availability or water quality at any protected areas.

32
33 **Conclusions of Law**

34
35 Based on the foregoing findings, the Council concludes that the design, construction and
36 operation of the facility would not be likely to result in significant adverse impacts to any
37 protected areas, in compliance with the Council's Protected Area standard.

38

1 **IV.G Retirement and Financial Assurance: OAR 345-022-0050**
2

3 *To issue a site certificate, the Council must find that:*

4
5 *(1) The site, taking into account mitigation, can be restored adequately to a useful, non-*
6 *hazardous condition following permanent cessation of construction or operation of the*
7 *facility.*

8
9 *(2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a*
10 *form and amount satisfactory to the Council to restore the site to a useful, non-*
11 *hazardous condition.*

12
13 **Findings of Fact**

14
15 The Retirement and Financial Assurance standard requires a finding that the facility site can be
16 restored to a useful, non-hazardous condition at the end of the facility’s useful life, should
17 either the applicant (certificate holder) stop construction or should the facility cease to operate.
18 In addition, it requires a demonstration that the applicant can obtain a bond or letter of credit
19 in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous
20 condition.

21
22 *Restoration of the Site Following Cessation of Construction or Operation*

23
24 OAR 345-022-0050(1) requires the Council to find that the facility site can be restored to a
25 useful non-hazardous condition at the end of the facility’s useful life, or if construction of the
26 facility were to be halted prior to completion. In ASC Exhibit X, the applicant estimates the
27 facility’s useful life as 30 years.¹³⁴

28
29 The applicant is obligated to retire the proposed facility upon permanent cessation of
30 construction or operation (or upon retirement). Below, is a description of the decommissioning
31 activities associated with retiring the facility and each facility component that the applicant
32 would deploy to restore the site to a useful, non-hazardous condition:¹³⁵

33
34 **Mobilization and demobilization of equipment and facilities:** Includes mobilization (prior to
35 decommissioning) and demobilization (upon completion) of on-site construction
36 management/storage facilities and equipment used for decommissioning. Also includes site set
37 up and cleanup of facilities prior to and after decommissioning.

¹³⁴ WESAPPD03-24 ASC Exhibit X Retirement 2022-09-28, Section 2.0. The applicant indicates the facility could be repowered with more efficient equipment over time so operation of the facility could be longer than 30 years. Any major repowering may be subject to an amendment determination and the EFSC amendment process under OAR Chapter 345, Division 027.

¹³⁵ Tasks and descriptions were derived from Department evaluation of ASC Exhibit X, Attachment X-1. Project Retirement and Restoration Cost Estimate line items and subtasks. WESAPPD03-24 ASC Exhibit X Retirement 2022-09-28.

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Mobilization and demobilization of management: Site support including medical and office supplies, on-site field management including superintendent and engineers.

Operations and maintenance enclosure: Demolish (demo) structure, load materials and truck dispose/recycle metal. Remove foundation/gravel to subgrade or deeper by excavation, load concrete/gravel into trucks and transport/dispose of materials.¹³⁶

Substation: Disconnect transformers then separate, remove, transport and dispose of oil. Dismantle and cut transformers then load truck and dispose. Remove/demo control building, truck and dispose. Remove underground utilities. Excavate and remove foundations to subgrade or deeper then load, truck/transport and dispose concrete from foundations. Remove fence.

Switchyard: (same as Substation) Disconnect transformers then separate, remove, transport and dispose of oil. Dismantle and cut transformers then load truck and dispose. Remove/demo control building, truck and dispose. Remove underground utilities. Excavate and remove foundations to subgrade or deeper then load, truck/transport and dispose concrete from foundations. Remove fence.

Interconnection facility: Cut and lower poles and transmission towers (structure removal), remove overhead cables, load trucks and dispose. Remove foundations to subgrade or deeper with excavation, then load truck, transport and dispose concrete from foundations.

Battery facilities: Disconnect, remove, transport and dispose/recycle batteries. Demo and remove structures for disposal or recycling.

Solar facility: Disconnect electrical from panels and inverters and transformers. Dismantle and remove racking system, remove piers including pier foundations to depth with excavation, concrete loaded and transported for disposal. Panels transported for disposal or recycling. Remove external fence line. Underground electrical collector lines would remain buried for sections at 3 feet or deeper.

Roads: Facility roads would be used to allow the decommissioning contractor to separate the solar modules from the pole, and directly load the modules into a truck or roll-off container for off-site disposal or recycling. After facility components are removed, gravel would be removed from facility roads and then roads would be decompacted, backfilled as necessary, and restored. Decompaction includes discing and regrading.

¹³⁶ To allow continued use of the land for agricultural or other purposes deemed appropriate at the time of decommissioning purposes, all subsurface features including underground collector lines and concrete foundations associated with the O&M, Substation, Solar, Battery, and Switchyard may need to be removed to a minimum of 3 feet below ground surface or as agreed with the landowner.

1 Re-seeding and site restoration: Roads, locations of facility components, and areas disturbed by
2 construction would be spot graded and re-seed with native vegetation as per revegetation plan
3 and retirement plan.
4

5 The Council reviewed the above-summarized tasks and actions with the more-detailed line-item
6 breakdown presented in ASC Exhibit X-1 and compared those details against the information
7 presented in ASC Exhibit B (Project Description), C (Project Location – Disturbance) and G
8 (Materials Inventory). Based on review of these materials, the Council affirms that the
9 information is consistent across relevant exhibits and finds that the tasks and actions accurately
10 represent facility decommissioning and site restoration.
11

12 As provided in ASC Exhibit B and I, and reflected in Soil Protection Condition 4, 5, 7 and 8 in
13 Section IV.D., *Soil Protection*, the applicant commits to developing and implementing a Spill,
14 Prevention, Control and Countermeasure Plan (SPCC), which would comply with 40 CFR 112 (Oil
15 Pollution Prevention), including the safe cleanup of hazardous materials.¹³⁷ This applicant
16 proposed plan, approved by Council as site certificate conditions, would also minimize impacts
17 to the site and support the applicant’s ability to restore the site to a useful, nonhazardous
18 condition.
19

20 The Council’s rules include several mandatory site certificate conditions, which are addressed
21 below, relating to the obligation of a certificate holder to prevent the development of
22 conditions on the site that would preclude restoration of the site and requiring the certificate
23 holder to obtain Council approval of a retirement plan in the event that the facility ceases
24 construction or operation:
25

26 **Retirement and Financial Assurance Condition 1:** The certificate holder shall prevent the
27 development of any conditions on the site that would preclude restoration of the site to a
28 useful, non-hazardous condition to the extent that prevention of such site conditions is
29 within the control of the certificate holder.
30 [Mandatory Condition OAR 345-025-0006(7), GEN-RF-01]
31

32 **Retirement and Financial Assurance Condition 2:** The certificate holder shall retire the
33 facility if the certificate holder permanently ceases construction or operation of the facility.
34 The certificate holder shall retire the facility according to a final retirement plan approved
35 by the Council, as described in OAR 345-027-0110. The certificate holder shall pay the actual
36 cost to restore the site to a useful, nonhazardous condition at the time of retirement,
37 notwithstanding the Council’s approval in the site certificate of an estimated amount
38 required to restore the site.
39 [Mandatory Condition OAR 345-025-0006(9), RET-RF-01]
40

41 **Retirement and Financial Assurance Condition 3:** If the Council finds that the certificate
42 holder has permanently ceased construction or operation of the facility without retiring the

¹³⁷ WESAPPD03-1 ASC Exhibit B Project Description 2022-10-22, Section 2.0.

1 facility according to a final retirement plan approved by the Council, as described in OAR
2 345-027-0110, the Council shall notify the certificate holder and request that the certificate
3 holder submit a proposed final retirement plan to the Department within a reasonable time
4 not to exceed 90 days. If the certificate holder does not submit a proposed final retirement
5 plan by the specified date, the Council may direct the Department to prepare a proposed
6 final retirement plan for the Council's approval. Upon the Council's approval of the final
7 retirement plan, the Council may draw on the bond or letter of credit described in OAR 345-
8 025-0006(8) to restore the site to a useful, nonhazardous condition according to the final
9 retirement plan, in addition to any penalties the Council may impose under OAR Chapter
10 345, Division 29. If the amount of the bond or letter of credit is insufficient to pay the actual
11 cost of retirement, the certificate holder shall pay any additional cost necessary to restore
12 the site to a useful, nonhazardous condition. After completion of site restoration, the
13 Council shall issue an order to terminate the site certificate if the Council finds that the
14 facility has been retired according to the approved final retirement plan.

15 [Mandatory Condition OAR 345-025-0006(16), RET-RF-02]
16

17 In Section IV.B., *Organizational Expertise* of this order, the Council finds that the applicant has
18 the organizational expertise to construct, operate, and retire the facility, in compliance with the
19 standard. In addition, the Council finds that the applicant would satisfy the requirements of the
20 Soil Protection, Fish and Wildlife Habitat, and Waste Minimization standards (Sections IV.D.,
21 IV.H., and IV.N. of this order, respectively). Each of those sections describe conditions designed
22 to minimize adverse impacts on the surrounding land from construction and operation of the
23 facility.
24

25 Based on compliance with the above-referenced mandatory conditions and conditions
26 presented in Section IV.D. *Soil Protection*, and the applicant's assessment of decommissioning
27 tasks and actions, the Council finds that the site of the facility could be restored adequately to a
28 useful, non- hazardous condition following permanent cessation of construction or operation.
29

30 *Methods and Assumptions for Decommissioning Cost Estimate*

31

32 OAR 345-022-0050(2) requires the Council to find that the applicant has demonstrated a
33 reasonable likelihood of obtaining a bond or letter of credit in a form and amount necessary to
34 restore the site of the proposed facility to a useful non-hazardous condition. A bond or letter of
35 credit in a form and amount satisfactory to Council provides a site restoration remedy to
36 protect the State of Oregon and its citizens if the applicant (certificate holder) fails to perform
37 its obligation to restore the site. The bond or letter of credit must remain in force until the
38 applicant (certificate holder) has fully restored the site. OAR 345-025-0006(8) establishes a
39 mandatory condition, which ensures compliance with this requirement (see Retirement and
40 Financial Assurance Condition 4 below).
41

42 ASC Exhibit X, Attachment X-1, details the applicant's cost estimate to restore the site to a
43 useful, nonhazardous condition. The decommissioning cost estimate was generated by Mr.
44 Gary Murdock an Engineer and Cost Estimator at Tetra Tech with 15 years' experience in

1 generating cost estimates for commercial energy facilities, including approved EFSC wind and
2 solar facilities.¹³⁸ The methods and assumptions that the applicant relied on to generate the
3 decommissioning estimate are:

4
5 Labor, Equipment, and Unit Cost Rate Methods and Assumptions:

- 6 • Labor costs developed by reviewing U.S. Department of Labor wage determinations
7 prevalent to the geographic area of the proposed facility and rates published by RS
8 Means data.¹³⁹ An average rate includes base wage, fringe, and payroll tax liability. The
9 final rate used in the estimate is an average of 40 hours of standard time and 10 hours
10 of overtime per week, assuming a 50-hour work week during construction activities.
- 11 • Production rates established using applied professional experience and published
12 standards including RS Means data.¹⁴⁰
- 13 • Equipment rates developed by reviewing rates published by RS Means and historical
14 vendor quotes associated with the location of the proposed facility. Rates include fuel,
15 maintenance, and wear and tear of ground-engaging components. Rates utilized assume
16 the use of rental equipment, which is generally more expensive than contractor-owned
17 equipment.
- 18 • Unit costs developed by establishing the labor, equipment, and production rate required
19 for each individual task using RS Means and the estimator's experience.¹⁴¹

20 Decommissioning Task Methods and Assumptions:

- 21 • Mobilization and demobilization costs reflect the anticipated cost to mobilize
22 equipment, facilities and workers to the facility site, assuming the work would
23 performed by local contractors. This amount does not include the frontloading of costs
24 from other tasks.
- 25 • Project Site Support includes costs for field management during
26 construction/decommissioning activities which includes a Superintendent, a Health and
27 Safety Representative, and two Field Engineers. Costs for temporary facilities includes
28 one office trailer and two Conex storage units, along with portable toilets, first aid
29 supplies, and utilities.

¹³⁸ WESAPDoc12 Applicant Responses to RAIs Exhb E, I, W and X_Combined 2022-06-01; Exhibit X_RAI X-11_Murdock Gary Resume.

¹³⁹ RS Means provides cost estimating software for the construction industry where construction costs are comprised of material, labor and/or equipment prices with more than 92,000-line items and cost engineers spend more than 30,000 hours researching and validating the costs every year.
<https://www.rsmeans.com/info/contact/about-us> Accessed 06-10-2022.

¹⁴⁰ Production rates in estimating refer to time to perform a task. For example, the production rate for Solar Panel Removal is assumed to be 20 panels per laborer per hour. WESAPDoc3-1 ASC Exhibit B Project Description 2022-10-22, Section 4.2.

¹⁴¹ The applicant provided different unit rates for the removal of the solar racking posts – one where posts have concrete backfill and one where there is no concrete backfill in Attachment W-1. To generate a more conservative estimate, the applicant applied the higher unit rate (where concrete must be removed at each post) was applied to all racking posts but one.

- 1 • The contractor’s Home Office, Project Management, Overhead, and Fee costs developed
2 based on an average and applied to the estimate, added as 5 percent for Home Office
3 and Project Management, and 13 percent for Overhead and Fee.
- 4 • Roads would be restored consistent with the approved retirement plan so that they
5 become a part of the natural surroundings and are no longer recognizable or usable as a
6 road. On private lands, roads would be restored or left in place at the request of the
7 current landowner. The cost for restoration of roads assumes that all roads would be
8 decompacted and reseeded.
- 9 • Restoration is estimated on a unit cost basis, priced by task, and follows the progression
10 of work from start to finish. Several other miscellaneous costs have been approximated,
11 including permits, engineering, signage, fencing, traffic control, utility disconnects, etc.

12

13 *Estimated Cost of Site Restoration*

14

15 As presented in Table 4: *Facility Decommissioning Tasks and Cost Estimate*, the
16 decommissioning cost estimate totals \$4,734,498 million (Q3 2022 dollars), prior to application
17 of the Department’s contingencies, as further described below.

18

19

20

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27

Table 4: Facility Decommissioning Tasks and Cost Estimate

Task or Component	Quantity	Unit Cost (\$)¹	Unit	Estimate (\$)
Mobilization / Demobilization [1.1]				
<i>Equipment Mob</i>	1	61,200.00	Lump Sum⁴	\$61,200.00
<i>Site Facilities</i>	1	2,200.00	Lump Sum⁴	\$2,200.00
<i>Crew Mob & Site Setup</i>	3	12,065.72	Day	\$36,197.16
<i>Crew Demob & Site Cleanup</i>	2	12,065.72	Day	\$24,131.44
<i>Subtotal =</i>				\$123,728.60
Project Site Support [1.2] Site Facilities [1.2.1]	3	1,305.00	Month	\$3,915.00
Field Management [1.2.2]	3	53,947.28	Week	\$161,841.84
O&M Building Removal [1.3]				
<i>Structure Demo</i>	1	867.41	Lump Sum⁴	\$867.41
<i>Remove Foundations To Subgrade³</i>	11	27.02	Cubic Yd.	\$297.22
<i>Trucking</i>	1	1,375.00	Each	\$1,375.00
<i>Waste Material Disposal</i>	4	45	Ton	\$180.00
<i>Subtotal =</i>				\$2,719.63
Substation & Switchyard Removal and Disposal [1.4.1 & 1.4.2]				
<i>Fence Removal</i>	2	1,202.19	Day	\$2,404.38
<i>Transformer Removal</i>	2	119,639.33	Each	\$239,278.66
<i>Remove Control Building</i>	2	2,432.59	Each	\$4,865.18
<i>UG Utility & Ground Removal</i>	4	1,202.19	Day	\$4,808.76
<i>Remove Foundations to Subgrade³</i>	1000	27.02	Cubic Yd.	\$27,020.00
<i>Misc. Material Disposal</i>	2	1,825.00	Lump Sum⁴	\$3,650.00
<i>Restore Yard (Incl. backfill, topsoil, reveg)</i>	2	31,301.73	Each	\$62,603.46
<i>Subtotal =</i>				\$344,630.44
Interconnection Facility [1.5]				
<i>Structure Removal</i>	2	4,255.53	Each	\$8,511.06
<i>Remove Foundations To Subgrade³</i>	2	2,321.28	Each	\$4,642.56
<i>Subtotal =</i>				\$13,153.62

Table 4: Facility Decommissioning Tasks and Cost Estimate

Task or Component	Quantity	Unit Cost (\$)¹	Unit	Estimate (\$)
DC Storage System Removal [1.6]				
<i>Battery Removal & Disposal</i>	70	2,497.10	MW	\$174,797.00
<i>Structure & Components Removal</i>	70	951.7	MW	\$66,619.00
<i>Subtotal =</i>				\$241,416.00
Solar Array Removal [1.7]				
<i>Fence Removal</i>	15,400.00	1.19	Linear Feet	\$18,326.00
<i>Inverter / Transformer Removal</i>	25	5,089.67	Each	\$127,241.75
<i>Remove Foundations To Subgrade³</i>	25	2,594.35	Each	\$64,858.75
<i>Solar Panel Removal & Disposal</i>	180,000.00	6.00	Each	\$1,080,000.00
<i>Solar Rack (Trackers) & Post Removal w/ Concrete</i>	1	1,142,547.10	Lump Sum⁴	\$1,142,547.10
<i>Subtotal =</i>				\$2,432,973.60
Road Removal and Site Restoration/Revegetation [1.8]				
<i>Decompact & Remove Gravel From Roads</i>	18,100.00	2.29	Linear Feet	\$41,449.00
<i>Import Backfill/Topsoil</i>	2,500.00	20.00	Cubic Yd.	\$50,000.00
<i>Spot Grade Disturbed Areas</i>	324	268.20	Acre	\$86,896.80
<i>Re-Seed With Native Vegetation - Roads & Areas Disturbed By Construction</i>	324	500.00	Acre	\$162,000.00
<i>Subtotal =</i>				\$340,345.80
West End Solar Project Max Potential Decommissioning Cost (Cost) Subtotal =				\$3,664,724.53
Decommissioning Subtotal for Wind and Solar (94% of Total Cost)				\$3,423,308.53
Decommissioning Total for Battery (6% of Total Cost)				\$241,416.00
Applicant Applied Contingencies [1.9]				
<i>Home Office, Project Management (5% Of Cost)</i>	5		Percent	\$183,236.23
<i>Contractor OH & Fee (13% Of Cost)</i>	13		Percent	\$476,414.19
Applicant Contingency Subtotal =				\$659,650.42

Table 4: Facility Decommissioning Tasks and Cost Estimate

Task or Component	Quantity	Unit Cost (\$)¹	Unit	Estimate (\$)
Breakdown of Applicant Contingencies by Component				
Total Applicant Contingencies for Solar (94% of total contingencies)				\$620,071.39
Total Applicant Contingencies for Battery (ESS) (6% of total contingencies)				\$39,579.02
Subtotal of Cost and Applicant Contingencies (Q2 2021 Dollars) - <i>Rounded to nearest \$1</i>				\$4,324,374.95
Subtotal of Cost and Applicant Contingencies for Solar (94% of total contingencies)				\$4,043,379.92
Subtotal of Cost and Applicant Contingencies for Battery (ESS) (6% of total contingencies)				\$280,995.02
Subtotal of Cost and Applicant Contingencies (Adjusted - Q3 2022 Dollars)²				\$4,687,622.44
<i>Performance Bond</i>	1		Percent	\$46,876.22
Adjusted Gross Cost				\$4,734,498.67
Department Applied Contingencies				
<i>Department Administration and Project Management</i>	10		Percent	\$473,449.87
	10		Percent	\$445,042.87
<i>Future Development Contingency</i>	20 (ESS)		Percent	\$56,813.98
	<i>subtotal</i>			\$501,856.86
ODOE Contingency Subtotal =				\$975,306.73
Total Site Restoration Cost with Department Adjusted Contingencies (Q3 2022 Dollars) <i>Rounded to nearest \$1</i>				\$5,709,805
Notes:				
1. All unit costs are in Q2 2021 Dollars.				
2. Adjustment factor from Q2 2021 Dollars to Q3 2022 Dollars is 1.084.				
Source: WESAPDoc3-24 ASC Exhibit X Retirement 2022-09-28. Attachment X-1 for detailed breakdown of tasks, actions and unit costs for the sum total costs presented in this table.				
3. To allow continued use of the land for agricultural or other purposes deemed appropriate at the time of decommissioning purposes, all subsurface features including underground collector lines and concrete foundations associated with the O&M, Substation, Solar, Battery, and Switchyard may need to be removed to a minimum of 3 feet below ground surface or as agreed with the landowner.				

Table 4: Facility Decommissioning Tasks and Cost Estimate

Task or Component	Quantity	Unit Cost (\$)¹	Unit	Estimate (\$)
4. Tasks associated with a Lump Sum unit cost may be calculated using a fraction (in decimal form) of the actual quantities constructed or by using the more detailed break down of unit costs associated with the Lump Sum task identified in the cost estimating worksheet in ASC Exhibit X, Attachment X-1.				

1

1 As presented in Table 4: *Facility Decommissioning Tasks and Cost Estimate*, the Council adds a
2 10 percent contingency cost for both the administrative and project management expenses,
3 and a future development contingency (less the decommissioning estimate of the ESS/DC
4 Storage System, including an applied 20 percent contingency). A performance bond of 1
5 percent is also applied. For all types of energy facilities, the subtotal of line-item costs, including
6 contractor's overhead, profit and insurance costs, and specialty contract costs is increased by
7 one percent to account for the cost of a performance bond that would be posted by the
8 contractor as assurance that the work would be completed as agreed, if the facility needed to
9 be retired absent the applicant.

10
11 The 10 percent contingency for administrative and management expenses would cover the
12 anticipated direct costs borne by the State in the course of managing site restoration and would
13 include the preparation and approval of a final retirement plan, obtaining legal permission to
14 proceed with demolition of the facility, legal expenses for protecting the State's interest,
15 preparing specification bid documents and contracts for demolition work, managing the bidding
16 process, negotiations of contracts, and other tasks. Consistent with Organizational Condition 3,
17 the Council reserves the right to adjust the contingencies, as appropriate and necessary to
18 ensure that costs to restore the site are adequate to maintain health and safety of the public
19 and environment, consistent with Council standards.

20
21 The 10 percent future development contingency Council applies to all tasks, actions and
22 applicant contingencies, with the exception of the cost of the ESS conclude that a 20 percent
23 future development contingent is necessary to be applied to account for uncertainty in the
24 decommissioning estimate of the ESS/DC Storage System because, if site restoration becomes
25 necessary, it might be many years in the future where there is uncertainty of continued
26 adequacy of the retirement cost estimate. For all types of energy facilities, the subtotal of line-
27 item costs, including contractor's overhead, profit and insurance costs, and specialty contract
28 costs is increased by one percent to account for the cost of a performance bond that would be
29 posted by the contractor as assurance that the work will be completed as agreed.

30
31 Therefore, the Council finds that \$5,709,805 million (Q3 2022 dollars) is a reasonable estimate
32 of an amount satisfactory to restore the site to a useful, nonhazardous condition.

33 *Ability of the Applicant to Obtain a Bond or Letter of Credit*

34
35
36 OAR 345-022-0050(2) requires the Council to find that the applicant has a reasonable likelihood
37 of obtaining a bond or letter of credit in a form and amount satisfactory to Council to restore
38 the facility site to a useful non-hazardous condition. A bond or letter of credit provides a site
39 restoration remedy to protect the state of Oregon and its citizens if the applicant (certificate
40 holder) fails to perform its obligation to restore the site. The bond or letter of credit must
41 remain in force until the applicant (certificate holder) has fully restored the site.

42
43 As discussed in Section IV.B., *Organizational Expertise*, the applicant, EE West End Solar LLC, is a
44 wholly owned subsidiary of Eurus Solar Holdings, LLC. Eurus Solar Holdings LLC is a wholly

1 owned subsidiary of Eurus Energy America, LLC. Eurus Energy America, LLC is a wholly owned
2 subsidiary of Eurus Energy America Corporation (EEAC- parent company). ASC Exhibit M,
3 Attachment M-2 is a letter from Sumitomo Mitsui Banking Corporation (SMBC), which indicates
4 that EEAC is a valued client of SMBC.¹⁴² The letter continues to acknowledge the organizational
5 structure of Eurus Solar Holdings and that EE West End Solar LLC is the applicant for the facility
6 and that the applicant may request a letter of credit up to \$5.8 million. SMBC indicates that,
7 because of its ongoing relationship with EEAC, there is a reasonable likelihood that the financial
8 institution would provide the letter of credit for the facility.

9
10 ASC Exhibit M, Attachment M-1 includes a letter from Senior Legal Counsel for EEAC, indicates
11 that he reviewed the original or certified copies of books, records, LLC records, and certificates
12 of public officials to support his professional opinion that the applicant has the legal authority
13 to construct and operate the facility, without violating its articles of incorporation covenants, or
14 similar agreements.

15
16 The Council reviewed the legal opinion and SMBC financial assurance letter which are provided
17 in the ASC under the informational requirements under OAR 345-021-0010(1). These
18 documents, combined with the supporting evidence under the Council's Retirement and
19 Financial Assurance standard and Organizational Expertise standard are largely consistent with
20 similar letters historically reviewed and approved by Council under these rules.

21
22 Based upon the Council's review of the SMBC letter and applicant's legal counsel opinion, as
23 well as the incident reporting under Organizational Expertise Condition 3 and contingency
24 adjustment to protect public health and safety as described above imposed under Retirement
25 and Financial Assurance Condition 4 below, the Council finds that the applicant has
26 demonstrated a reasonable ability to obtain a bond or letter of credit in a form and amount
27 considered satisfactory by Council.

28
29 OAR 345-025-0006(8) establishes a mandatory condition that must be imposed in all site
30 certificates.¹⁴³ This condition is imposed, based on the decommissioning amount considered
31 satisfactory by Council, per below:

32
33 **Retirement and Financial Assurance Condition 4:** Before beginning construction of the
34 facility or a facility component, the certificate holder shall submit to the State of
35 Oregon, through the Council, a bond or letter of credit naming the State of Oregon,
36 acting by and through the Council, as beneficiary or payee. The total bond or letter of
37 credit amount for the facility is \$5.7 million dollars (Q3 2022 dollars), to be adjusted to

¹⁴² At its January 28, 2022, Council added and approved SMBC as an EFSC-approved financial institution.

WESAPPD08 EFSC Meeting-Item-B-Annual-Financial-Assurance-Update-Staff-Report and Mins 2022-01-28

¹⁴³ OAR 345-025-0006(8) Before beginning construction of the facility, the certificate holder must submit to the State of Oregon, through the Council, a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition. The certificate holder must maintain a bond or letter of credit in effect at all times until the facility has been retired. The Council may specify different amounts for the bond or letter of credit during construction and during operation of the facility.

1 the effective date, and adjusted on an annual basis thereafter, as described in sub-
2 paragraph (b) of this condition:

- 3 a. The certificate holder may adjust the amount of the bond or letter of credit based
4 on the design configuration of the facility, or any phase of the facility, by applying
5 the unit costs presented in Table 4 of the Final Order on the ASC, and the
6 contingencies illustrated in Table 4 of the Final Order on the ASC and may further
7 make adjustments based on unit costs for task and actions presented in ASC Exhibit
8 X Attachment X-1. Any revision to the restoration costs should be adjusted to the
9 effective date as described in (b). Any modification to the unit costs presented in
10 Table 4 of the Final Order on the ASC are subject to review and approval by the
11 Council. The Department and Council reserve the right to adjust the contingencies,
12 as appropriate and necessary to ensure that costs to restore the site are adequate to
13 maintain health and safety of the public and environment.
- 14 b. The certificate holder shall adjust the amount of the bond or letter of credit using
15 the following calculation:
- 16 i. Adjust the amount of the bond or letter of credit (expressed in Q3 2022
17 dollars) to present value, using the U.S. Gross Domestic Product Implicit Price
18 Deflator, Chain Weight, as published in the Oregon Department of
19 Administrative Services' "Oregon Economic and Revenue Forecast" or by any
20 successor agency and using the third quarter 2022 index value and the
21 quarterly index value for the date of issuance of the new bond or letter of
22 credit. If at any time the index is no longer published, the Council shall select a
23 comparable calculation to adjust third quarter 2022 dollars to present value.
- 24 ii. Round the result total to the nearest \$1,000 to determine the financial
25 assurance amount.
- 26 c. The financial institution issuing of the bond or letter of credit must be on the
27 Council's pre-approved financial institution list. The bond or letter of credit form
28 approved by the Council is included as Attachment X-1 to the Final Order on ASC.
29 [Mandatory Condition OAR 345-025-0006(8), PRE-RF-01]

30
31 **Conclusions of Law**

32
33 Based on the foregoing findings of fact, and subject to compliance with site certificate
34 conditions, the Council finds that the facility would comply with the Retirement and Financial
35 Assurance standard.
36

1 **IV.H Fish and Wildlife Habitat: OAR 345-022-0060**
2

3 *To issue a site certificate, the Council must find that the design, construction and*
4 *operation of the facility, taking into account mitigation, are consistent with:*

5
6 *(1) The general fish and wildlife habitat mitigation goals and standards of OAR*
7 *635-415-0025(1) through (6) in effect as of February 24, 2017****
8

9 **Findings of Fact**
10

11 The analysis area for potential impacts to fish and wildlife habitat, as defined in the Project
12 Order, is the area within and extending ½-mile from the site boundary.
13

14 **IV.H.1 Department Evaluation of Applicant’s Desktop and Field Surveys**
15

16 Literature review and field studies were conducted in 2019-2020, based on consultation with
17 ODFW, and review of state (ODFW, ORBIC), federal (USFWS) and regional wildlife databases.
18

19 Surveys were conducted in 2019 and 2020, including protocol-level Washington Ground
20 Squirrel (WGS) surveys,¹⁴⁴ raptor nest surveys, habitat categorization, botanical and wetland
21 surveys.
22

23 WGS and raptor nest surveys were conducted from April 22-23 and May 21-22, 2019; and,
24 March 22 and May 9-10, 2020. The area for evaluation of potentially suitable WGS habitat
25 extends 1,000 feet from potential ground disturbance, including areas outside of the site
26 boundary, totaling approximately 388 acres. The area for evaluation of potentially active nest
27 substrates included the area within an extending 0.5-mile from the site boundary. Based on the
28 extent of existing active agriculture and permanent infrastructure (paved roads), there are
29 approximately 120 acres of potentially suitable WGS habitat within the survey area; 81 acres
30 were field surveyed and 39 acres were desktop surveyed due to landowner permission
31 restrictions on areas outside the site boundary. There were no observations of active WGS
32 burrows or colonies or any active or inactive raptor nests during the 2019-2020 surveys.¹⁴⁵
33

34 Habitat categorization surveys included desktop review of USFWS, 2018 National Wetlands
35 Inventory data, 2001 National Hydrography Dataset, National Land Cover Database, 2016
36 Oregon Conservation Strategy, State Land and Water Resources Plans, 2018 Oregon
37 Biodiversity Information Center data, soil and land use data from Umatilla County. Based on the
38 results of the literature review, a field reconnaissance-level site visit was conducted on October

¹⁴⁴ Protocol-survey methods generally followed Morgan, R.L., and M. Nugent. 1999. Status and Habitat Use of the Washington Ground Squirrel (*Spermophilus washingtoni*) on State of Oregon Lands, South Boeig, Oregon in 1999. Report to the Oregon Department of Fish and Wildlife. WESAPDoc3-16 ASC Exhibit P Fish and Wildlife 2022-09-28. Attachment P-3, p.2.

¹⁴⁵ WESAPDoc3-16 ASC Exhibit P Fish and Wildlife 2022-09-28. Attachment P-3. Section 4.0, p.5; and Section 5.2, p.14.

1 31, 2018. Surveys for habitat mapping and raptor nests were then conducted concurrently with
2 the WGS surveys described above; biologists delineated areas of relatively homogenous
3 vegetation and characterized the composition and structure of habitat, with a minimum
4 mapping unit of 1-acre. Each delineated vegetation polygon was assigned a habitat type,
5 subtype and habitat category.

6
7 Botanical and wetland surveys were conducted within the 324-acre sit boundary on July 3,
8 2019, June 22, 2022, and May 19, 2022. The results of these surveys are described below as
9 they were used to inform that habitat categories within the analysis area.

10
11 The Council finds that the above-described databases, references and field surveys were
12 conducted in accordance with ODFW and other available guidance are appropriate for
13 informing habitat categorization at the site and potential impacts to state sensitive wildlife
14 species.

15 16 Habitat Categories within the Analysis Area

17
18 This standard creates requirements for mitigating impacts to fish and wildlife habitat, based on
19 the functional quantity and quality of the habitat impacted as well as the nature, extent, and
20 duration of the impact. Functional quality is presented using a habitat classification system
21 based on the function and value of the habitat it would provide to a species or group of species
22 likely to use it. ODFW policy identifies six habitat categories, with Category 1 being the most
23 valuable, and Category 6 the least valuable.

24
25 As described above, the analysis area includes the area within and extending ½-mile from the
26 site boundary. When an analysis area extends beyond the area that could be directly impacted,
27 as is the case under the Fish and Wildlife Habitat standard, the purpose is to identify whether
28 there are adjacent sensitive habitat areas, such as WGS Category 1 habitat, that would inform
29 habitat categorization within the area of potential impact. Other than the potential for WGS
30 habitat outside of the site boundary, there is not sensitive habitat outside the site boundary
31 that should be considered in the evaluation of habitat categorization.

32
33 Habitat categorization, based on habitat type, within the analysis area includes the following:

- 34
- 35 • Category 3 habitat:
 - 36 ○ Shrub-steppe (mature, big basin sagebrush; rubber rabbitbrush; green
 - 37 rabbitbrush)
 - 38
 - 39 • Category 4 habitat:
 - 40 ○ Eastside grasslands (green rabbitbrush, rubber rabbitbrush, non-native cereal
 - 41 rye, cheatgrass and bulbous bluegrass)
 - 42
 - 43 • Category 5 habitat:

- 1 ○ Eastside grasslands (green rabbitbrush, rubber rabbitbrush, cheatgrass, non-
2 native cereal rye, Russian thistle yellow starthistle, salsify, and stork’s bill)
- 3
- 4 ● Category 6 habitat:
 - 5 ○ Active agriculture
 - 6 ○ Developed areas
- 7

8 In a January 2022 comment letter, ODFW agreed with the applicant’s habitat categorization
9 presented above and in Table 5 below.¹⁴⁶ However, in a comment submitted on the draft
10 proposed order, ODFW indicated that, due to adjacent development, agriculture and
11 fragmented habitat, the proposed Category 3 and 4 habitat would not serve as functional
12 “important” habitat, and would be more appropriately categorized as Category 5 habitat. Based
13 on the appropriate desktop and field surveys and resulting data, and ODFW recommendations,
14 the Council finds that the habitat categorization may be relied upon to establish the applicable
15 mitigation goals under the standard, to be updated prior to construction as per Fish and
16 Wildlife Habitat Condition 1 below.¹⁴⁷ Figure 9: *Habitat Categories within the Analysis Area* and
17 Figure 10: *Habitat Subtypes within the Analysis Area* below present habitat mapping within the
18 analysis area.

19

¹⁴⁶ WESAPPD6-5 pASC Reviewing Agency Comment_ODFW_Rosenberg 2022-01-26. Comment 5.

¹⁴⁷ WESAPPD3 Reviewing Agency Comment ODFW Somers 2022-11-03.

1 Figure 9: Habitat Categories within the Analysis Area



1 Figure 10: Habitat Subtypes within the Analysis Area



1 IV.H.2 Habitat Impacts and Mitigation

2
 3 Habitat impacts can be temporary, temporal or permanent depending on whether the impact
 4 can be restored within 3-5 years, 5-10 years or is not recoverable and therefore considered
 5 permanent due to siting of facility structures. For this facility, all habitat impacts will occur
 6 within an approximately 3-mile perimeter fenceline and are considered permanent habitat
 7 impacts. Because all onsite impacts are considered permanent habitat impacts, and there are
 8 no temporary habitat impacts, there is not a revegetation plan or revegetation requirements
 9 for restoration of temporary habitat impacts. However, the applicant will be required to
 10 monitor all areas of disturbance prior to and during construction, and during operations, within
 11 the fenceline for site stability and noxious weeds under the requirements of the Noxious Weed
 12 Plan (see Land Use Conditions 9, 10 and 11) and ESCP (see Soil Protection Conditions 1, 2 and
 13 3).

14
 15 Permanent habitat disturbance impacts to Categories 3, 4 and 5 are preliminarily estimated at
 16 320 acres. Impacts to Category 6 habitat do not require mitigation under the standard and
 17 therefore are omitted from the habitat impact calculation. As presented in Table 5: *Summary of*
 18 *Habitat Impacts, by Category/Acres*, permanent impacts to habitat include 20 acres on Category
 19 3, 139 acres on Category 4 and 161 acres on Category 5 habitat.

20
**Table 5: Summary of Habitat Impacts, by
 Category/Acres**

Habitat Category	Habitat Subtype	Permanent Impact (Acres)
3	Shrub-steppe	20
4	Eastside Grasslands	139
5		161
6	Other Row Crops	4
Total Permanent Impacts for Categories 1-5 =		320

21
 22 *“Habitat Category 3” is essential habitat for fish and wildlife, or important habitat for*
 23 *fish and wildlife that is limited either on a physiographic province or site-specific basis,*
 24 *depending on the individual species or population.*

25
 26 The mitigation goal for Category 3 habitat is no net loss of either habitat quantity or quality.
 27 The Council interprets this to mean that both habitat quantity and quality must be preserved.
 28 The goal is achieved by avoidance of impacts or by mitigation of unavoidable impacts through
 29 reliable “in-kind, in-proximity” habitat mitigation to achieve no net loss in either pre-
 30 development habitat quantity or quality.

31
 32 *“Habitat Category 4” is important habitat for fish and wildlife species.*

1 Like Category 3, the mitigation goal for Category 4 habitat is no net loss in either existing
2 habitat quantity or quality. The Council interprets this to mean that both existing habitat
3 quantity and quality must be preserved. The goal is achieved by avoidance of impacts or by
4 mitigation of unavoidable impacts. In contrast to Category 3, mitigation options are less
5 constrained and may involve reliable “in-kind or out-of-kind, in-proximity or off-proximity”
6 habitat mitigation to achieve no net loss in either pre-development habitat quantity or quality.

7
8 *“Habitat Category 5” is habitat for fish and wildlife having high potential to become*
9 *either essential or important habitat.*

10
11 If impacts are unavoidable, the mitigation goal for Category 5 habitat is to provide a net benefit
12 in habitat quantity or quality. The Council has previously interpreted this to mean that there
13 must be some improvement in either habitat quality or quantity. To clarify the “net benefit”
14 goal, ODFW has advised: “The improvement in habitat quantity or quality achieved need not
15 rise to the level of improvement required to meet a goal of ‘no net loss’ (i.e. the level required
16 or recommended in the Mitigation Policy for Habitat Categories 2, 3, and 4).” The goal is
17 achieved by avoidance of impacts or by mitigation of unavoidable impacts through “actions that
18 contribute to essential or important habitat.”

19
20 *“Habitat Category 6” is habitat that has low potential to become essential or important*
21 *habitat for fish and wildlife.*

22
23 Impacts to Category 6 habitat does not require mitigation under the standard.

24
25 To achieve the habitat mitigation goals for permanent impacts to Category 3, 4 and 5 habitat,
26 the applicant proposes to implement a Habitat Mitigation Plan (HMP). In the draft HMP (See
27 Attachment P-5 of this order), the applicant proposes to demonstrate consistency with ODFW’s
28 mitigation goals for each applicable habitat category based on obtaining a habitat mitigation
29 area (HMA) of sufficient size and quality to provide a no net loss in habitat quantity for the
30 approximately 320 acres permanently impacted; and to implement a suite of enhancement
31 actions sufficient to achieve a no net loss in quality for Category 3 and 4 habitat and a net
32 benefit in quality for Category 5 habitat. Applicant identifies a potential HMA as the 2100-acre
33 Olex Ranch owned by Karen Kronner and Bob Gritski, located in Gilliam County. The quality of
34 the habitat at the potential Olex HMA ranges from Category 2 to 5 based primarily on its
35 vegetative characteristics and the HMA is also located within ODFW-designated mule deer
36 winter range (Category 2 habitat). To demonstrate this commitment, applicant includes a
37 recorded Memorandum of Option for Conservation Agreement is included in the draft HMP.
38 The applicant proposes mitigation acreage ratios (acres impacted to acres protected in HMA)
39 per habitat category, as presented in Table 6 below. The maximum size of the HMA is
40 approximately 239 acres.

Table 6 : Habitat Mitigation to Achieve No Net Loss in Habitat Quantity

Habitat Category	Habitat Subtype	Permanent Impact (Acres)	Goal	Mitigation Acreage Ratio	Total Mitigation Acres	Does Mitigation Acreage Ratio Meet the Quantity Goal?
3	Shrub-steppe	20	No net loss	1:1	20	Yes
4	Eastside Grasslands	139		1:1	139	Yes
5		161	Net benefit	0.5:1	80.4	Yes
6	Other row crops	4	NA			
Total Permanent Impacts for Categories 1-5 =		320	-	-	239	-

1
 2 In the draft HMP, the enhancement actions proposed to achieve a no net loss in habitat quality
 3 for Categories 3 and 4, and a net benefit in quality for Category 5 habitat impacts, include:
 4 shrub planting within 20 acres of existing shrub-steppe; weed control; seeding on a minimum of
 5 5-acres; fire control; and restricted grazing, as presented in Table 7 below.
 6

Table 7: Habitat Mitigation to Achieve No Net Loss in Habitat Quality

Habitat Category	Habitat Subtype	Permanent Impact (Acres)	Goal	Mitigation Enhancement	Total Mitigation Acres (Minimum)	Does Mitigation Enhancement Meet Quality Goal?
3	Shrub-steppe	20	No net loss	Shrub-planting; weed control	Within 20 acres; as needed	Yes
4	Eastside Grasslands	139		Seeding; weed control	5 acres; as needed	Yes
5		161	Net benefit	weed control	As needed	Yes
Total Permanent Impacts for Categories 1-5 =		320				

7
 8 Based on consultation with ODFW and the minimum mitigation acres available for
 9 enhancement within the HMA, the Council finds that the enhancement actions demonstrate
 10 the ability to achieve a no net loss in habitat quality for Category 3 and 4 impacts, and a net

1 benefit for Category 5 impacts. Further, Council finds that, prior to construction, the applicant
2 be provided an opportunity to re-evaluate habitat categorization in consultation with ODFW,
3 that would then be used in the finalization of the final HMP as outlined below.

4
5 The Council imposes a condition requiring that, prior to construction, the applicant may re-
6 evaluate the habitat categorization at the site in consultation with ODFW, and then finalize the
7 draft Habitat Mitigation Plan, including selection of an HMA, substantially similar to or with
8 similar habitat enhancement potential as that currently under review, based on a
9 preconstruction habitat assessment, and execution of a legally binding agreement to conserve,
10 enhance and maintain the HMA for the life of the proposed facility:

11
12 **Fish and Wildlife Habitat Condition 1:** Prior to construction, the certificate holder shall:

- 13 a. Indicate to the Department and ODFW if certificate holder intends to re-evaluate
14 habitat categorization at the site, and if so, consult with ODFW and Department in
15 final categorization.
- 16 b. Calculate the size of the habitat mitigation area (HMA) for permanent habitat
17 impacts, based on final habitat mitigation obligations and facility design. The
18 calculation must be based on the ratios and methods presented in the Final Order on
19 the ASC and provided to the Department for review and approval.
- 20 c. Provide evidence to the Department demonstrating that an agreement of outright
21 purchase, conservation easement or similar conveyance has been executed for the
22 enhancement and protection of the HMA under the requirements of the Habitat
23 Mitigation Plan, to extend for the life of the facility.
- 24 d. Submit a final Habitat Mitigation Plan to the Department for review and approval,
25 substantially similar to the draft plan provided in Attachment P-5 of the Final Order
26 on the ASC.

27 [PRE-FW-01]

28
29 **Fish and Wildlife Habitat Condition 2:** During operation, the certificate holder shall
30 implement and adhere to the requirements of the Habitat Mitigation Plan, as approved
31 per Fish and Wildlife Condition 1.

32 [OPR-FW-01]

33
34 The draft HMP includes a Memorandum of Option of Conservation Easement executed on April
35 13, 2022 for one or more easements for land conservation purposes over approximately 240
36 acres; and two maps demonstrating the location of the proposed HMA, the underlying habitat
37 type and enhancement areas. Based on this evidence and the evaluation of habitat, habitat
38 categorization and applicable mitigation goals, and compliance with the above-proposed
39 conditions, the Council finds that the applicant has demonstrated that permanent impacts to
40 wildlife habitat will be mitigated in a manner consistent with ODFW's fish and wildlife habitat
41 mitigation policy.

42
43 IV.H.3 Wildlife Impacts and Mitigation

- 1 The site boundary contains suitable habitat for 9 state sensitive birds and two eagle species, as
- 2 presented in Table 8: *State Sensitive Species with the Potential to Occur within the Analysis Area*
- 3 below.¹⁴⁸
- 4

¹⁴⁸ The two eagle species identified are not state sensitive species, “bald eagles (*Haliaeetus leucocephalus*) and golden eagles (*Aquila chrysaetos*) are ... species of concern protected under the Bald and Golden Eagle Protection Act (BGEPA).

Table 8: State Sensitive Species with the Potential to Occur within the Analysis Area

Common Name (<i>Scientific Name</i>)	ODFW Status in Columbia Plateau ¹	Expected Habitat	Observed (including Quantity) or Expected Occurrence within Analysis Area	Potential Use of Habitat within Analysis Area
Birds				
bald eagle (<i>Haliaeetus leucocephalus</i>)	N/A	Nests in forested areas adjacent to large bodies of water. Nests in trees, rarely on cliff faces and ground nests in treeless areas. Known to scavenge opportunistically on carcasses in otherwise unsuitable habitat particularly during migration.	Not observed during surveys.	Potential scavenging and foraging habitat.
golden eagle (<i>Aquila chrysaetos</i>)	N/A	Usually nests on cliffs but also can nest in trees. Breeds in open and semi open habitats at a variety of elevations, in tundra, shrublands, grasslands, woodland-brushlands, and coniferous forests, farmland and riparian areas. Typically forages in open habitats like grasslands, areas with steppe-like vegetation.	Not observed during surveys.	Potential foraging habitat.
Brewer's sparrow (<i>Spizella breweri</i>)	S	Abundant east of the Cascades in sagebrush communities.	Not observed during surveys.	Limited sagebrush habitat available.
Burrowing owl (<i>Athene cunicularia hypugaea</i>)	SC	Nests in earthen burrows in open shrub-steppe regions and grasslands.	Not observed during surveys.	Limited nesting and foraging habitat available.

Table 8: State Sensitive Species with the Potential to Occur within the Analysis Area

Common Name (<i>Scientific Name</i>)	ODFW Status in Columbia Plateau ¹	Expected Habitat	Observed (including Quantity) or Expected Occurrence within Analysis Area	Potential Use of Habitat within Analysis Area
Common nighthawk (<i>Chordeiles minor</i>)	S	Nests in open landscapes with little ground cover and is most abundant in sagebrush and rock scablands of eastern Oregon.	Not observed during surveys.	Limited nesting and foraging habitat available.
Ferruginous hawk (<i>Buteo regalis</i>)	SC	Occurs in the open landscapes east of the Cascades, most common in the foothills of the Blue Mountains. Nests on the ground or in lone or peripheral trees.	Not observed during surveys.	Foraging habitat available.
Grasshopper sparrow (<i>Ammodramus savannarum</i>)	S	Prefers open grasslands, found in scattered colonies along unforested northern slopes of the Blue Mountains.	Three individuals observed in Eastside grassland.	Breeding and foraging habitat available.
Loggerhead shrike (<i>Lanius ludovicianus</i>)	S	Breeds in open habitats east of the Cascades.	Not observed during surveys.	Limited potential habitat.
long-billed curlew (<i>Numenius americanus</i>)	SC	Locally common breeder in open grassland areas east of the Cascades. It is most abundant in the Columbia River basin.	Three individuals observed during surveys in eastside grassland habitat.	Breeding habitat available.
Sagebrush sparrow (<i>Artemisiospiza nevadensis</i>)	SC	Widespread throughout the extensive shrub-steppe of eastern Oregon. Usually associated with big sagebrush.	Not observed during surveys.	Limited sagebrush habitat available.

Table 8: State Sensitive Species with the Potential to Occur within the Analysis Area

Common Name (<i>Scientific Name</i>)	ODFW Status in Columbia Plateau ¹	Expected Habitat	Observed (including Quantity) or Expected Occurrence within Analysis Area	Potential Use of Habitat within Analysis Area
Swainson's hawk (<i>Buteo swainsoni</i>)	S	Prefers bunchgrass prairies of eastern Oregon and common in the foothills of the Blue Mountains. Nests typically in solitary tree, bush, or small grove.	Six individuals observed foraging in eastside grassland and Shrub-steppe habitat during surveys.	Foraging habitat available.
Notes: ODFW Status: S = Sensitive Species, SC = Critical Sensitive Species				

1

1 Potential impacts to state-sensitive species from facility construction include injury to or loss
2 (fatality) due to collision with or crushing from construction equipment vehicles; and, general
3 disturbance (noise and visual), which can interrupt wildlife behavior. In addition, there are risks
4 to wildlife species during facility operations from structure collision, vehicle collisions,
5 disturbance related to artificial lighting and introduction or spread of noxious weeds. To
6 minimize impacts to wildlife species, the applicant proposes to implement numerous design
7 measures, construction restrictions and a long-term wildlife monitoring plan.

8
9 All of the applicant's proposed measures are presented in ASC Exhibit P Section 7.1.1 and 7.1.2,
10 which have been converted into measures that can be verified by the Council and included in a
11 Wildlife Monitoring and Adaptive Management Plan provided as Attachment P-3 of this order.
12 To ensure that the applicant adheres to its representations and to allow the Department the
13 ability to monitor and evaluate implementation of the design and construction-related
14 avoidance measures, the Council imposes the following conditions:

15
16 **Fish and Wildlife Habitat Condition 3:** Prior to construction, the certificate holder shall
17 provide evidence to the Department that the design measures included in the Wildlife
18 Monitoring and Adaptive Management Plan (Attachment P-3 of the Final Order on the
19 ASC) have been included in the final facility design and construction contractor
20 contracts, as applicable.

21 [PRE-FW-02]

22
23 **Fish and Wildlife Habitat Condition 4:** During construction, the certificate holder shall
24 adhere to the requirements of the Wildlife Monitoring and Adaptive Management Plan
25 (Attachment P-3 of the Final Order on the ASC). Monitoring records shall be maintained
26 throughout construction and included in the semi-annual report submitted to the
27 Department pursuant to OAR 345-026-0080.

28 [CON-FW-01]

29
30 **Fish and Wildlife Habitat Condition 5:** During operation, the certificate holder shall
31 adhere to the requirements of the Wildlife Monitoring and Adaptive Management Plan
32 (Attachment P-3 of the Final Order on the ASC). Monitoring records shall be maintained
33 throughout operation and included in the annual report submitted to the Department
34 pursuant to OAR 345-026-0080.

35 [OPR-FW-02]

36
37 **Conclusions of Law**

38
39 Based on the foregoing findings of fact and conclusions, and subject to compliance with the site
40 certificate conditions, the Council finds that the design, construction and operation of the

1 facility, with mitigation, would satisfy the requirements of the Council’s Fish and Wildlife Habitat
2 standard.

3
4 **IV.I Threatened and Endangered Species: OAR 345-022-0070**

5
6 *To issue a site certificate, the Council, after consultation with appropriate state agencies,*
7 *must find that:*

8
9 *(1) For plant species that the Oregon Department of Agriculture has listed as*
10 *threatened or endangered under ORS 564.105(2), the design, construction and*
11 *operation of the proposed facility, taking into account mitigation:*

12
13 *(a) Are consistent with the protection and conservation program, if any, that the*
14 *Oregon Department of Agriculture has adopted under ORS 564.105(3); or*

15
16 *(b) If the Oregon Department of Agriculture has not adopted a protection and*
17 *conservation program, are not likely to cause a significant reduction in the*
18 *likelihood of survival or recovery of the species; and*

19
20 *(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as*
21 *threatened or endangered under ORS 496.172(2), the design, construction and*
22 *operation of the proposed facility, taking into account mitigation, are not likely to*
23 *cause a significant reduction in the likelihood of survival or recovery of the species.*

24
25 **Findings of Fact**

26
27 For the purposes of this standard, threatened and endangered species are those identified as
28 such by either the Oregon Department of Agriculture or the Oregon Fish and Wildlife
29 Commission.¹⁴⁹

30
31 The analysis area for threatened or endangered plant and wildlife species, as defined in the
32 Project Order, is the area within and extending 5-miles from the site boundary.

33
34 *Desktop Review*

35
36 In order to identify threatened and endangered species that might occur within the analysis
37 area, the applicant conducted a desktop review using information provided by the Oregon
38 Biodiversity Information Center (ORBIC) and the Oregon Department of Fish and Wildlife
39 (ODFW) and additional sources of information regarding threatened and endangered species
40 published by ORBIC, ODFW, U.S. Fish and Wildlife Service, the Burke Museum of Natural History

¹⁴⁹ Although the Council’s standard does not address federally-listed threatened or endangered species, applicants must comply with all applicable federal laws, including laws protecting those species, independent of the site certificate.

1 and Culture Herbarium, the Oregon Flora Project, and the Washington Department of Natural
2 Resources.¹⁵⁰

3
4 The applicant's literature review indicated that one endangered animal species, Washington
5 ground squirrel (*Urocitellus washingtoni*), had the potential to occur within the analysis area.
6 The desktop review identified two historic occurrence records for Washington ground squirrel
7 (WGS) within the analysis area, with the most recent of the two recorded in 1979.¹⁵¹ Wolverine
8 (*Gulo gulo*), a state threatened species was also considered in the desktop review but was not
9 specifically surveyed for due to lack of suitable habitat.

10
11 The literature review identified one threatened plant species, Lawrence's milkvetch (*Astragalus*
12 *collinus* var. *laurentii*), with the potential to occur within the analysis area. The desktop review
13 identified one occurrence record for Lawrence's milkvetch at a location southeast of Echo,
14 approximately 3 miles south of the site boundary.¹⁵²

15
16 *Field Surveys*

17
18 Washington Ground Squirrel Surveys

19 Surveys for Washington ground squirrel (WAGS/WGS) were conducted on April 22 and 23, May
20 21 and 22, 2019, and March 22, May 9 and 10, 2020. Surveyors walked linear transects spaced
21 165 to 230 feet apart in suitable habitat, including non-agricultural habitats and non-developed
22 lands, within the site boundary and within an area extending 1000 feet from the site boundary
23 unless separated by a road, other habitat barrier, or if access from landowners was not granted.
24 Surveys generally followed methodology developed in the Status and Habitat Use of the WAGS
25 on State of Oregon Lands (Morgan and Nugent 1999). Details on the survey methods are
26 provided in ASC Exhibit P, Attachment P-3. No active Washington ground squirrel colonies were
27 observed within the survey area during surveys.¹⁵³

28
29 Botanical Surveys

30 The applicant conducted botanical surveys on July 3, 2019, and June 22, 2020. The survey
31 schedule was chosen to cover the identification period for Lawrence's milkvetch (*Astragalus*
32 *collinus* var. *laurentii*) and dwarf evening-primrose (*Eremothera* [*Camissonia*] *pygmaea*). The
33 surveys were conducted outside of the recommended identification period for sessile
34 mousetail, but this species' vernal pool habitat was considered unlikely to occur in the analysis
35 area.¹⁵⁴ Botanical field surveys were conducted using the Intuitive Controlled Survey Method.
36 No occurrences of Lawrence's milkvetch, dwarf evening-primrose, or sessile mousetail were
37 observed during the surveys.

38

¹⁵⁰ WESAPPD03-17 ASC Exhibit Q TE Species 2022-09-28, Section 2.1.

¹⁵¹ WESAPPD03-17 ASC Exhibit Q TE Species 2022-09-28, Section 3.1.

¹⁵² WESAPPD03-17 ASC Exhibit Q TE Species 2022-09-28, Section 3.2.1.

¹⁵³ WESAPPD03-17 ASC Exhibit Q TE Species 2022-09-28, Section 3.1.

¹⁵⁴ WESAPPD03-17 ASC Exhibit Q TE Species 2022-09-28, Section 2.2.2.

1 *Mitigation of Potential Impacts to Threatened and Endangered Species*
2

3 As described above, one endangered animal species and one threatened plant species have the
4 potential to occur in the analysis area. No occurrences of either species were observed during
5 surveys conducted in support of the application.
6

7 The analysis area includes potentially suitable habitat for WGS, the endangered animal species
8 with the potential to occur in the analysis area. While no active WGS colonies were observed
9 during initial surveys, survey results are only considered valid for three years based on the
10 species' dispersal and burrowing patterns. While the 2019 and 2020 survey data may be relied
11 upon for this evaluation, additional preconstruction surveys of potentially suitable habitat
12 within 1,000 feet of ground disturbing activities, where access is permitted, are necessary to
13 ensure avoidance and minimize of impacts to the survivability of the species. The Council
14 imposes the following conditions to ensure that WGS and their habitat are avoided:
15

16 **Threatened and Endangered Species Condition 1:** Prior to construction of the facility,
17 facility component or phase, as applicable, that would occur within suitable Washington
18 Ground Squirrel (WGS) habitat:

- 19 a. The certificate holder must conduct protocol-level WGS surveys within 1000 feet of any
20 ground disturbing activity, where accessible. Where suitable WGS habitat is not
21 accessible (e.g., on adjacent properties where access is not granted) an assessment
22 must be conducted from accessible areas and based on desktop sources using methods
23 similar to those used during the pre-application assessment, which was conducted
24 consistent with ODFW recommendations.
25 b. Suitable WGS habitat can be defined as any terrestrial habitat that has not been
26 developed e.g. active agricultural lands, paved roads), particularly shrub-steppe and
27 grassland habitats. Protocol-level surveys include two sets of surveys at least two weeks
28 apart, in the active squirrel season (March 1 to May 31), in suitable habitat that is
29 contiguous with areas of ground disturbing activity (e.g., excluding areas across a paved
30 road from ground disturbance). Protocol-level surveys are valid for three (3) years. If
31 construction does not commence the year following the protocol-level survey, any
32 active burrows or colonies shall be checked prior to the year of construction to evaluate
33 any changes that may occur in the location and delineation of Category 1 and 2 habitat.
34 c. The certificate holder shall submit the WGS Survey Report to the Department and
35 ODFW. The certificate holder shall clearly identify whether WGS were observed or
36 colonies and burrows were identified, and include a facility layout map demonstrating
37 how temporary and permanent impacts to WGS and WGS habitat will be avoided (i.e.,
38 Category 1 habitat associated with WGS colonies and burrows) will be avoided.

39 [PRE-TE-01]
40

41 **Threatened and Endangered Species Condition 2:** If the WGS surveys required under
42 Threatened and Endangered Species Condition 1 identify Category 1 WGS habitat (buffer
43 extending 785-feet around each active burrow, excluding areas not suitable for WGS
44 foraging or burrow establishment) or Category 2 WGS habitat (buffer extending 4,136-feet

1 from the delineated Category 1 habitat, excluding areas of habitat types not suitable for
2 WGS foraging or burrow establishment), during construction of the facility, facility
3 component or phase, the certificate holder shall:

- 4 a. Map, flag and avoid delineated Category 1 WGS habitat.
- 5 b. Check the location of active burrow or colonies in subsequent years of construction to
6 evaluate any changes that may occur in the location and delineation of Category 1
7 habitat.

8 [CON-TE-01]

9
10 Based on compliance with the above conditions, the Council finds that the design, construction
11 and operation of the proposed facility would not be likely to significantly reduce the likelihood
12 of survivability or recovery of Washington Ground Squirrel.

13
14 The applicant conducted surveys for Lawrence’s milkvetch, the threatened plant species with
15 the potential to occur in the analysis area, and for other candidate species with potentially
16 suitable habitat in the analysis area. The applicant did not observe occurrences of Lawrence’s
17 milkvetch during the surveys. ODA agrees with the applicant’s survey results, and considers the
18 likelihood of future Lawrence’s milkvetch occurrences within the surveyed areas to be low.¹⁵⁵

19 Based on the low likelihood Lawrence’s milkvetch occurrences, ODA clarified that
20 preconstruction surveys are unnecessary given the expected construction commencement to
21 occur within 3 years, if the site certificate is approved. Because these species were not
22 observed during initial surveys and are not known to occur in the analysis area, the Council
23 finds that the design, construction and operation of the facility would not be likely to cause a
24 significant reduction in the likelihood of survival or recovery of the species. To ensure the
25 avoidance of any potential impacts to the survivability or recovery of the Lawrence’s milkvetch,
26 the Council imposes the following condition:

27
28 **Threatened and Endangered Species Condition 3:** Prior to and during construction of the
29 facility, facility component or phase, as applicable, the certificate holder shall avoid via
30 mapping and flagging, based on a 100 foot buffer (unless otherwise reviewed and approved
31 by the Department and ODA), any incidentally identified occurrence(s) of Lawrence’s
32 milkvetch.

33 [CON-TE-02]

34
35 Based on compliance with the above condition, the Council finds that the design, construction
36 and operation of the proposed facility would not be likely to significantly reduce the likelihood
37 of survivability or recovery of the Lawrence’s milkvetch.

38
39 **Conclusions of Law**

40

¹⁵⁵ WESAPDoc7-1 Reviewing Agency Comment ODA NPCS_Brown 2022-10-21.

1 Based on the foregoing findings of fact and conclusions, and subject to compliance with the site
2 certificate conditions, the Council finds that the facility would comply with the Council’s
3 Threatened and Endangered Species standard.

4
5 **IV.J Scenic Resources: OAR 345-022-0080**

6
7 *(1) Except for facilities described in section (2), to issue a site certificate, the Council*
8 *must find that the design, construction and operation of the facility, taking into*
9 *account mitigation, are not likely to result in significant adverse impact to scenic*
10 *resources and values identified as significant or important in local land use plans,*
11 *tribal land management plans and federal land management plans for any lands*
12 *located within the analysis area described in the project order.*

13 ***156

14 **Findings of Fact**

15
16 The Scenic Resources Standard requires the Council to find that visibility of facility structures,
17 plumes, vegetation loss and landscape alterations would not cause a significant adverse impact
18 to identified scenic resources and values. To be considered under the standard, scenic
19 resources and values must be identified as significant or important in a local land use plan,
20 tribal land management plan, state land management plan or federal land management plan.

21
22 The analysis area for the Scenic Resources standard is the area within and extending 10-miles
23 from the site boundary.

24
25 **Applicable Land Use and Management Plans**

26
27 The analysis area for scenic resources includes parts of two Oregon counties, one Washington
28 county, four Oregon municipalities, and land administered by the Oregon Department of Fish
29 and Wildlife (ODFW), the U.S. Bureau of Land Management (BLM), the U.S. Fish and Wildlife
30 Service (USFWS), and the U.S. Army Corps of Engineers (USACE). No Tribal lands are located
31 within the analysis area. Land use and management plans applicable to lands within and
32 extending 10-miles of the proposed site boundary are presented in Table 9 below.

33
34
35
36
37

¹⁵⁶ The facility is not a special criteria facility under OAR 345-015-0310; therefore OAR 345-022-0080(2) is not applicable.

1

Table 9: Identification of Applicable Local, State, Tribal, and Federal Land Use and Management Plans for Lands within 10-Mile Scenic Resources Analysis Area

Governmental Agency	Plan
Local (County)	
Morrow County	Morrow County Comprehensive Plan (2013)
Umatilla County	Umatilla County Comprehensive Plan (1984, 2018)
Benton County (WA)	Benton County Comprehensive Plan (2020)
Local (City)¹	
City of Umatilla	City of Umatilla Comprehensive Land Use Plan (2019)
City of Hermiston	City of Hermiston Comprehensive Plan and Development Code (2021)
City of Stanfield	City of Stanfield Comprehensive Plan (2001) and Development Code (2017)
City of Echo	City of Echo Comprehensive Plan (2005) and Zoning Administrative Regulations (2015)
State	
Oregon Department of Fish and Wildlife	Columbia Basin Wildlife Areas Management Plan (2008)
Oregon Parks and Recreation Department	Hat Rock State Park Master Plan (1983)*
Federal	
BLM, Vale District	Baker Resource Management Plan (BLM 1989)
USFWS	McNary and Umatilla National Wildlife Refuges Comprehensive Conservation Plan and Environmental Assessment (USFWS 2007)
US Army Corps of Engineers	Lake Umatilla and Lake Wallula Recreation Management Areas – John Day Lock and Dam Master Plan (1976) and McNary Shoreline Management Plan (2012)
*This plan was not identified in ASC Exhibit R.	

2

3 Both the applicant and the Council reviewed the listed plans for identification of scenic
4 resources or values as significant or important.

5

6 The Morrow County Comprehensive Plan does not identify any significant or important scenic
7 resources.¹⁵⁷

8

9 The 1983 Umatilla County Comprehensive Plan, as amended June 1, 2022, identifies Wallula
10 Gap as a significant or important scenic resource.¹⁵⁸ Wallula Gap, which is a large water gap in

¹⁵⁷ WESAPPD03-18 ASC Exhibit R Scenic Resources 2022-09-28, Section 3.1., citing Morrow County Comprehensive Plan – Natural Resources Element (2013), page 11. Accessed 6/28/2022 at: https://www.co.morrow.or.us/sites/default/files/fileattachments/planning/page/991/6_of_19_-_mc_comp_plan_-_goals_5_6.pdf

¹⁵⁸ Umatilla County Comprehensive Plan, Page 8-12.

1 the Columbia River, is located more than 20 miles from the proposed facility site, and is not
2 within the Analysis Area for Scenic Resources. The Umatilla County Comprehensive plan further
3 states that “[i]t is the position of Umatilla County that Comprehensive Plan designations and
4 zoning ordinances mitigate other scenic and aesthetic conflicts through ordinance criteria.”¹⁵⁹
5 The facility’s compliance with applicable substantive criteria from the Umatilla County
6 Development Ordinance is discussed in Section IV.E of this order.

7
8 The Benton County (Washington) Comprehensive Plan establishes a goal to ““Conserve visually
9 prominent naturally vegetated steep slopes and elevated ridges that define the Columbia Basin
10 landscape and are uniquely a product of the ice age floods.” The plan specifically discusses the
11 protection of the Rattlesnake uplift formation, specifically Rattlesnake, Red, Candy, and Badger
12 mountains, and the Horse Heaven Hills. Applicant states that this could be interpreted to
13 identify the formation as a significant or important scenic resource; however, there are no
14 features located within the analysis area.¹⁶⁰

15
16 The City of Umatilla Comprehensive Land Use Plan (2019) does not identify any significant or
17 important scenic resources.¹⁶¹

18
19 The City of Hermiston Comprehensive Plan (2020) explains that designated Open Space areas
20 within the Urban Growth Boundary of the City, including areas within the 100- year floodplain
21 of the Umatilla River, the wetlands area in the northeast portion of Hermiston and the OSU
22 Agricultural Experimentation Station provide visual relief and passive recreational activities.
23 Policy 16 of the plan then explains that the City will acquire and develop additional parks and
24 recreational facilities which possess scenic qualities.¹⁶² Because no specific scenic sites or views
25 are identified, the applicant concluded that the plan does not identify significant or important
26 scenic resources.¹⁶³

27
28 The designated Open Space areas within the 100-year floodplain of the Umatilla River appear to
29 have been designated as Open Space as an interim floodplain ordinance.¹⁶⁴ Because these areas
30 appear to be designated to address a natural hazard rather than to protect a scenic resource or
31 to provide visual relief, the Council concurs that these areas are likely not intended to be
32 considered important scenic resources. The Council does not agree with the applicant’s
33 reasoning with regards to the remaining areas zoned as Open Space; however, as discussed
34 further below the Applicant’s ZVI analysis indicates that the facility would not be visible from

¹⁵⁹ Umatilla County Comprehensive Plan, Page 8-10.

¹⁶⁰ WESAPDoc3-18 ASC Exhibit R Scenic Resources 2022-09-28, Section 3.1.3.

¹⁶¹ City of Umatilla Comprehensive Land Use Plan (2019), pg. 3

¹⁶² City of Hermiston Comprehensive Pan (2020), page III-17

¹⁶³ WESAPDoc3-18 ASC Exhibit R Scenic Resources 2022-09-28, Section 3.2.2.

¹⁶⁴ City of Hermiston Comprehensive Plan, page III-10.

1 either wetlands area in the northeast portion of Hermiston or the Oregon State University
2 Agriculture Research and Extension Center.

3
4 The City of Stanfield Comprehensive Plan (2003) does not identify specific scenic resources as
5 significant or important.¹⁶⁵

6
7 The City of Echo Comprehensive Plan (2005) does not identify specific scenic resources as
8 significant or important.¹⁶⁶

9
10 The Oregon Department of Fish and Wildlife’s Management Plan for the Columbia Basin
11 Wildlife Areas (2008) does not discuss scenic resources and does not identify specific scenic
12 resources as significant or important.¹⁶⁷

13
14 The Hat Rock State Park Master Plan (1983) identifies views of Hat Rock, Boat Rock, and the
15 Columbia River as providing important scenic qualities and elements of scenic interest.

16
17 The Baker Resource Management Plan, which provides management direction for lands
18 administered by the Bureau of Land Management in Morrow, Umatilla, Union, and Baker
19 County, identifies 151,711 acres of land identified as areas of high-scenic quality. None of these
20 areas are located within the analysis area. The plan also states that the Oregon Trail Area of
21 Critical Environmental Concern (ACEC) will be managed to preserve the areas “unique historic
22 resource and visual qualities.” As a result of this management direction, the applicant
23 concludes that the Oregon Trail ACEC is a significant scenic resource. The Council concurs.

24
25 The Comprehensive Conservation Plan and Environmental Assessment for the McNary and
26 Umatilla National Wildlife Refuges (2007) does not identify specific scenic resources as
27 significant or important.

28
29 The John Day Lock and Dam Master Plan (USACE 1976), and McNary Shoreline Management
30 Plan (USACE 2012) do not identify specific scenic resources as significant or important.

31
32 Visual Impacts

33
34 Based on the analysis of Land Use Management Plans applicable to lands within the analysis
35 area, significant or important scenic resources that could potentially be affected by the
36 construction and operation of the facility include: wetlands area in the northeast portion of
37 Hermiston which are designated as Open Space, the Oregon State University Agriculture
38 Research and Extension Center, views of Hat Rock, Boat Rock, and the Columbia River within

¹⁶⁵ City of Stanfield Comprehensive Plan (2003), page 6.

¹⁶⁶ City of Echo Comprehensive Plan (2005), page 3.

¹⁶⁷ ODFW. 2008. Columbia Basin Wildlife Areas Management Plan.

1 Hat Rock State Park, and the Echo Meadows parcel of the Oregon Trail Area of Critical
2 Environmental Concern (ACEC).

3
4 The applicant conducted a zone of visual influence (ZVI) analysis to determine whether the
5 facility would potentially be visible from the protected areas in the analysis area. The ZVI
6 analysis assumed that the facility would include solar arrays with a maximum height of 16 feet
7 and a substation, and equipment with a maximum height of 30 feet. The impacts of these
8 modeled components were expected to be representative of impacts from other facility
9 components. The analysis used a “bare-earth” modeling approach, meaning that it only
10 considers the effects of topography and does not account for the effects of distance, lighting,
11 weather, atmospheric attenuation factors, vegetation, or buildings.

12
13 The applicant ZVI analysis indicates that the facility would not be visible from either the
14 wetlands area in the northeast portion of Hermiston or the Oregon State University Agriculture
15 Research and Extension Center, which are both designated as Open Space in the City of
16 Hermiston Comprehensive Plan. As a result, the Council finds that the facility would not impact
17 these resources. Discussion of potential impacts to resources within Hat Rock State Park and
18 the Echo Meadows parcel of the Oregon Trail ACEC are discussed further below.

19
20 Hat Rock State Park

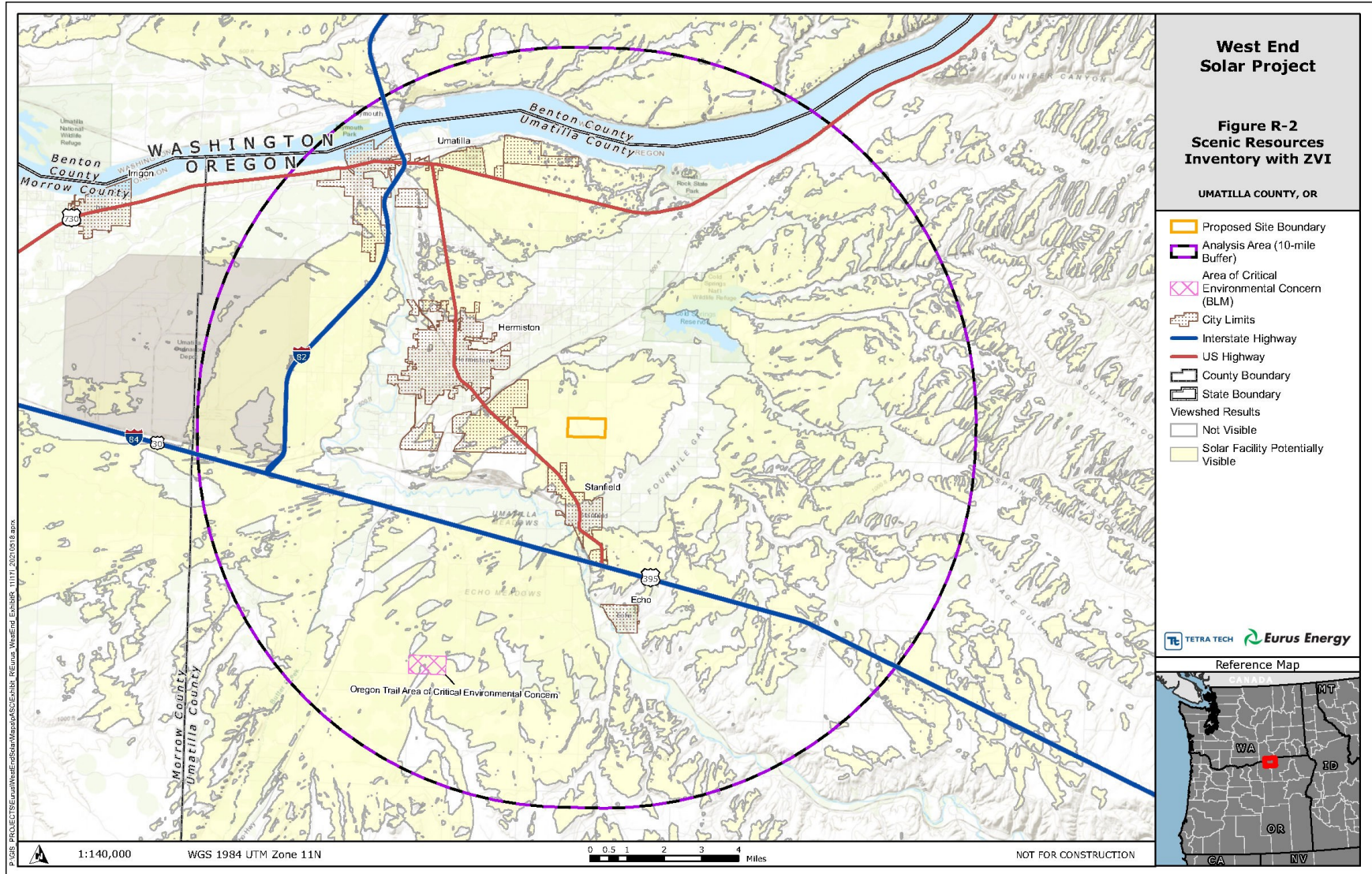
21 The applicant’s viewshed analysis indicates that the facility is potentially visible from some
22 higher elevation areas of Hat Rock State Park at a background distance (more than 5 miles) but
23 would not be visible from developed use areas. In addition, due to the orientation of the facility
24 from the park, views of important scenic resources, including Hat Rock, Boat Rock, and the
25 Columbia River are not likely to be affected by the construction or operation of the facility.
26 Based on the limited visibility, viewing distance, and low visual contrast, the Council finds that
27 visual impacts of the facility on Hat Rock State Park would be less than significant.

28
29 Oregon Trail ACEC

30 The applicant’s viewshed analysis indicates that the facility would be visible from much the
31 Echo Meadows Parcel of the Oregon Trail ACEC at a background distance (greater than 5 miles.)
32 Visitors to the ACEC viewing Oregon Trail ruts and interpretive signage would likely be oriented
33 to the North, but some viewers may be oriented to the Northwest in the direction of the
34 facility. Existing views in the direction of the facility would include wind turbines, transmission
35 lines, agricultural structures, center-pivot agricultural irrigation systems and urban
36 development in the City of Stanfield which would limit the visual contrast introduced by the
37 facility, and in some cases, would screen views of facility components or structures. Due to the
38 viewing distance, low visual contrast, and high level of existing development within the affected
39 viewshed, the Council finds that the visual impacts of the facility on the Echo Meadows Parcel
40 of the Oregon Trail ACEC would be less than significant.

1

Figure 11: Applicant's ZVI Analysis for Scenic Resources within 10-Mile Analysis Area



2

1 Monitoring and mitigation conditions

2 While no potential significant adverse impacts to scenic resources to significant were identified,
3 the applicant proposed to incorporate the following mitigation features into its design.

- 4
- 5 • Use solar modules with antireflective coating to minimize the potential for glare.
- 6 • Limit the length, if any, of overhead collector lines.
- 7 • Use permanent lighting fixtures with down shielding to limit off-site lighting.
- 8 • Limit signage to those needed for manufacturer’s or installer’s identification,
9 appropriate warning signs, or owner identification.

10

11 While the Council believes these proposals should be viewed as binding commitments by the
12 applicant, the Council does not believe that additional conditions are required, because the
13 facility would be constructed and operated substantially as described in the site certificate, and
14 because the applicant proposes to use antireflective coating and underground most collector
15 lines in Exhibit B of the ASC, and requirements for down shielding on lighting and limitations on
16 signage imposed under Land Use Conditions 3, 4 and 5.

17

18 **Conclusion of Law**

19

20 Based on the foregoing findings of fact, the Council concludes that the design, construction, and
21 operation of the facility would not be likely to result in significant adverse impacts to any scenic
22 resource identified as significant or important in a local, tribal, or federal land or resource
23 management plan, in compliance with Council’s Scenic Resources standard.

24

25 **IV.K Historic, Cultural, and Archaeological Resources: OAR 345-022-0090**

26

27 *(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the*
28 *Council must find that the construction and operation of the facility, taking into account*
29 *mitigation, are not likely to result in significant adverse impacts to:*

30

31 *(a) Historic, cultural or archaeological resources that have been listed on, or would*
32 *likely be listed on the National Register of Historic Places;*

33

34 *(b) For a facility on private land, archaeological objects, as defined in ORS*
35 *358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and*

36

37 *(c) For a facility on public land, archaeological sites, as defined in ORS 358.905(1)(c).*

38

39 *(2) The Council may issue a site certificate for a facility that would produce power from*
40 *wind, solar or geothermal energy without making the findings described in section (1).*
41 *However, the Council may apply the requirements of section (1) to impose conditions on*
42 *a site certificate issued for such a facility.*

43 * * *

44

1 **Findings of Fact**

2

3 Information about Historic, Cultural and Archaeological Resources is located in ASC Exhibit S,
4 where information concerning the location of archaeological sites or objects may be exempt
5 from public disclosure under ORS 192.345(11)¹⁶⁸.

6

7 The analysis area for Historic, Cultural and Archaeological Resources as identified in the Project
8 Order is the area within the site boundary, and for aboveground resources, including Built
9 Environment, Traditional Cultural Properties or Historic Properties of Religious and Cultural
10 Significance to Indian Tribes, the analysis area is the area within and extending 1-mile from the
11 site boundary.¹⁶⁹ The entire 324-acre site boundary was field surveyed for archaeological and
12 historic resources. The expanded field survey area for historic built environment resources was
13 based upon the findings of the archival research for the one mile beyond the site boundary.

14

15 *Description of Discovery Measures*

16

17 Discovery measures included desktop analysis consisting of a review of State Historic
18 Preservation Office (SHPO) records (Oregon Archaeological Records Remote Access and Oregon
19 Historic Sites Database) for previous surveys and known recorded archaeological or
20 historic/built-environment resources within the site boundary and the analysis area, as well as
21 historic maps, aerial photographs, and records on file with the Umatilla County Tax Assessor's
22 Office. For historic-era resources, archival sources such as historic maps and historic
23 newspapers were reviewed online to develop a chain of title for the property and identify
24 whether the properties are associated with an important individual or event in local, state, or
25 national history. In addition, local libraries were visited.

26 Discovery measures also included applicant and Department coordination with affected Tribal
27 Governments; the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) and
28 Confederated Tribes of Warm Springs (CTWS). The applicant coordinated directly with the
29 CTUIR November 11, 2020 and May 12, 2021, where the Tribe was provided a copy confidential
30 survey report (Exhibit S, Attachment S-1) for comments. The Department requested comments
31 from CTUIR and CTWS on the facility on November 18, 2021, and on September 27, 2022. The
32 applicant indicated that the CTWS did not express interest in the project, and the Tribe did not
33 respond to Department comment requests.

34 In April 2020, the applicant's qualified archaeologists conducted a Phase I pedestrian survey of
35 the entire 324-acre site boundary. Results of the desktop studies of prior surveys in the analysis
36 area indicated a very low density of previously recorded archaeological resources in the analysis
37 area supported the low probability of subsurface resources and as such, no subsurface probing
38 during the survey was warranted. The pedestrian surveys were conducted following the Oregon
39 SHPO guidelines which included archaeologist crews walking taking observations spread out in

¹⁶⁸ The site boundary does not encompass public lands; therefore, OAR 345-022-0090(1)(c) is not applicable.

¹⁶⁹ WESAPPD08 Expedited Review Project Order 2022-02-10. Table 3.

1 line at 20-meter intervals (i.e., transects) and spatial control was maintained through the use of
2 1:24,000 scale maps and Global Positioning System (GPS) units with sub-meter accuracy.
3 Ground surface visibility varied between fair (greater than 30 percent) and excellent (greater
4 than 75 percent) throughout the analysis area.¹⁷⁰
5

6 Additional historic built-environment field surveys were conducted, based on SHPO comments,
7 for a total of eight tax parcels that archival research identified as containing historic buildings.
8 Historic resources/built environment field surveys were conducted in April 2022 based on the
9 results of the archival research showing parcels with historic-era structures. A comprehensive
10 study of each property was completed to evaluate the significance of each building for listing on
11 the NRHP, which is discussed further in this section.
12

13 *Survey Results and Impacts Assessment*

14 *Tribal Resources*

15
16
17 In response to Department comment requests, the CTUIR provided comments on the
18 application indicating that they had reviewed the archaeological report the applicant provided
19 them, and that location of the proposed facility does not appear to have any archaeological
20 concerns.¹⁷¹ The letter concludes that the CTUIR does not have cultural resource concerns at
21 the time the letter was submitted.
22

23 A plan outlining the procedures for inadvertent discoveries (Draft Inadvertent Discovery Plan or
24 IDP) during construction has been drafted and was reviewed by CTUIR as part of their review of
25 ASC Exhibit S Attachment S-1. A draft IDP, as amended based on updated contact information
26 provided by CTUIR¹⁷², is provided as Attachment S-3 of this order. The IDP includes minimum
27 avoidance buffers/markers around cultural resources and procedures to follow in the unlikely
28 event of a discovery of an archaeological resource during construction. In its letter to the
29 Department, the CTUIR acknowledges the IDP's inclusion in ASC Exhibit S and indicate that they
30 appreciate the inclusion of the Inadvertent Discovery Plan (IDP) in the ASC.¹⁷³
31

32 The Council imposes Historic, Cultural, and Archaeological Resources Condition 1 to require
33 that, prior to construction, the applicant submit to the Department the final IDP with the most
34 current agency and tribal government contacts at the time. Further, to ensure that the IDP is
35 implemented during construction and during any ground disturbing operational activities, the
36 Council also imposes Historic, Cultural, and Archaeological Resources Condition 2.
37

¹⁷⁰ WESAPPD0c3-19 ASC Exhibit S Cultural 2022-0-9-28, Section 3.1.2.

¹⁷¹ WESAPPD0c6 pASC Reviewing Agency Comment_CTUIR_Steinmetz 2021-11-30.

¹⁷² WESAPPD0c3-2 Reviewing Agency Tribal Gov DPO Comment CTUIR Farrow Ferman 2022-11-16. In comments on the DPO, CTUIR's Cultural Resources Protection Program Manager Teara Farrow Ferman provided current contact information for CTUIR, CIS and Oregon State Police to be reflected in the draft IDP.

¹⁷³ WESAPPD0c6 pASC Reviewing Agency Comment_CTUIR_Steinmetz 2021-11-30.

Historic, Cultural, and Archaeological Resources Condition 1: Prior to construction of the facility, facility component or phase, submit to the Department an Inadvertent Discovery Plan (based on Attachment S-3 of Final Order on ASC), finalized with current contact information for the coordination protocol (3).
[PRE-HC-01]

Historic, Cultural, and Archaeological Resources Condition 2: During construction and ground disturbing operational activities, implement the final Inadvertent Discovery Plan.
[GEN-HC-01]

Because of the low probability of precontact archaeological resources on site and the CTUIR’s acknowledgement that there are not resources within the analysis area they are aware of that would be impacted, and the implementation of the IPD during construction and ground disturbing activities during operations, the Council finds that any significant adverse impacts from the construction and operation of the facility to tribal resources would be minimized.

Field and Desktop Survey Results

Previously Recorded Resources

The databases with existing archaeological and historical property information revealed that nine cultural resource surveys had been previously performed within site boundary and the 1-mile analysis area. The archival research identified two previously documented resources as presented below.

Table 10: Previously Recorded/Identified Cultural Resources within Analysis Area

Resource ID	Resource Description	Resource Type	NRHP-Eligibility	Nearest Distance to Site Boundary
HPP-H-2	Historic Refuse Scatter	Archaeological Site	Unevaluated	0.5-mile south of southwest corner
35UM 00399	Historic Irrigation Ditch (“Furnish Ditch”)	Historic Site*	Unevaluated (possibly eligible under NRHP Criteria A-C)	0.5-mile northwest of the northwest corner
* Although the historic Furnish Ditch is listed in Oregon Archaeological Records Remote Access and has been assigned a State trinomial number for an archaeological site, it is a functioning irrigation ditch. SHPO considers functioning historic irrigation ditches to be historic sites, not archaeological sites (SHPO 2016: Appendix C). As such, the applicant presents it in ASC Exhibit S, Table S-2 as a historic site.				

The potentially eligible (or unevaluated) archaeological site, HPP-H-2, is identified as an historic refuse scatter is located approximately 0.5-mile south of southwest corner of the site boundary. Because this resource is outside of the site boundary, there would not be impacts to the archaeological site. Similarly, the historic site 35UM 00399, which is a functioning Historic

1 Irrigation Ditch (“Furnish Ditch”), is located outside of the site boundary and would not be
2 impacted by the proposed facility.

3
4
5

Archaeological Site EWE-BB-01

6 The Phase I pedestrian survey resulted in the identification of archaeological site EWE-BB-01
7 which consists of a historic refuse scatter including two abandoned vehicles and two artifact
8 concentrations. The vehicles are both early twentieth century disarticulated vehicles without
9 diagnostic markings or tags, and the two artifact concentrations are comprised nearly entirely
10 of domestic and automotive cans. The site represents household and auto-related artifacts
11 typical of debris scatters from regional farming communities discarded during the early to late
12 twentieth century. The applicant submitted information about site EWE-BB-01 to SHPO and in a
13 February 7, 2022 Archaeological Site Form Approval, SHPO confirmed that a Smithsonian
14 number of 35UM00596 has been assigned to the resource and the submission was given a
15 SHPO national register eligibility status of Not Eligible.¹⁷⁴ The Council finds that because of the
16 Not Eligible SHPO determination, archaeological site EWE-BB-01 is not protected under OAR
17 345-022-0090(1)(a).

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OAR 345-022-0090(1)(b) requires the Council to find that, taking into account mitigation, the
facility is not likely to result in significant adverse impacts to archaeological sites, as defined in
358.905(1)(c) located on private land.¹⁷⁵ Because the site contains archaeological objects (old
vehicles and refuse) and it is possible the archaeological objects (vehicles) could have with a
contextual associations with each other, this resource could qualify for an evaluation under
OAR 345-022-0090(1)(b).

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The applicant indicates that based on the current facility design, solar arrays are planned for
the area of the EWE-BB-01 resource, therefore the resource would be directly impacted.
According to the Oregon SHPO, mitigation may include documenting historic properties before
they are demolished.¹⁷⁶ The resource cataloging encompassed with the SHPO NRHP designation
can be considered mitigation for impacts to the Not Eligible resource, because it preserves the
data for the resource, even though the resource is considered Not Eligible. Therefore, the
Council finds that impacts to EWE-BB-01 have been mitigated appropriately, therefore EWE-BB-
01 may be impacted by the construction and operation of the facility.

34
35
36
37

Historic Resources

Historic Transmission Structures

¹⁷⁴ WESAPPD09 SHPO Not Eligible Confirmation Site EWE-BB-01 2022-02-07.

¹⁷⁵ ORS 358.905(1)(c) (A) “Archaeological site” means a geographic locality in Oregon, including but not limited to submerged and submersible lands and the bed of the sea within the state’s jurisdiction, that contains archaeological objects and the contextual associations of the archaeological objects with:

- (i) Each other; or
- (ii) Biotic or geological remains or deposits...

¹⁷⁶ Oregon SHPO Mitigation for Adverse Effects: Examples Fall 2019

1
2 As discussed in this order, the applicant proposes to connect to the grid with one of three
3 transmission lines that run across or adjacent to the site. Two transmission line rights-of-way
4 transect the site boundary and run southeast to northwest crossing over the site boundary:
5 Bonneville Power Administration’s (BPA) McNary to Roundup 230-kilovolt (kV) line which was
6 constructed in 1952 and PacifiCorp’s Pendleton to Hermiston 69-kV line, which was constructed
7 in 1941. Both lines were included in the preliminary records search as a known historic utility
8 corridors observed on historic cartographic references. During the field surveys, no artifacts
9 were observed to be associated with either transmission line corridor. Both lines are still
10 operational and were recommended as eligible for listing in the NRHP under Criterion A for
11 their significant association with early rural electrification in eastern Oregon. Neither line was
12 recommended for listing in the NRHP under criteria B through D.

13
14 The applicant explains that right-of-way corridor avoidance (except for access roads) is
15 recommended if the transmission lines are not selected for interconnection. As discussed in
16 Section III.A.1., *Energy Facility*, the facility would be constructed and operated to avoid the
17 transmission line rights-of-way, as represented in ASC Exhibit C, Figure C-4 (Overall Site Plan),
18 and in Figure 1: *Preliminary Facility Site Plan*, of this order. As indicated in the Preliminary Site
19 Plan, there would be a 75-foot set back of facility components on both sides of the transmission
20 line rights-of-way, however, facility roads would be permissible under the transmission lines.
21 Under General Standard Condition 3, the applicant is required to design, construct, operate and
22 retire the facility substantially as described in the site certificate.

23
24 The applicant states that if either of the lines are selected for interconnection, the impact of the
25 interconnection would be assessed separately and in consultation with the owning company
26 (BPA or PacifiCorp). However, for both lines, an interconnect is not expected to result in a
27 significant impact because the transmission lines remain operational. According to BPA Pacific
28 Northwest Transmission System, Register of Historic Places Multiple Property Documentation
29 Form connection to BPA’s Pacific Northwest Transmission System multiple property resource is
30 expressly allowed. Note that development under the lines and around their associated utility
31 pole structures will not cause significant impacts to the resources. The sites will be flagged for
32 avoidance during construction to ensure significant impacts are avoided. If avoidance is
33 infeasible, the applicant would enter consultations with SHPO and the owning company (BPA
34 and/or PacifiCorp) to determine appropriate mitigation for significant impacts.

35
36 The Council finds that because the BPA McNary to Roundup 230-kilovolt (kV) transmission line
37 and PacifiCorp’s Pendleton to Hermiston 69-kV transmission line are operational facilities
38 where it’s permissible to interconnect (impact) with them, and taking into account the right-of-
39 way facility avoidance areas for impacts to the operational transmission lines, the construction
40 and operation of the facility, is not likely to result in significant adverse impacts to these historic
41 resources.

42
43 *Historic Properties*
44

1 The analysis area for aboveground resources, including Built Environment resources, the
2 analysis area is the area within and extending 1-mile from the site boundary. Therefore, the
3 applicant provides in ASC Exhibit S, Attachment S-2, a Historic Properties Inventory Report.¹⁷⁷
4 Historic sites are defined by the NHPA as resources consisting of standing structures 50 years of
5 age or older.¹⁷⁸

6
7 The applicant’s archaeological consultants conducted a desktop survey identifying buildings on
8 aerial photographs of the historic properties, reviewed the SHPO Historic Sites database, and
9 assessed the information on the Umatilla County Assessors site to determine the age of the
10 buildings. Historic maps were also reviewed to identify previous and current ownership of each
11 parcel, which included General Land Office cadastral maps, the 1914 Ogle map, and the 1934
12 Metsker map. A total of eight tax lots were identified as containing historic buildings. Field
13 assessments of these eight properties were conducted from the public right-of-way, where
14 resources were photographed and recorded on photograph logs. Documentation also included
15 photographic documentation of at least one elevation, a physical description, and a concise
16 statement of significance relative to the building’s eligibility for listing on the NRHP (36 CFR Part
17 60.4).

18
19 Figure 12: *Historic Building/Property Locations*, identifies the location and proximity to the
20 facility site boundary for the historic properties that are evaluated in the Historic Properties
21 Inventory Report and correspond to Table 11: *Historic Property Inventory and NRHP*
22 *Significance Summary*.

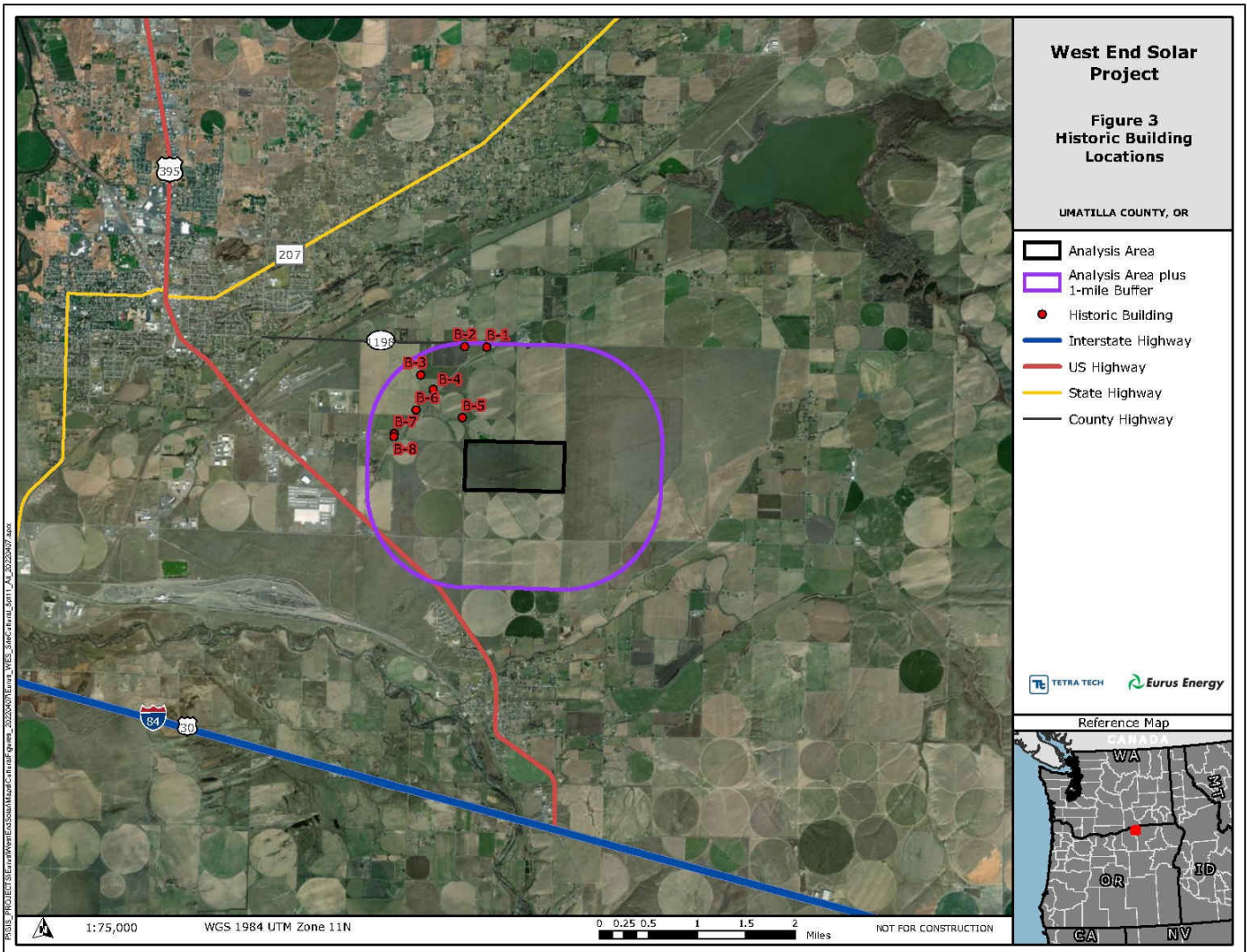
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¹⁷⁷ Attachment S-2 was provided by the applicant in response to SHPO’s January 2022 comment letter which indicated that to adequately evaluate potential indirect impacts to the setting (e.g. visual/audial) of historic, built environment resources from the facility, SHPO requests that the applicant evaluate aerial photographs/cartographic maps (1970) within 1-mile of the site boundary to determine if there are any historic properties within 1-mile of the site boundary and that if there are historic built environment resources that could be impacted by the facility, additional field work is likely recommended to further evaluate likelihood of NRHP eligibility and potential impact. WESAPPDoc6-6 pASC Reviewing Agency Comment_SHPO Case No 21-1537_Gabriel 2022-01-31.

¹⁷⁸ ORS 358.905(1)(a) and ORS 358.905(1)(c) require archaeological resources to be at least 75 years old, however the Code of Federal Regulations (CFR) Title 36 Chapter II § 261.2 defines a Historical Resource as any structural, architectural, archaeological, artifactual or other material remains of past human life or activities which are of historical interest and are at least 50 years of age, and the physical site, location, or context in which they are found. Therefore, because the applicant is applying federal NRHP criteria to the resources, the applicant evaluated resources that are 50 years or older. <https://www.ecfr.gov/current/title-36/chapter-II/part-261> Accessed 10-25-2022.

1

Figure 12: Historic Building/Property Locations



2
3

4 Because OAR 345-021-0010(1)(s)(A) requires an evaluation of historic and cultural resources
 5 within the analysis area that have been listed, or would likely be eligible for listing, on the
 6 NRHP, the Department and SHPO recommended and the applicant provided an evaluation of
 7 the four NRHP Eligibility Criteria as part of ASC Exhibit S.¹⁷⁹ In addition to the four criteria of
 8 eligibility under CFR Part 60.4, architectural resources must meet some, if not all, of the seven

¹⁷⁹ The quality of significance in American history, architecture, archaeology, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- A. that are associated with events that have made a significant contribution to the broad patterns of our history; or
- B. that are associated with the lives of persons significant in the past; or
- C. that embody the distinctive characteristics of a type, period, or method of construction, or that represents the work of a master, or that possess high artistic value, or that represent a significant or distinguishable entity whose components may lack individual distinction; or
- D. that have yielded, or are likely to yield, information important in prehistory or history....

1 aspects of integrity as defined by the National Park Service (NPS) which include location, design,
2 setting, materials, workmanship, feeling, and association.

3

4 The results of the applicant's desktop and field studies for historic properties and buildings is
5 provided below in Table 11: *Historic Property Inventory and NRHP Significance Summary*.

6

7

8

Table 11: Historic Property Inventory and NRHP Significance Summary

GIS Point	Tax Id	Building Construction Years	Location	Description	Significance Evaluation¹
B-1	4N29170000500	1953, 1991, 2021, 2022	32654 E Highland Ext., Stanfield, OR	Agricultural Area abutting a canal. Equipment storage garage (2022), a residence (2021) a small utility shed (1953), and a garage (1991)	No buildings or structures remain from this early period in the property’s history. Neither the property nor the individual historical building is eligible for inclusion on the NRHP.
B-2	4N29180000100	1970, 1979, 1979	32548 E Highland Ext, Stanfield, OR	Agricultural Area with canal at the south. Residence (1979), garage (1979), and a pole barn used for potato storage (1970)	Potato storage building is clearly related to the history of potato farming in Oregon and is part of a local agricultural legacy. No exterior characteristics that suggest the building’s use as potato storage. Property is one of several that are associated with the Amstad family. Neither the property nor the individual historical building is eligible for inclusion on the NRHP.
B-3	4N29180000700	1959, c. 2000	79113 Melody Lane, Stanfield, OR	Agricultural Area with transmission line views. Residence built in 1959 and substantially modified around 2000, large pole barn used for machinery storage constructed around the same time.	Residence has been significantly altered since its construction. Property retains no buildings or structures from its ownership by the irrigation companies. property also does not relate to any historically significant individuals or group. Neither the property nor the individual historical building is eligible for inclusion on the NRHP.
B-4	4N29180000800	1940, 2005	79023 Melody Lane, Stanfield, OR	Agricultural Area with canal through middle. Residence (1940, remodeled 2005) and a machinery storage shed (2005 with a 2015 addition).	Original residence was significantly altered in 2005, obscuring almost all of its exterior features. The building no longer maintains integrity of design, workmanship, or materials. No evidence to suggest that the property could provide additional historical

Table 11: Historic Property Inventory and NRHP Significance Summary

GIS Point	Tax Id	Building Construction Years	Location	Description	Significance Evaluation ¹
					information. Neither the property nor the individual historical building is eligible for inclusion on the NRHP.
B-5	4N29180001200	1938, 1980	78910 Canal Rd., Stanfield, OR	Agricultural Area with canal. Residence (1938) and a detached two car garage (1980). A hay cover (1970) built at the west end of the property was demolished in 2021.	Property is not clearly associated with any significant themes in national or local history. Residence has been significantly altered, forfeiting integrity of materials, design, and workmanship. Neither the property nor the individual historical building is eligible for inclusion on the NRHP.
B-6	4N29180001700	1948, c. 1948, 1979, 1979, c. 2015	78926 Melody Lane, Stanfield, OR	Agricultural Area with canal at the south. Residence (1948, remodeled 1979), detached garage (1979) (Photograph 7), Pump house (1979), prefabricated storage shed (recent), and a saltbox roof shed (Assessor Eff Year built 1960).	Residence has an identifiable architectural style but has been significantly modified through a non-historic addition and alterations to the siding and other exterior features. It does not have integrity of design, materials, and workmanship. No evidence to suggest that the property could provide additional historical information. Neither the property nor the individual historical building is eligible for inclusion on the NRHP.
B-7	4N29180001900	1950 (non-extant)	2505 E Airport Rd (A), Stanfield, OR	Umatilla County Tax Assessor, 4N29180001900 had a lean-to (1950) and 4N29180002000 had a machine shed (1950)	Via satellite imagery, it is evident that the two buildings visible in 1970 were removed from the property between 2009-2011. Therefore, there are no longer any historic buildings on the properties.
B-8	4N29180002000	1950 (non-extant)	2505 E Airport Rd (B), Stanfield, OR	Umatilla County Tax Assessor,	Via satellite imagery, it is evident that the two buildings visible in 1970 were removed from the property between 2009-2011.

Table 11: Historic Property Inventory and NRHP Significance Summary

GIS Point	Tax Id	Building Construction Years	Location	Description	Significance Evaluation ¹
				4N29180001900 had a lean-to (1950) and 4N29180002000 had a machine shed (1950)	Therefore, there are no longer any historic buildings on the properties.
<p>¹ See ASC Exhibit S, Attachment S-2. Historic Properties Inventory Report, for a full evaluation relative to the building’s or properties’ eligibility for listing on the NRHP (36 CFR Part 60.4) including photographic documentation included photographic from least one elevation, a physical description, and a concise statement of eligibility for listing on the NRHP.</p>					

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The applicant and the Department provided Attachment S-2, the Historic Properties Inventory Report to SHPO for their review and comment. On August 19, 2022, SHPO provided a letter to the Department and applicant indicating they reviewed the revised data and indicated that all the necessary data was present for them to complete their review. In the letter SHPO concurred that the eight potentially historic properties documented within the evaluation/analysis area are not eligible for listing in the National Register of Historic Places (Umatilla Tax IDs: 4N29170000500, 4N29180000100, 4N29180000700, 4N29180000800, 4N29180001200, 4N29180001700, 4N29180001900, and 4N29180002000), and that based on the information provided, SHPO concurs that there will be no effect to historic properties for this undertaking.¹⁸⁰

¹⁸⁰ WESAPDoc6-11 pASC Reviewing Agency Comment SHPO Case No. 21-1537_Gabriel_2022-08-19.

1 **Conclusions of Law**
2

3 Based on the foregoing findings of fact, conclusions of law, and based upon compliance with
4 the site certificate conditions, the Council finds that the facility would comply with the Council’s
5 Historic, Cultural, and Archeological Resources standard.
6

7 **IV.L Recreation: OAR 345-022-0100**
8

9 *(1) Except for facilities described in section (2), to issue a site certificate, the Council must*
10 *find that the design, construction and operation of a facility, taking into account*
11 *mitigation, are not likely to result in a significant adverse impact to important*
12 *recreational opportunities in the analysis area as described in the project order. The*
13 *Council shall consider the following factors in judging the importance of a recreational*
14 *opportunity:*

- 15 *(a) Any special designation or management of the location;*
- 16 *(b) The degree of demand;*
- 17 *(c) Outstanding or unusual qualities;*
- 18 *(d) Availability or rareness;*
- 19 *(e) Irreplaceability or irretrievability of the opportunity.*

20 ***181

21 **Findings of Fact**
22

23 The Recreation standard requires the Council to find that the design, construction, and
24 operation of a facility would not likely result in significant adverse impacts to “important”
25 recreational opportunities within the analysis area. Therefore, the Council’s Recreation
26 standard applies only to those recreation areas that the Council finds to be “important,”
27 utilizing the factors listed in the OAR 345-022-0100(1)(a)-(e); special designations or
28 management of the location; degree of demand; outstanding or unusual qualities; availability
29 or rareness; irreplaceability or irretrievability of the opportunity. After “important” recreational
30 opportunities are identified, the Council must then evaluate whether the design, construction
31 or operation of the facility could adversely impact the identified important recreational
32 opportunity. If the facility could impact the resource, then the Council must consider the
33 significance of the potential impact, by evaluating potential impacts using the factors listed in
34 the OAR 345-022-0100(1)(a)-(e).
35

36 Impacts to important recreational opportunities from construction and operation of the
37 proposed facility that are evaluated in this section are: direct or indirect loss of a recreational
38 opportunity, excessive noise, increased traffic, and visual impacts of facility structures or

¹⁸¹ The facility is not a special criteria facility under OAR 345-0015-0310; therefore, OAR 345-022-0100(2) is not applicable.

1 plumes. ASC Exhibit T provides information about recreational opportunities. The analysis area
2 for the Recreation standard is the area within and extending five miles from the site boundary.

3

4 Recreational Opportunities within the Analysis Area

5

6 In accordance with OAR 345-001-0010(59)(d), and consistent with the study area boundary, the
7 analysis area for recreational opportunities is the area within and extending 5 miles from the
8 site boundary. As presented in ASC Exhibit T, the applicant conducted a review of published and
9 unpublished resources including maps, GIS files, comprehensive plans, park and
10 recreation plans, park master plans, and internet sites to identify existing recreational
11 opportunities within the analysis area.

12

13 The location of identified recreational opportunities within the analysis area is presented in ASC
14 Exhibit T Attachment T-1 and presented below in Figure 13: *Recreational Opportunities within*
15 *the Analysis Area*.

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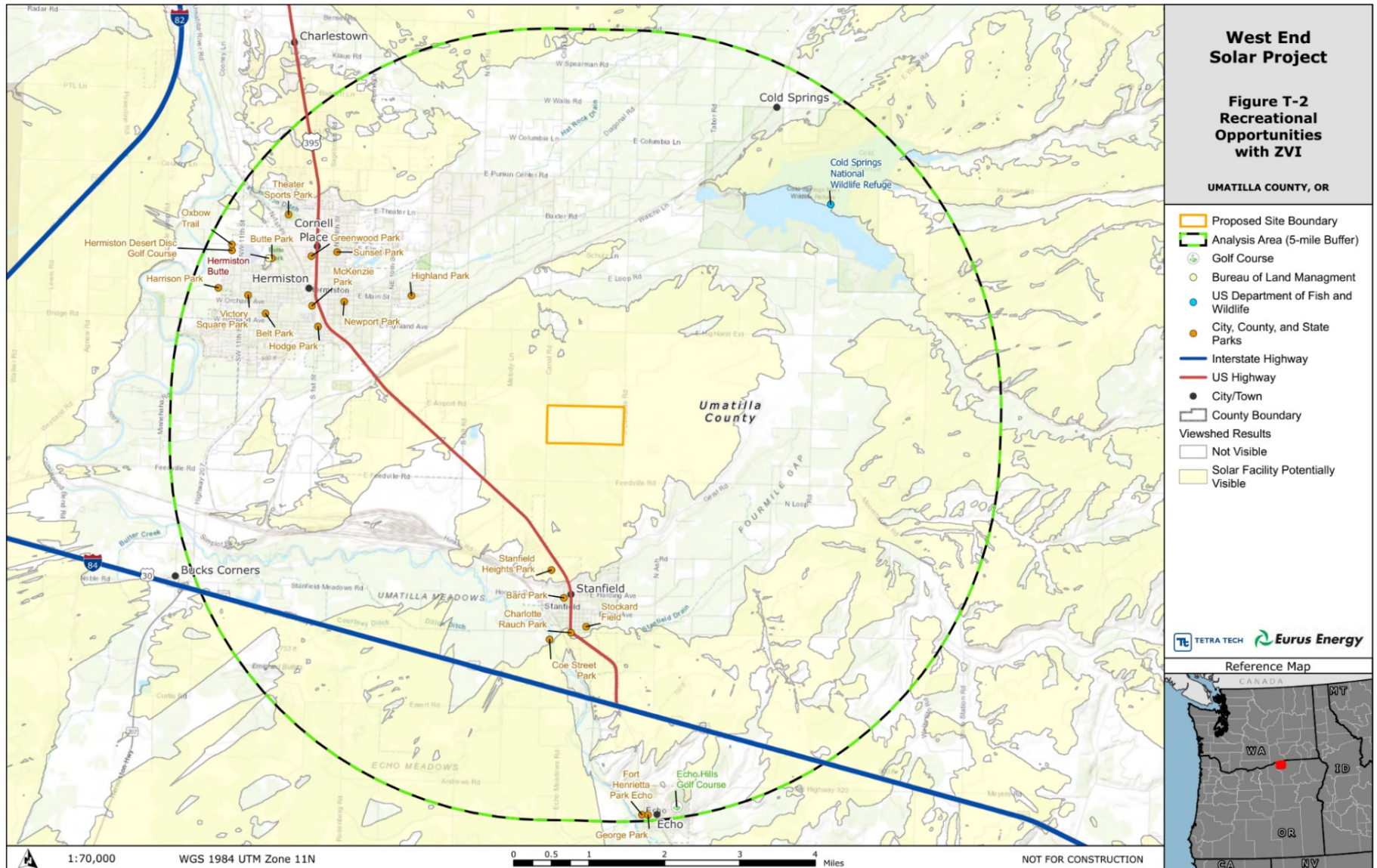
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Figure 13: Recreational Opportunities within Analysis Area



- 1 There are 23 recreational opportunities identified within the 5-mile analysis area from 1.7 to
 2 4.9 miles from the site boundary. These are identified below in Table 12: *Recreational*
 3 *Opportunities, Distance from Site Boundary, and Importance Designation*, along with the
 4 distance from the site boundary as well as each resources' "importance" designation under the
 5 standard.
 6

Table 12: Recreational Opportunities, Distance from Site Boundary, and Importance Designation

Recreational Opportunity	Management or Jurisdiction	Distance from Site Boundary (miles)	Special Designation	Determination of Importance (Yes/No)
Stanfield Heights Park	City of Stanfield	1.7	Municipal Park	No
Nathan Bard Memorial Community Park	City of Stanfield	2.0	Municipal Park	No
Highland Park	City of Hermiston	2.3	Municipal Park	No
Stockard Field	City of Stanfield	2.4	Municipal Park	No
Cold Springs National Wildlife Refuge	Federal State (ODFW for hunting access)	2.4	National Wildlife Refuge	Yes
Rauch Park	City of Stanfield	2.5	Municipal Park	No
Coe Park	City of Stanfield	2.6	Municipal Park	No
Newport Park	City of Hermiston	3.0	Municipal Park	No
Hodge Park	City of Hermiston	3.2	Municipal Park	No
McKenzie Park	City of Hermiston	3.4	Municipal Park	No
Sunset Park	City of Hermiston	3.5	Municipal Park	No
Greenwood Park	City of Hermiston	3.7	Municipal Park	No
Belt Park	City of Hermiston	3.9	Municipal Park	No
Butte Park	City of Hermiston	4.1	Municipal Park	Yes
Hermiston Butte	Federal	4.2	BLM Recreation Area	Yes
Victory Square Park	City of Hermiston	4.2	Municipal Park	No
Theater Sports Park	City of Hermiston	4.3	Municipal Park	No
Harrison Park	City of Hermiston	4.6	Municipal Park	No
Hermiston Desert Disc Golf Course	City of Hermiston	4.7	Municipal Park	No
Oxbow Trail	City of Hermiston	4.7	Municipal Hiking Trail	No
Echo Hills Golf Course	City of Echo	4.9	Municipal Golf Course	No
F.T. George Park	City of Echo	4.9	Municipal Park	No
Fort Henrietta Park and Campground	City of Echo	4.9	Municipal Park	Yes

1 The applicant proposes and the Council agrees that twelve municipal parks in the same three
2 cities “as common and replaceable” because they contain many of the same features as each
3 other, as well as other parks in these cities outside of the analysis area, such as community and
4 sports attractions designed for urbanized communities. These include: Stanfield Heights Park,
5 Stockard Field, Rauch Park, Coe Park, Echo Hills Golf Course, F.T. George Park, Highland Park,
6 Newport Park, Hodge Park, Sunset Park, Greenwood Park, Victory Square Park, Harrison Park.
7 Further, based on a Department internet search, the Council determined that there are at least
8 two other golf courses in Umatilla County, all of which are open to the public. Based on a
9 review of the submitted materials in Exhibit T, the Council agrees with the applicant and finds
10 that all thirteen recreation resources in this category are common, replaceable and do not
11 constitute “important” recreational resources utilizing the factors listed in the OAR 345-022-
12 0100(1)(a)-(e).

13

14 The applicant proposes, and the Council concurs that six recreational opportunities would be
15 considered uncommon, but replaceable under the Council’s Rules. Because these recreation
16 resources are uncommon, each one is evaluated in more detail below, however, the Council
17 finds that these recreational opportunities also would not be considered important under the
18 Council’s Recreation standard.

19

20 Nathan Bard Memorial Community Park – The applicant states that the one unusual quality of
21 this park is that it is used to host the Stanfield 4th of July Celebration every year. However,
22 outside of that one unique quality, the park includes similar features as other parks in the City
23 of Stanfield and other municipal parks in the analysis area. Based on a review of the submitted
24 materials in Exhibit T, the Council agrees with the applicant and concludes that Nathan Bard
25 Memorial Community Park does not constitute an “important” recreation resource utilizing the
26 factors listed in the OAR 345-022-0100(1)(a)-(e).

27

28 McKenzie Park – The applicant states that the park’s uncommon characteristics include the sole
29 skatepark in the community and it contains an interpretive panel site. However, outside of
30 these two unique qualities, the park includes similar features as other parks in the City of
31 Hermiston and other municipal parks in the analysis area. Based on a review of the submitted
32 materials in Exhibit T, the Council agrees with the applicant and concludes that McKenzie Park
33 does not constitute an “important” recreation resource utilizing the factors listed in the OAR
34 345-022-0100(1)(a)-(e).

35

36 Belt Park – The applicant states that the uncommon characteristic of this park is an arboretum.
37 However, outside of this unique quality, the park includes similar features as other parks in the
38 City of Hermiston and other municipal parks in the analysis area. Based on a review of the
39 submitted materials in Exhibit T, the Council agrees with the applicant and concludes that Belt
40 Park does not constitute an “important” recreation resource utilizing the factors listed in the
41 OAR 345-022-0100(1)(a)-(e).

42

43 Theater Sports Park – The applicant states that the uncommon characteristics include that it is
44 used to host youth sports and is also home to the Hermiston City Softball League. However,

1 outside of these unique qualities, the park includes similar features as other parks in the City of
2 Hermiston and other municipal parks in the analysis area. Based on a review of the submitted
3 materials in Exhibit T, the Council agrees with the applicant and concludes that Theater Sports
4 Park does not constitute an “important” recreation resource utilizing the factors listed in the
5 OAR 345-022-0100(1)(a)-(e).

6
7 Hermiston Desert Disc Golf Course – This is the sole disc golf course within the analysis area
8 which makes it unique. However, both the City of Boardman, 26 miles from Hermiston and the
9 City of Pendleton, 32 miles from Hermiston both have disc golf courses as well which makes the
10 Hermiston Desert Disc Golf Course replaceable. Based on a review of the submitted materials in
11 Exhibit T, the Council agrees with the applicant and concludes that Hermiston Desert Disc Golf
12 Course does not constitute an “important” recreation resource utilizing the factors listed in the
13 OAR 345-022-0100(1)(a)-(e).

14
15 Oxbow Trail – The applicant states that this 5-mile trail’s unusual qualities include that it
16 interconnects with several other recreation resources in Hermiston and includes interpretive
17 panels and a gazebo. However, according to the City of Hermiston’s Parks and Recreation
18 webpage, which is referenced in Exhibit T, several of the city’s parks include paved walking
19 paths which makes the Oxbow Trail replaceable. Based on a review of the submitted materials
20 in Exhibit T, the Council agrees with the applicant and concludes that Oxbow Trail does not
21 constitute an “important” recreation resource utilizing the factors listed in the OAR 345-022-
22 0100(1)(a)-(e).

23 24 *Important Recreational Opportunities*

25
26 For the below reasons and assessment, the applicant proposes, and the Council concurs that
27 there would be four important recreational opportunities within the analysis area: Cold Springs
28 National Wildlife Refuge, Hermiston Butte, Butte Park, Fort Henrietta Park and Campground.
29 The importance evaluation is followed with an assessment of direct or indirect loss of a
30 recreational opportunity as a result of the facility, noise resulting from facility construction or
31 operation; increased traffic resulting from facility construction or operation; and visual impacts
32 of facility structures.

33
34 Cold Springs National Wildlife Refuge – According the United States Fish and Wildlife Service
35 (USFSW) webpage for the Cold Springs National Wildlife Refuge (NWR), referenced in Exhibit T,
36 it “was one of the first refuges established in the West, created by President Theodore
37 Roosevelt on February 25, 1909. Cold Springs NWR was established primarily to benefit
38 waterfowl and other native birds. However, the 3,102-acre refuge, while small, provides a
39 surprising variety of habitats and abundance of many other wildlife species. The open water on
40 the reservoir attracts large numbers of Canada geese and ducks. Dense riparian areas provide
41 cover for migrating and nesting songbirds. Shrub-steppe areas support coyotes, badgers, ring-

1 necked pheasants, several hawk species and trophy elk and deer, along with dozens of other
2 mammal, reptile and amphibian species.”

3
4 While the refuge was first established by Executive Order in 1909, it was subsequently
5 expanded three times through later executive orders. The refuge’s purposes are derived from
6 Executive Orders and the Migratory Birds Convention Act as follows:

- 7 • “as preserves and breeding grounds for native birds”
- 8 • “for use as an inviolate sanctuary, or for any other management purpose, for migratory
9 birds.”

10
11 According to the applicant’s research, “it is the only NWR and ODFW Access and Hunting Site
12 within the Analysis Area (ODFW 2018), providing protection for outstanding wildlife habitat.
13 The NWR also boasts hiking, biking, and horseback riding opportunities, wildlife viewing and
14 photography, and fishing (USFWS 2015). Based on the ecological interest and the mix of
15 individual opportunities, the NWR is considered an uncommon resource; the recreational
16 opportunities are relatively common in the region, but may not offer the same quality of sights
17 and habitat as provided by this NWR. The level of demand is assumed to be low to moderate,
18 because the local population is small, the NWR capacity is large, and the NWR is not located on
19 a high-volume travel route nor near larger population centers. No surveys have ever been
20 completed to determine the level of usage, but the USFWS states that the use is low and the
21 NWR is typically used by residents of local communities (USFWS 2015). The resources and
22 characteristics of the NWR are irreplaceable due to it being a geographic/static recreational
23 resource, and unique to the community. Therefore, though the NWR has low to moderate
24 demand, because of its uncommon nature and irreplaceability the Cold Springs NWR is
25 considered to meet the criteria for an important recreation resource.”

26
27 Based on a review of the submitted materials in Exhibit T and the USFWS webpage for the
28 NWR, the Council agrees with the applicant and concludes that Cold Springs National Wildlife
29 Refuge does constitute an “important” recreation resource utilizing the factors listed in the
30 OAR 345-022-0100(1)(a)-(e).

31
32 Hermiston Butte – According to the “Hermiston Parks, Recreation and Open Space Master Plan
33 – August 2020”¹⁸² (HPROSMP) the Bureau of Land Management (BLM) owns seven acres at the
34 summit of Hermiston Butte. The applicant did not provide, and the Department could not find,
35 a BLM management plan for these 7 acres. However, the following passage is from the
36 HPROSMP:¹⁸³

37 “According needs assessment findings, Butte Park is the most popular facility in the PROS
38 system, it includes the most recognizable landmark in the City, Hermiston Butte, and it is

¹⁸²https://www.hermiston.or.us/sites/default/files/fileattachments/parks_and_recreation/page/9031/hpros_plan_spread_format_-_compressed.pdf.

¹⁸³ IBID – Page 54

1 the site of the City’s major outdoor recreation facility, the Hermiston Family Aquatic
2 Center.”

3
4 According to the applicant’s research, “BLM Hermiston Butte is a small, publicly accessible
5 recreation area that primarily serves the local population of Hermiston (AllTrails 2021, BLM
6 2021). The Butte is unusual in that it is the sole butte/raised geographic attraction providing
7 elevated views in the community of Hermiston, as well as the Analysis Area. It provides 0.8
8 miles of hiking trails and an automobile access route to its summit (AllTrails 2021, Google Earth
9 2021). Based on the geographic interest and the mix of individual opportunities, the Butte is
10 considered an uncommon resource. The level of demand is assumed to be low to moderate,
11 because the local population is small, the Butte capacity is large, and the Butte is not located on
12 a high-volume travel route nor near larger population centers. The resources and
13 characteristics of the Butte are irreplaceable due to it being a geographic/static recreational
14 resource, and unique to the community. Therefore, though the Butte has low to moderate
15 demand, because of its uncommon nature and irreplaceability Hermiston Butte is considered to
16 meet the criteria for an important recreation resource. “

17
18 The Council does not agree with the applicant’s assumption that the level of usage is low to
19 moderate because the population is small due to the reference in the HPROSMP that this is
20 Hermiston’s most popular park. However, based on review of the submitted materials in Exhibit
21 T and the USFWS webpage for the NWR, the Council agrees with the applicant and concludes
22 that Hermiston Butte does constitute an “important” recreation resource utilizing the factors
23 listed in the OAR 345-022-0100(1)(a)-(e).

24
25 Butte Park – As previously cited in the Hermiston Butte overview above, Butte Park is the most
26 popular facility in the City of Hermiston’s park, recreation and open space system. According to
27 the applicant’s research, it is a large facility that “does have some characteristics that are
28 notable but not outstanding, including general park, pet, and sports amenities such as a football
29 field, four-lit soccer fields. However, the park does have some unusual qualities, including that
30 it is the sole dog park and spray park in the community; home to the Funland Playground, one
31 of the largest playground in the Northwest (opening Spring 2021); has interpretive panels; and
32 has direct access to BLM’s Hermiston Butte. Based on the educational and locational interest
33 and the mix of individual opportunities, the park is considered an uncommon resource. The
34 level of demand is assumed to be low to moderate, because the local population is small, the
35 site is large, and the park is not located on a high-volume travel route, although use of the
36 reservable picnic shelter may raise the demand level to moderate. The resources and
37 characteristics of the park are generally replaceable, except for the unique attractions and
38 location adjacent to Hermiston Butte. Though the park has low to moderate demand and is
39 partially replaceable, because of its uncommon features and access to Hermiston Butte, Butte
40 Park is considered to meet the criteria for an important recreation resource.”

41
42 The Council does not agree with the applicant’s assumption that the level of usage is low to
43 moderate because the population is small due to the reference in the HPROSMP that this is
44 Hermiston’s most popular park. However, based on review of the submitted materials in Exhibit

1 T and the USFWS webpage for the NWR, the Council agrees with the applicant and concludes
2 that Hermiston Park does constitute an “important” recreation resource utilizing the factors
3 listed in the OAR 345-022-0100(1)(a)-(e).
4

5 Fort Henrietta Park and Campground – The applicant did not provide, and the Council could not
6 find, a management plan for this facility. According to the applicant’s research, “Fort Henrietta
7 Park is a small facility located within a developed community, and it is typical in many respects
8 of other small, municipal parks that serve a local population. However, the park does have
9 some unusual qualities, including its location on and access to the Umatilla River, location at a
10 noted Oregon National Historic Trail (ONHT) campsite and river crossing, a replica of a frontier-
11 era blockhouse, and the inclusion of camping within the park (City of Echo 2020). Based on the
12 historic interest and the mix of individual opportunities, specifically including the river access,
13 the park is considered an uncommon resource. The level of demand is assumed to be low,
14 because the local population is small, the facility capacity is small, and the park is not located
15 on a high-volume travel route. The resources and characteristics of the park are generally
16 replaceable, except for the historical link to the ONHT crossing (i.e., its function as a campsite
17 and river crossing for Oregon Trail emigrants). Though the park has low demand and is partially
18 replaceable, because of its uncommon access to the Umatilla River and irreplaceable historical
19 connection to the ONHT, Fort Henrietta Park is considered to meet the criteria for an important
20 recreation resource.

21
22 While the Council cannot confirm the applicant’s assumption that the demand is low because
23 the population is small, based on review of the submitted materials in Exhibit T and the USFWS
24 webpage for the NWR, the Council agrees with the applicant and concludes that Fort Henrietta
25 Park and Campground does constitute an “important” recreation resource utilizing the factors
26 listed in the OAR 345-022-0100(1)(a)-(e).
27

28 The facility must now be evaluated to ensure its design, construction and operation, taking into
29 account mitigation, are not likely to result in a significant adverse impact to these four
30 important recreational opportunities.

31
32 *Potential Direct or Indirect Loss of Recreational Opportunity*

33
34 *Direct Loss*

35
36 A direct loss to an important recreational opportunity would occur when construction or
37 operation of the facility would impact a recreational opportunity by directly altering the
38 resource so that it no longer exists in its current state. At its closest, the facility would be 2.4
39 miles from the Cold Springs National Wildlife Refuge; 4.2 miles from Hermiston Butte; 4.1 miles
40 from Hermiston Park; and 4.9 miles from Fort Henrietta Park and Campground respectively.
41 Based on the location of the facility in relation to the four important recreational opportunities,
42 the facility would not physically disturb, or result in ground disturbance, to any of them. The
43 facility would also not require any temporary or permanent closure or removal of the important
44 recreation opportunities to public use. Therefore, based upon review of the location and

1 proximity of important recreational opportunities to the facility site, the Council finds that the
2 facility would not be expected to result in direct impacts to the important recreational
3 opportunities.

4
5 *Indirect Loss*

6
7 Similar to the assessment of direct loss, indirect loss would result if construction or operation of
8 the facility would impact a recreational opportunity by indirectly altering the resource or some
9 component of it. To evaluate indirect loss associated resulting from the construction and
10 operation of the facility, the Council considers potential noise, traffic and visual impacts to the
11 above mentioned important recreational opportunities.

12
13 *Potential Noise Impacts*

14
15 The significance of potential noise impacts to identified recreational opportunities is based on
16 the magnitude and likelihood of the impact on the affected human population or natural
17 resources that uses the important recreational opportunity.

18
19 *Construction and Operation*

20
21 As provided in ASC Exhibit X and discussed in Section IV.R.1., *Oregon Department of*
22 *Environmental Quality (DEQ) Noise Control Regulations for Industry and Commerce* facility
23 construction activities phases that would generate noise include demolition, site preparation
24 and grading, trenching and road construction, equipment installation and commissioning. Table
25 17: *Construction Equipment Maximum Noise Levels at 50 and 1200 Feet*, identifies construction
26 equipment noise levels based on 40 percent to 50 percent usage factor for each type of
27 equipment at a distance of 50 feet and 1200 feet from the site boundary. As illustrated in this
28 table, noise attenuates, lessens or dissipates the further from the noise source it travels. As
29 such, the loudest construction equipment would be the pneumatic pile drives used to install the
30 solar facility posts, the noise generated at 50 feet in dBA would be approximately 95 dBA and
31 at 1200 feet (or 0.23 miles) is with other construction equipment would lessen to
32 approximately 63 dBA. For context, 60 dBA is the sound of a large store air-conditioning unit (at
33 20 feet) and 65 dBA is the sound from a passenger car at 65 mph (at 25 feet).¹⁸⁴

34
35 The nearest important recreational opportunity is Cold Springs National Wildlife Refuge is 2.4
36 miles from the site boundary. This would be 2.17 miles further than the 1200 feet which would
37 experience the loudest construction noise of 63 dBA. It is highly unlikely that any noise from
38 construction of the facility would be experienced at the Cold Springs National Wildlife Refuge
39 2.4 miles from the site boundary or any other the other important recreational opportunities
40 which are all further away than the Cold Springs NWR.

¹⁸⁴ WESAPPD03-25 ASC Exhibit Y Noise 2022-10-22, Table Y-2. Adapted from EPA (U.S. Environmental Protection Agency). 1971. Community Noise. NTID300.3 (N-96-01 IIA-231).

1 Operational noise is also evaluated in Section IV.R.1 of this order. Maximum operational noise
2 id modeled based on the maximum noise generating equipment on site. As discussed in that
3 section, the maximum noise that would be experienced at the residence closest to the facility
4 (approximately .25 miles) during the quietest times of the day and night would be 51 dBA.

5
6 Therefore, similar to the noise generated from construction, at the closest important
7 recreational opportunity, and all the other recreational opportunities further away, it is not
8 anticipated that operational noise would be perceivable at these recreational areas. Therefore,
9 the Council finds that noise generated from construction and operation of the facility would not
10 impact important recreational opportunities.

11 *Traffic Impacts*

12
13
14 As discussed in Section IV.M., *Public Services*, the primary transportation routes used during
15 construction of the facility would be:

16 17 1. Northern Primary Route -

- 18 -I-82 to US 730 near Sharps Corner
- 19 -US 730 to US-395, also near Sharps Corner
- 20 -US 395 through the City of Hermiston to Feedville Road, north of Stanfield
- 21 -Feedville Road to S. Edwards Road, northeast of Stanfield
- 22 -S. Edwards Road to project site

23 24 2. Southern Primary Route -

- 25 -I-84 to US 395 via exit 188, southeast of Stanfield
- 26 -US 395 to S. Edwards Road, running east of Stanfield to project site

27 28 Construction & Operation

29
30 Cold Springs National Wildlife Refuge – This NWR is located approximately 2.4 Miles of the
31 project but is not located along either of the two primary transportation routes described
32 above. While this NWR can be accessed from the project site via multiple County roads, none of
33 these routes would be convenient for either deliveries or workers accessing the site during
34 operation or construction because it is not directly accessible to any major road. Based on this
35 evaluation, the Council concludes that both construction and operational activities will not
36 result in any significant potential adverse traffic impacts to this important recreation resource
37 opportunity.

38
39 Hermiston Butte & Butte Park – Because both of these important recreation resource
40 opportunities have the same transportation entrances, they are being evaluated together. The
41 entrance to both is located approximately .5 miles west of US-395, a major part of the Northern
42 Primary Route, as it goes through the City of Hermiston. Based on this evaluation in the Public
43 Services section of this order, the Council concludes that both construction and operational

1 activities will not result in any significant potential adverse traffic impacts to these important
2 recreation resource opportunities.

3

4 Fort Henrietta Park and Campground – The City of Echo is located approximately 1.25 miles
5 south of I-84 exit 188 where the Southern Primary Route goes north to the project site. It is
6 therefore not likely that any deliveries would occur through the City of Echo or in proximity to
7 Fort Henrietta Park and Campground. While it is possible that construction workers could stay
8 in Echo, according to ASC Exhibit U – Public Services, page 15, there is adequate temporary
9 housing available in the broader geographic area. So even if there were some construction
10 workers that found temporary housing in the City of Echo, it would not be enough to impact
11 the transportation patterns that would negatively affect the park and campground. The facility
12 would be operated remotely, aside from periodic site visits from operational maintenance and
13 repair personnel, therefore operational traffic would be minimal. Based on this evaluation, the
14 Council concludes that both construction and operational activities will not result in any
15 significant potential adverse traffic impacts to these important recreation resource
16 opportunities.

17

18 *Potential Visual Impacts*

19

20 The project description in ASC Exhibit B includes the following facility components with the
21 following maximum heights:

- 22 • Solar Modules on Posts – 16’ high
- 23 • Perimeter Fence – 10’ high
- 24 • Battery storage module units – 10’ high
- 25 • Operation and & Maintenance Facility – 30’ high
- 26 • Substation and equipment– 30’ high

27

28 The applicant conducted a zone of visual influence (ZVI) analysis to determine if the facility
29 components could be seen from the four important recreational opportunities within the
30 analysis area. The facility will not generate emissions plumes, so the analysis was conducted
31 based on the proposed physically constructed elements of the facility listed above.

32

33 Cold Springs National Wildlife Refuge – The applicant states in ASC Exhibit T – Page 14, “a
34 majority of the NWR will not have views of the Project, which at the base is approximately 100
35 feet lower than the Project.” Based on a review of the topographical base layer in the Oregon
36 Renewable Site Assessment online mapping tool¹⁸⁵, the NWR site ranges from 510 to 740 feet in
37 elevation with the edge of the reservoir itself at 610 feet in elevation, whereas the site
38 boundary ranges from 680 to 735 feet in elevation. The constructed facility components would
39 add between 10 and 30 feet in height which would make taller ones more visible from the

¹⁸⁵ https://tools.oregonexplorer.info/OE_HtmlViewer/Index.html?viewer=renewable

1 NWR. However, given the 2.4 miles distance, the Council agrees with the applicant’s conclusion
2 that the majority of the NWR will not have views of the facility.

3
4 As previously indicated the listed purposes of this NWR are:

- 5 • “as preserves and breeding grounds for native birds”
- 6 • “for use as an inviolate sanctuary, or for any other management purpose, for migratory
7 birds.”

8
9 So, even though some of the constructed facility components will be visible from the NWR, the
10 purposes of it are not to maintain views but to maintain an area for native and migratory birds.
11 Based on this analysis, the Council concludes that the facility will not result in any significant
12 potential adverse visual impacts to this important recreation resource opportunity.

13
14 Hermiston Butte – The applicant states in ASC Exhibit T – Page 15, “a majority of the Butte will
15 not have views of the Project, which at the base is approximately 200 feet lower than the
16 Project. However, at the summit, there will be an approximate 70-foot difference in
17 elevation between the Butte and the facility, which, based on the viewshed analyses, could
18 generate limited views of the solar arrays (Figure T-2 and Exhibit R).” Based on a review of the
19 topographical base layer in the Oregon Renewable Site Assessment online mapping tool¹⁸⁶ the
20 butte ranges from 500 feet elevation at its base to 597 feet elevation at its top whereas the site
21 boundary ranges from 680 to 735 feet in elevation. As previously indicated, the constructed
22 facility components would add between 10 and 30 feet in height which would make taller ones
23 more visible from the Hermiston Butte. As previously stated, while the top 7 acres of Hermiston
24 Butte are owned by the BLM, the applicant did not provide, and the Department could not find,
25 a BLM management plan. Therefore, there is no information to show Hermiston Butte is
26 managed to preserve views of the surrounding landscape.

27
28 Based on the elevation differences, the distance of 4.2 miles between Hermiston Butte and the
29 site boundary, the intervening urban and agricultural uses the Council concludes that the
30 facility will not result in any significant potential adverse visual impacts to this important
31 recreation resource opportunity.

32
33 Butte Park – Based on a review of the topographical base layer in the Oregon Renewable Site
34 Assessment online mapping tool¹⁸⁷ Butte Park ranges from 480 to 500 feet elevation whereas
35 the site boundary ranges from 680 to 735 feet in elevation. Even with the constructed facility
36 components reaching an additional 30 feet in height, given that the park is surrounded by
37 urban development, is approximately 200 feet lower in elevation than the site boundary, which
38 is 4.1 miles away, the Council agrees with the applicant’s conclusion in Exhibit T – Page 14 that
39 the project will not be visible from this important recreational opportunity due to distance and
40 terrain.

¹⁸⁶ IBID

¹⁸⁷ IBID

1
2 Fort Henrietta Park and Campground (4.9 Miles) – Based on a review of the topographical base
3 layer in the Oregon Renewable Site Assessment online mapping tool¹⁸⁸ Fort Henrietta Park and
4 Campground is at 603 feet elevation whereas the site boundary ranges from 680 to 735 feet in
5 elevation. Even with the constructed facility components reaching an additional 30 feet high,
6 given that the park and campground is surrounded by urban development, is approximately
7 100 feet lower in elevation than the site boundary, which is 4.9 miles away, the Council agrees
8 with the applicant’s conclusion in Exhibit T – Page 14 that the facility will not be visible from this
9 important recreational opportunity due to distance and terrain.

10
11 **Conclusions of Law**

12
13 Based on the foregoing findings of fact, the Council finds that the design, construction and
14 operation of the facility would not be likely to result in a significant adverse impact to any
15 important recreational opportunities in the analysis area and therefore the facility would
16 comply with the Council’s Recreation standard.

17
18 **IV.M Public Services: OAR 345-022-0110**

19
20 *(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the*
21 *Council must find that the construction and operation of the facility, taking into account*
22 *mitigation, are not likely to result in significant adverse impact to the ability of public*
23 *and private providers within the analysis area described in the project order to provide:*
24 *sewers and sewage treatment, water, storm water drainage, solid waste management,*
25 *housing, traffic safety, police and fire protection, health care and schools.*

26
27 *(2) The Council may issue a site certificate for a facility that would produce power from*
28 *wind, solar or geothermal energy without making the findings described in section (1).*
29 *However, the Council may apply the requirements of section (1) to impose conditions on*
30 *a site certificate issued for such a facility.*

31 ***189

32 **Findings of Fact**

33
34 The Council’s Public Services standard requires the Council to find that the facility is not likely to
35 result in significant adverse impacts on the ability of public and private service providers to
36 supply sewer and sewage treatment, water, stormwater drainage, solid waste management,
37 housing, traffic safety, police and fire protection, health care, and schools. Pursuant to OAR
38 345-022-0110(2), the Council may issue a site certificate for a facility that would produce power

¹⁸⁸ IBID

¹⁸⁹ OAR 345-022-0110(3) does not apply to this ASC because the facility would not meet the criteria for a special criteria facility as defined in ORS 469.373(1).

1 from solar energy without making findings regarding the Public Services standard; however, the
2 Council may impose site certificate conditions based upon the requirements of the standard.

3
4 The analysis area for potential impacts to public services from construction and operation of
5 the facility is the area within and extending 10-miles from the site boundary. Based on the
6 analysis area, the following evaluation assesses potential impacts to public and private
7 providers within Umatilla County and the cities of Hermiston, Stanfield, Echo, and Umatilla.

8
9 *Important Assumptions used in Applicant’s Impact Assessment*

10
11 Assumptions relied upon by the applicant to evaluate potential impacts from facility
12 construction and operation to private and public service providers are summarized below:

13
14 *Construction Assumptions*¹⁹⁰

- 15
- 16 • Construction anticipated to take 9-12 months, with an average of 24 working days per
17 month.¹⁹¹
 - 18 • Average number of construction workers would be 300 people, while the maximum
19 number of workers during peak construction months would not be more than 500
20 people.
 - 21 • 15 percent of workers would be hired locally by contractors or subcontractors.¹⁹²
 - 22 • 60 percent of workers would commute from up to 70 miles away from the proposed
23 facility.¹⁹³
 - 24 • 25 percent of workers would require temporary housing in the analysis area.¹⁹⁴
 - 25 • Estimated maximum haul and delivery trip rate would 90 one-way trips per day and
26 maximum worker daily trip rate would be 800 one-way trips.

27
28 *Operation Assumptions*¹⁹⁵

- 29
- 30 • Operated remotely, aside from periodic site visits from operational maintenance and
31 repair personnel.
 - 32 • Two to five workers would be deployed to the site when necessary for maintenance.

¹⁹⁰ Applicant details assumptions about the labor force that includes its assessment under the Public Services standard. Council notes that these assumptions do not guarantee the assumptions are correct.

¹⁹¹ Under General Standard of Review Condition 1, the Council provides the applicant two years to complete construction after construction has begun, so construction of the facility could last up to 24 months. WESAPPDoc3-21 ASC Exhibit U Public Services 2022-09-28, Section 3.2.4.

¹⁹² 15 percent of average workforce hired locally would be 45 people and maximum workers would be 75.

¹⁹³ 60 percent of average workforce commuting would be 180 workers and maximum commuters would be 300.

¹⁹⁴ 25 percent of average workforce needing temporary housing would be 75 workers and the maximum would be 125 workers.

¹⁹⁵ Applicant details assumptions about the labor force that includes its assessment under the Public Services standard. Council notes that these assumptions do not guarantee the assumptions are correct.

- Operations staff, positions that require previous experience working at solar facilities, may be hired from non-local areas.

IV.M.1 Sewers and Sewage Treatment

Construction and operation of the facility would generate sanitary waste. As discussed in ASC Exhibit U, there would be no permanent restroom facilities and associated underground septic systems onsite at the O&M building. All sanitation waste would be managed via portable toilets which would be managed by a licensed subcontractor, who would be responsible for servicing the toilets at regular intervals, transporting, and disposing of wastewater in accordance with local and jurisdictional regulations.¹⁹⁶ The facility would not rely on or require use of existing public or private sewer system or connection to a sewage treatment facility, other than to have the licensed contractor dispose of sanitation waste, therefore, the Council finds that the facility would not be likely to result in significant adverse impacts to public and private supplies of sewers and sewage treatment.

IV.M.2 Water Service

Facility construction would use approximately 12.8 million gallons of water for dust suppression, road construction and site preparation, installation of collector lines, mixing concrete for foundations, and fire risk mitigation.¹⁹⁷ During construction one of the primary drivers for water use is to control dust. Dust is generated from the construction equipment that would cut, move, and compact the subgrade surface; as well as decompaction and final grading for site revegetation. The applicant explains that water trucks would be used to control dust generation in all disturbed areas during road construction, foundation installation, final cleanup, reclamation, and restoration by patrolling the site to control dust up to as one pass per hour, wetting down disturbed and exposed soils. During construction, water may also be used for fire prevention, which would involve stationing a water truck at the job site to keep the ground and vegetation moist to be prepared for extreme fire conditions.

As discussed in Section IV.R.3., *Water Rights*, the applicant or the applicant's third-party construction contractor would obtain construction water from the City of Hermiston under an existing municipal water right. The applicant provides correspondence from the City's Water Superintendent as ASC Exhibit O, Attachment O-1. In correspondence from the City indicates that, under normal conditions, the City would be able to provide water for the facility construction and operation.

The applicant estimates that the solar modules (panels) would need to be washed twice a year which would use approximately 1.65 Mgal per year during operations.¹⁹⁸ Operational water would be trucked in and retained from the City of Hermiston. Employee drinking water would

¹⁹⁶ WESAPPD03-23 ASC Exhibit W Waste 2022-09-28, Section 2.2.1

¹⁹⁷ WESAPPD03-21 ASC Exhibit U Public Services 2022-09-28, Section 3.2.2.

¹⁹⁸ WESAPPD03-21 ASC Exhibit U Public Services 2022-09-28, Section 3.4.2.2.

1 be supplied by bottled water and portable toilets would be used for sanitation during
2 operations, therefore, these water uses would not impact public or provide service providers of
3 water.

4
5 Based upon review of the correspondence from the City affirming its ability to meet facility
6 construction and operational water demand under its existing water permits, the Council finds
7 that the construction and operation of the proposed facility are not likely to result in significant
8 adverse impacts to the ability of public or private providers to provide water service.

9
10 IV.M.3 Stormwater Drainage

11
12 Construction and operation of the facility could potentially impact rural stormwater
13 management systems. Stormwater management systems include pervious surfaces that allow
14 rainfall and snowmelt to percolate into soils to refill aquifers, streams, or rivers. Stormwater
15 management systems also include infrastructure to direct and store stormwater such as
16 culverts, catch basins, storm sewers and piping, as well as holding ponds and drainage ditches.
17 The facility would not require use of or interconnection to a publicly or privately managed
18 stormwater system.¹⁹⁹

19
20 New roads constructed would be designed to maintain existing drainage patterns and
21 stormwater generated is anticipated to infiltrate into the soil. As further discussed in Section
22 IV.D., *Soil Protection*, a typical DEQ-issued 1200-C Construction Stormwater Discharge General
23 Permit is not necessary for the construction of this facility because of the lack of waters of the
24 state on-site, however, the applicant proposes and the Council imposes under Soil Protection
25 Condition 1, an erosion and sediment control best management practices (BMPs) which are
26 included in Attachment I-1, Erosion Sediment Control Measures. These would help reduce any
27 stormwater runoff and include:

- 28
29
- 30 • Grading will be minimized to the maximum extent practicable and existing vegetation
 - 31 • BMPs for erosion, including perimeter controls (e.g., silt fence), soil stabilization (e.g.,
 - 32 mulching or tackifiers).
 - 33 • Fugitive dust from truck traffic will be minimized by applying water to access roads and
 - 34 by keeping paved public rights-of-way (ROW) clean or wet down.
- 35

36 Operational activities associated with maintaining the facility are not anticipated to cause
37 stormwater runoff because permanent roads would be used for vehicle access and the site is
38 anticipated to maintain existing drainage patterns.

39
40 Because the facility would not interconnect to or require use of existing public or private
41 stormwater drainage systems and the applicant proposes BMP's to mitigate potential impacts
42 to existing stormwater drainage and erosion, the Council finds that construction and operation

¹⁹⁹ WESAPPDoc3-21 ASC Exhibit U Public Services 2022-09-28, Section 3.3.3.

1 of the facility would not be likely to result in significant adverse impacts to the ability of
2 stormwater drainage service providers to provide service.

3
4 IV.M.4 Solid Waste Management
5

6 Facility construction and operation would result in the generation of solid waste. Construction-
7 related solid waste would include approximately one 40-cubic yard roll-off per week,
8 comprised of scrap steel, packaging materials and erosion control materials (e.g., silt fencing
9 and straw wattles), waste concrete, and excavated soil.²⁰⁰ Construction material and office
10 recycling programs would be implemented to the extent practical to reduce the volume of
11 material that would be disposed of as solid waste, which is discussed further in Section IV.N.,
12 *Waste Minimization*. Any non-recyclable waste would be disposed of offsite, hauled by a
13 licensed sanitary service provider and disposed of in a landfill, discussed below.

14
15 During operations, the primary waste generated would be solid waste from maintenance and
16 ongoing operational activities. The applicant estimates approximately two yards of solid waste
17 would be generated per month.²⁰¹ Waste such as universal waste (for example, lightbulbs and
18 batteries) would be recycled according to applicable regulations. The solar panels would be
19 replaced on an ongoing and as-needed basis depending on any operational issues incurred. The
20 lithium-ion batteries would need to be changed approximately every 10 years, where the self-
21 contained battery components would be removed and disposed of or recycled by a qualified
22 vendor or contractor.

23
24 The closest regional landfill to the facility is the Finley Buttes Regional Landfill, located
25 approximately 12 miles south of Boardman, Oregon. The landfill is owned and operated by
26 Waste Connections, Inc. and was opened in 1990 with a planned closure date of 2242.
27 According to Clark County Washington data, the Finley Buttes Landfill has a capacity of
28 131,895,000 tons of municipal solid waste and receives approximately 500,000 tons of
29 municipal soil waste a year.²⁰² The other regional waste handling facility is the Columbia Ridge
30 Landfill, which is located near the town of Arlington in Gilliam County, Oregon, located
31 approximately 60 miles from the facility.

32
33 ASC Exhibit U, Attachment U-1 provides correspondence with the Columbia Ridge Landfill, in
34 which representatives from the landfill indicate that the landfill has adequate capacity to
35 receive the waste generated from construction and operation of the facility. Finley Buttes
36 Regional Landfill is closer to the facility site and would likely be used for frequent disposal of
37 waste, and as the second largest landfill in Oregon, receiving 500,000 tons of waste per year,
38 the Council finds that the ability of this waste service provider would not be impacted by
39 construction and operation of the facility.²⁰³

²⁰⁰ WESAPPD03-23 ASC West End Solar Exhibit W Waste 2022-09-28, Section 2.1.1.

²⁰¹ WESAPPD03-23 ASC West End Solar Exhibit W Waste 2022-09-28, Section 2.1.2.

²⁰² WESAPPD03-23 ASC West End Solar Exhibit W Waste 2022-09-28, Section 3.3.4.

²⁰³ https://chptap.ornl.gov/profile/78/FinleyButtesLandfill-Project_Profile.pdf. Accessed 10-18-2022.

1
2 The Council imposes Waste Minimization Conditions 1 and 2 under the Waste Minimization
3 standard (see Section IV.N., *Waste Minimization*, of this order), which require the applicant to
4 implement plans that would reduce waste and encourage the reuse and recycling of waste
5 generated during construction and operation of the facility. These conditions would lessen the
6 waste that would be disposed of at the regional landfills. Therefore, based on the quantity and
7 type of solid waste generated by the facility, existing and long-term capacity of the Columbia
8 Ridge and Finley Buttes Regional Landfills, and compliance with the waste minimization
9 conditions, the Council finds that construction and operation of the facility would not be likely
10 to result in significant adverse impacts to the ability of solid waste disposal providers to dispose
11 generated waste.

12
13 *IV.M.5 Traffic Safety*
14

15 Construction of the facility would result in traffic impacts from the increased traffic and
16 congestion resulting from delivery trucks, equipment, and workers travelling to and from the
17 facility site. Public providers related to transportation would be the Oregon Department of
18 Transportation (ODOT) for state highways, local and state police Departments for traffic safety,
19 and the Umatilla County Public Works/Road Department because they manage road conditions,
20 maintenance, and improvements.

21
22 Applicant assumes and estimates that 15 percent of workers would be hired locally. The
23 remaining 85 percent of the workforce would be anticipated to be from other parts of the state
24 or from out-of-state and would either commute daily from communities outside the analysis
25 area or would temporarily relocate to the vicinity of the proposed facility. Peak construction
26 periods would result in approximately 500 workers onsite. Most workers would drive alone;
27 vehicle trips per day are based on an assumed 1.25 occupancy rate. Estimated maximum
28 worker daily trip rate would be 400 round trips and 800 one-way trips. Estimated maximum
29 haul and delivery trip rate would be 45 round trips and 90 one-way trips per day.²⁰⁴ Total
30 maximum daily construction-related traffic would be approximately 890 one-way trips and 445
31 round trips.

32
33 Throughout construction the 90 one-way truck trip and deliveries would include the following
34 activities:

- 35 • Delivery of civil construction and materials (sand, aggregate, and cement) for new roads,
36 laydown areas, and equipment pads/foundations for substation and inverters.
- 37 • Heavy duty trucks to deliver solar modules and related equipment delivery, including
38 racking system structure, electrical wiring/cabling and equipment, steel posts, inverters,
39 and transformers;

²⁰⁴ WESAPPD03-21 ASC Exhibit U Public Services 2022-09-28, Section 3.2.4. Worker vehicles trips would occur in the early morning and evenings, whereas equipment and haul truck traffic would occur throughout the day, therefore the applicant does not anticipate worker and truck traffic to overlap significantly.

- 1 • Substation component delivery, including the main power transformer, circuit-breakers,
2 electrical buses and insulators, disconnect switches, control enclosure, metering and
3 control equipment, grounding, and associated control wiring, and all related equipment
4 based on the final design;
- 5 • Energy Storage System (ESS) delivery, including containers, battery modules, and related
6 equipment;
- 7 • Delivery of on-site construction equipment such as cranes, dozers, graders, compactors,
8 forklifts, etc.; and
- 9 • Light-duty delivery trucks would deliver water and would be used to apply water for
10 dust suppression as well as delivering electrical equipment and materials required for
11 solar panel construction and power transmission.
- 12 • Heavy-duty trucks carry gravel and other materials required for site grading and to
13 construct the new site access road segments.

14

15 The primary transportation highway corridors that would be used are I-82, I-84, and US-395.
16 For deliveries and workers arriving from the northern transportation route via I-82, the route
17 would use a short section of US-730 to access US-395 and from there would take Country Road
18 (CR) 1000 east (Feedville Road) from US-395, to S. Edwards Road north. For deliveries and
19 workers arriving from the southern transportation route via I-84 (east or west), access would be
20 anticipated to be from I-84 exit 188 to US-395, and then to S. Edwards Road. The main access
21 point to the facility site is anticipated to be located off of S. Edwards Road near the proposed
22 substation. A new driveway off of S. Edwards Road would be required at the access point and
23 would be constructed to Umatilla County standards, which is discussed further in Section IV.E.,
24 *Land Use*.

25

26 According to ODOT, interstate highways, US-395, and US-730 are designated as freight routes
27 by the Amended Oregon Freight Plan, which have specific standards for roadway section
28 widths, median barriers, and intersection design and there are no weight restricted bridges
29 along the two primary transportation routes.²⁰⁵ Feedville Road and South Edwards Road are
30 both paved County roads; however, current pavement condition of these roads is unknown.
31 Umatilla County requires a Road Use Agreement for certain proposed uses to ensure that any
32 impacts to County roads caused by construction activities are mitigated/repared by the
33 developer, which is discussed further below.

34

35 The Umatilla County Transportation System Plan (Umatilla County TSP) estimates that the
36 average daily traffic (ADT) volumes for local roads is 500 ADT, county roads which include rural
37 county roads is below 1,000 ADT, and heavier use county/collector roads, such as Feedville
38 Road, is between 1,200 and 10,000 ADT. The Umatilla County TSP explains that some county
39 roads serve only local uses, yet other county roads serve rural needs such as providing
40 connections to higher functioning facilities such as a state highway or interstate freeway,

²⁰⁵ WESAPDoc3-21 ASC Exhibit U Public Services 2022-09-28, Section 3.3.6.

1 accessing large businesses in rural areas, and accessing rural communities and farms, and these
2 types of roads are considered to be of higher importance to Umatilla County.²⁰⁶

3
4 Table 13: *Facility Construction Traffic Impacts to Area Highways* and Table 14: *Facility*
5 *Construction Traffic Impacts to County Roads* summarize the applicant’s analysis of impacts on
6 surrounding roads from construction traffic. The analysis for both types of highways and roads
7 uses the Average Annual Daily Traffic (AADT) as designated by ODOT and by the Umatilla
8 County TSP as an acceptable traffic range for designated roads. The applicant incorporates the
9 Level of Service (LOS) and the volume to capacity (V/C) ratio for facility access roads to
10 determine the magnitude, if any, of impacts to roads. The Umatilla County TSP defines LOS by a
11 letter grade from A to F, with each grade representing a range of V/C ratios. A V/C ratio is the
12 peak hour traffic volume on a highway divided by the maximum volume that the highway can
13 handle, where a V/C ratio of 0.0 indicates free-flowing traffic (LOS A) while a V/C of 1.0
14 indicates a breakdown in vehicular flow (LOS F).²⁰⁷ For instance, according to the Umatilla
15 County TSP a LOS “A” rating would have an equivalent V/C ratio of 0.00 to 0.48, which is
16 associated with traffic flow conditions where motorists are able to drive at their desired speed
17 and passing demand is well below passing capacity, and almost no platoons of three or more
18 vehicles are observed.

19
20 The assumptions integrated into the applicant’s traffic impact assessment are provided in the
21 footnotes of the Tables and include the assumption that some roads will only carry 40 or 60
22 percent of the maximum construction-related traffic (890 one-way trips) because workers and
23 deliveries would originate from different areas outside the analysis area and thus, travel to the
24 site using different routes. Highways used to support construction-related traffic would remain
25 at or near their existing V/C ratio and would not experience a lower level of service due to
26 construction traffic. County roads nearest to the facility site would experience an increase in
27 V/C ratios from an existing range of 0.10 to 0.25 to an anticipated range of 0.14 to 0.30,
28 however, the LOS is not anticipated to diminish and would remain at an A grading. The Council
29 notes that according to the Umatilla County TSP, the ADT for these important country roads is
30 1,001 to 2,500 and construction traffic increase is anticipated to be 1,535 to 3,034 AADT, which
31 is within and above the existing range. However, because the V/C ratio is still below 0.48, which
32 is associated with a traffic flow LOS rating of “A”, and the applicant would deploy the best
33 management practices to avoid, minimize and mitigate impacts from construction traffic
34 discussed below, the Council concludes that construction-related traffic would not impact the
35 ability of public and private providers of traffic safety services.

206 Umatilla County 2002 Transportation System Plan, Table 4-3: Important County Roads.
https://www.co.umatilla.or.us/fileadmin/user_upload/Planning/Umatilla_County_TSP_June_02.pdf Accessed on
03-01-2022.

207 WESAPPD03-21 ASC Exhibit U Public Services 2022-09-28, Section 3.3.6.1.

Table 13: Facility Construction Traffic Impacts to Area Highways

Location	Existing AADT (2019 ¹)	Estimated Current LOS ²	Estimated Existing V/C ^{3,4}	Facility Construction Traffic (Peak Trips Per Day, One-Way) ⁶			AADT with Facility Traffic	Projected V/C with Peak Construction Traffic ^{5,4}	Projected LOS with Peak Construction Traffic
				Total Peak Trips	Worker Traffic	Truck Traffic			
I-82 – Umatilla Bridge ATR Station 30-025	21,600	A	0.17	356 ⁷	320	36	21,956	0.17	A (no change)
I-84 - 2.56 miles east of US 395 interchange	17,300	B	0.51	534 ⁸	480	54	17,834	0.52	B (no change)
US-395 – 0.02 miles north of Gladys Ave/OR-207 (located within UGB)	19,300	C/D	0.72	356 ⁷	320	36	19,656	0.73	C/D (no change)
US-395 – Stanfield ATR Station 30-019 (0.12 miles north of Feedville Rd)	8,200	A	0.30	356 ⁷	320	36	8,556	0.32	A (no change)
US-395 – 0.5 miles north of I-84 interchange	8,600	A	0.32	534 ⁸	480	54	9,134	0.34	A (no change)
US-730 - 0.5 miles east of I-82 interchange	12,400	A	0.46	356 ⁷	320	36	12,756	0.47	A (no change)

1. Data from ODOT (2019).
2. Based on estimated volume to capacity (V/C) and equivalent level of service (LOS) as presented in Table U-5.
3. Estimated by dividing existing annual average daily traffic (AADT) by the maximum ADT of the federal functional class for the applicable highway segment (from Table U-6).
4. Segments below maximum ODOT V/C ratios in Table U-4.

Table 13: Facility Construction Traffic Impacts to Area Highways

Location	Existing AADT (2019 ¹)	Estimated Current LOS ²	Estimated Existing V/C ^{3,4}	Facility Construction Traffic (Peak Trips Per Day, One-Way) ⁶			AADT with Facility Traffic	Projected V/C with Peak Construction Traffic ^{5,4}	Projected LOS with Peak Construction Traffic
				Total Peak Trips	Worker Traffic	Truck Traffic			
5. Estimated by dividing projected annual average daily traffic (AADT) by the maximum ADT of the federal functional class for the applicable highway segment (from Table U-6). 6. One-way trips are counted to tally both the inbound and outbound trips for Project traffic (i.e., round-trip count would be half of total one-way trips). 7. Assumes 40 percent of construction traffic will use road. 8. Assumes 60 percent of construction traffic will use road. Source: ASC Exhibit WESAPDoc3-21 ASC Exhibit U Public Services 2022-09-28, Table U-7.									

1

Table 14: Facility Construction Traffic Impacts to County Roads

Location	Existing AADT Range (2021 ¹)	Estimated Current LOS ²	Estimated Existing V/C ³	Facility Construction Traffic ⁵			AADT with Facility Traffic	Projected V/C with Peak Construction Traffic ⁴	Projected LOS with Peak Construction Traffic
				Total Peak Trips per day, one-way	Worker Traffic, peak trips per day, one-way	Truck Traffic, peak trips per day, one-way			
Feedville Road	1,001 to 2,500	A	0.10 to 0.25	356 ⁶	320	36	1,357 to 2,856	0.14 to 0.29	A (no change)
S. Edwards Road	1,001 to 2,500	A	0.10 to 0.25	534 ⁷	480	54	1,535 to 3,034	0.15 to 0.30	A (no change)

1. Data from ODOT (2021).
 2. Based on estimated volume to capacity (V/C) and equivalent level of service (LOS) as presented in Table U-5.
 3. Estimated by dividing existing annual average daily traffic (AADT) by the maximum vehicles per day for major and minor collector roads per TSP (Umatilla County 2002).
 4. Estimated by dividing projected annual average daily traffic (AADT) by the maximum vehicles per day for major and minor collector roads per TSP (Umatilla County 2002).
 5. One-way trips are counted to tally both the inbound and outbound trips for Project traffic (i.e., round-trip count would be half of total one-way trips).
 6. Assumes 40 percent of construction traffic will use road.
 7. Assumes 60 percent of construction traffic will use road.

Table 14: Facility Construction Traffic Impacts to County Roads

Location	Existing AADT Range (2021 ¹)	Estimated Current LOS ²	Estimated Existing V/C ³	Facility Construction Traffic ⁵			AADT with Facility Traffic	Projected V/C with Peak Construction Traffic ⁴	Projected LOS with Peak Construction Traffic
				Total Peak Trips per day, one-way	Worker Traffic, peak trips per day, one-way	Truck Traffic, peak trips per day, one-way			
Source: ASC Exhibit WESAPDoc3-21 ASC Exhibit U Public Services 2022-09-28, Table U-8.									

1

1 The Umatilla County TSP designates road design standards for county roads including arterial,
2 major and minor collector, and local roads, which include surface width, speed limits, pavement
3 or gravel standards, and shoulder width. The applicant represents that at the design stage for
4 the facility, a careful inspection of county roads used for construction and operation of the
5 facility would be required to determine where and what improvements would be needed to be
6 made so that roads would be serviceable for construction traffic. To ensure that road
7 improvements are done consistent with current Umatilla County codes and standards, the
8 applicant represents that it would cooperate with the Umatilla County Public Works
9 Department to obtain permits to improve the roads and also to make repairs to roads that
10 might be damaged from construction traffic. In addition, the applicant would enter into road
11 use agreements with Umatilla County, to ensure that public roads impacted by construction
12 would be left in as “good or better” condition than that which existed prior to the start of
13 construction.

14

15 Based on other road use agreements reviewed by EFSC and the Department, the Council
16 understands that provisions typical of road use agreements between an applicant and a County
17 or its Public Works Department includes, but is not limited to:

- 18 • Applicant responsibility to identify final transportation routes based on final design;
- 19 • Conduct pre-construction road inventory that identifies the condition of all roads used
20 during construction;
- 21 • Applicant responsibility to pay for road improvements necessary for construction as well
22 as any necessary road repairs caused from construction of the proposed facility;
- 23 • Applicant shall maintain roads to County standards which include the ability for the
24 public and emergency services to access and use roads; and
- 25 • Conduct post-construction inventory to compare with pre-construction to negotiate all
26 necessary improvements that must be made to roads.

27

28 The applicant states that a component of road use agreements would be a traffic management
29 plan which would be employed by its construction contractor and would provide best
30 management practices (BMP’s) to minimize traffic impacts due to construction traffic
31 congestion, flagging needs, road closures, and large equipment and deliveries. All BMPs are
32 listed in their entirety in Attachment U-1, a draft Traffic Management Plan, some of which
33 include:

- 34 • Encouraged construction worker carpooling.
- 35 • Construction manager will provide construction schedules to adjacent landowners prior
36 to start of construction and will work with adjacent landowners on mitigating any traffic
37 impacts to harvest time activities.
- 38 • Posting signs on county- and state-maintained roads, where appropriate, to alert
39 motorists of construction and warn them of slow, merging, or oversize traffic.
- 40 • Using traffic control measures such as traffic control flaggers, warning signs, lights, and
41 barriers during construction to ensure safety and to minimize localized traffic
42 congestion. These measures will be required at locations and during times when trucks
43 will be entering or exiting highways frequently.

- Restoring residential areas as soon as possible, and fencing construction areas near residences at the end of the construction day.

All applicant-representations for avoiding, minimizing and mitigating impacts related to construction traffic for the proposed facility are compiled into a draft Traffic Management Plan (Plan) which is attached to this order as Attachment U-1. To ensure that construction and operation of the proposed facility is not likely to result in significant adverse impacts on the ability of public and private service providers for traffic safety including impacts to roads and traffic flow, the Council imposes Public Services Conditions 1 and 2, which require the finalization of the Plan, submission of final road use agreements, and adherence to the final Traffic Management Plan during construction. The Council understands that it is likely that the applicant or its construction contractor may have its own Traffic Management Plan, which may be provided if it, at a minimum, includes the provisions in the draft Traffic Management Plan, Attachment U-1.

Public Services Condition 1: Prior to construction of the facility, or facility component, as applicable, the certificate holder shall:

- a. Based on final design, finalize, identify, and provide maps of all public roads used for construction, road names, locations, and road conditions and include in Final Traffic Management Plan identified in (b) and (c).
- b. Submit executed road use agreements between Umatilla County and the certificate holder or its contractor. Any Final Traffic Management Plan that is part of the road use agreements shall include, at a minimum, the provisions designated in Section II of Attachment U-1 of the Final Order on ASC.
- c. If a Final Traffic Management Plan designated in sub (a) is not included in road use agreements executed with Umatilla County, then submit a Final Traffic Management Plan. A copy of the Final Traffic Management Plan shall be provided to the Department and Umatilla County Public Works Department. The Construction Traffic Management Plan shall, at a minimum, include the provisions in Section II of Attachment U-1 of the Final Order on ASC.
- d. Submit to the Department, any ODOT permits obtained by the certificate holder, its third-party contractors or subcontractors including but not limited to Oversize Load Movement Permit/Load Registration, Permit to Occupy or Perform Operations Upon a State Highway, and/or an Access Management Permit.
- e. Submit to the Department, any county permits obtained by the certificate holder, its third-party contractors or subcontractors including but not limited to utility crossing permit and road approach permit.

[PRE-PS-01]

Public Services Condition 2: During construction of the facility, or facility component, the certificate holder shall ensure that construction contractors adhere to the requirements of the Final Traffic Management Plan.

1 Facility operation is anticipated to require two to five employees would be periodically onsite
2 for operation and maintenance activities. These employees would use the same roads that
3 would be used by the construction workforce. Occasionally during operations, specialty
4 contractors would travel from farther areas to handle major repairs, however, the Council
5 concludes that operational traffic generation would be minimal and is not anticipated to impact
6 traffic operations or roadways.

7 [CON-PS-01]

8
9 IV.M.6 Air Traffic

10
11 Facility construction and operation could result in impacts to navigable airspace from taller
12 structures located in proximity to public and private airports, potential solar panel glare, and
13 outdoor light illumination. The tallest facility structures would be the collector substation and
14 switchyard substation which both would be approximately 30 feet high and the interconnection
15 poles at the switchyard substation which would be the approximate height of the existing
16 transmission line/poles that the proposed facility would interconnect with. The O&M building
17 would be approximately 20 feet high and the solar arrays, at maximum tilt would be 16 feet tall.
18 The nearest public airport is the Hermiston Municipal Airport, located 1.5 miles northwest of
19 the proposed facility.²⁰⁸

20
21 To assess the potential for impacts to navigable air space, ASC Exhibit U includes determination
22 letters obtained from the Oregon Department of Aviation (ODA) indicating that ODA conducted
23 an aeronautical study of the proposed facility buildings and solar array configurations. ODA
24 evaluates standards in CFR: *Title 14. Aeronautics and Space: PART 77—Safe, Efficient Use, and*
25 *Preservation of the Navigable Space*, similar to the Federal Aviation Administration (FAA). ODA
26 determined that notice to the FAA Form (7460-1) is required, because the structures exceed
27 FAR Part 77.9 (a, b or c) and Obstruction Standards of OAR 738-70-0100, which would be from
28 the proximity to a municipal airport. The determination also concluded that ODA does not
29 object to the construction described in this proposal, but that the determination does not
30 constitute ODA approval or disapproval of the physical development involved in the proposal. It
31 is a determination with respect to the safe and efficient use of navigable airspace by aircraft
32 and with respect to the safety of persons and property on the ground.²⁰⁹ The determinations
33 from ODA expire 18 months after the effective date, April 06, 2022.²¹⁰ To ensure that potential
34 impacts to the public air traffic providers are avoided, the Council imposes Public Services
35 Condition 3 below, requiring the applicant re-submit the facility data to ODA prior to
36 construction if the ODA determination has expired.

37
38 As noted by ODA and as provided in ASC Exhibit U the applicant includes FAA Determinations of
39 No Hazard to Air Navigation (Form 7460-1) obtained by the applicant, which confirms that FAA

²⁰⁸ The facility would be located approximately 1.5 miles southeast of Hermiston Municipal Airport.

²⁰⁹ WESAPDoc3-21 ASC Exhibit U Public Services 2022-09-28, Attachment U-4_2022-ODA-S-227-230-OE
Determination Letter - Solar Arrays.

²¹⁰ ODA determination would expire on or around October 6, 2023.

1 conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and
2 applicable Title 14 of the Code of Federal Regulations (CFR), part 77, and finds that facility
3 structures would not exceed obstruction standards and would not be a hazard to air navigation.
4 There are four determinations for solar panel configurations, the O&M building, and the
5 substation. The FAA determinations expire November 3, 2023. The FAA’s Determinations of No
6 Hazard to Air Navigation, also require the submission of a Supplemental Notice of Actual
7 Construction or Alteration form (Form 7460-2) to FAA is required within 5 days after
8 construction reaches its greatest height as specified in the No Hazard/Determination. The
9 applicant indicates that if the final design of the facility requires additional submittals of form
10 7460-1 to the FAA and the ODA to account for a revised layout/locations of infrastructure or
11 revised heights, the applicant would provide a record of all correspondence with FAA and ODA
12 to the Department no less than 30 days prior to construction.²¹¹ The applicant also indicates it
13 corresponded with Community Planning & Liaison Officer with the Navy who indicated that
14 “the proposed project appears to be located several miles outside of military training and
15 operating areas.”²¹²

16
17 To ensure that, based on final design, facility construction and operation would not be likely to
18 impact private and public air traffic (airport) providers from impacts to navigable airspace, as
19 well as to reflect the applicant-representations for FAA and ODA coordination, and to ensure
20 that valid ODA and FAA determinations are obtained prior to construction, the Council imposes
21 the following condition:

- 22
23 **Public Services Condition 3:** If prior to construction, the Oregon Department of Aviation’s
24 (ODA) Determinations for the facility expire, the certificate holder shall:
- 25 a. First, submit to and receive responses from the ODA of 7460-1 Notice of Proposed
26 Construction or Alteration Forms for all aboveground facility components. The
27 certificate holder shall provide copies of ODA’s responses, which must be consistent
28 with ORS 836.535(2), to the Department. Certificate holder shall respond to ODA
29 recommendations, if applicable.
 - 30 b. Second, once ODA responses on the 7460-1 forms are received and if the FAA
31 determinations have expired, submit to and receive determinations from the Federal
32 Aviation Administration (FAA) for all aboveground facility components. The certificate
33 holder shall provide copies of FAA determinations to the Department.
 - 34 c. Within 5-days of construction, certificate holder shall submit 7460-2 forms to FAA and
35 ODA and shall report both timing of submission and any results to the Department.

²¹¹ OAR 738-070-0060 outline procedures for submitting notice to ODA of construction or alteration of structures with height and distance to airport limits. ORS 836.535 restricts hazards to air navigation, however, ORS 836.535(2) exempts entities who receive approval from the FAA or EFSC from the statute. Nevertheless, under OAR 345-001-0010(51)(i), ODA is a reviewing agency for EFSC and requests consultation with them prior to submission data to FAA to incorporate any feedback ODA may provide on a facility.

²¹² WES Email from Navy with comment 2021-12-10. The Department of Defense, including the U.S. Navy, are not designated as reviewing agencies under OAR 345-001-0010(51) and military airports and airways are not designated under the scope of the Public Services standard, however, the Department encourages applicants to coordinate early in project development with military entities who may be impacted by a facility.

1 [PRE-PS-02]

2
3 Measures the applicant would employ to minimize potential glare and lighting from the
4 operation of the solar facility would be to use solar modules coated with antireflective to
5 minimize the potential for glare which is a typical design feature for solar panels and
6 permanent lighting fixtures would be directed down, shielding light to limit off-site lighting.

7
8 Based on compliance with the above condition, the Council finds that the facility would not be
9 likely to result in significant adverse impacts on the ability of air traffic service providers to
10 provide service.

11
12 *Police and Fire Protection*

13
14 *IV.M.7 Police Protection*

15
16 Facility construction could result in impacts to police protection providers due to the increased
17 possibility of theft at the proposed site, safety issues associated with the increased population
18 from temporary workers, and increased traffic on roads around the proposed facility. The
19 average number of construction workers on site would be 300 people, while the maximum
20 number of workers during peak construction months would not be more than 500 people, with
21 approximately 75-125 workers estimated to temporarily relocate to the area and 180-300
22 workers estimated to commute to the facility site from outside the analysis area.

23
24 The Umatilla County Sheriff is the law enforcement provider that would serve the facility site
25 with an office in Hermiston, Oregon, approximately 2.6 miles from the proposed facility. ASC
26 Exhibit U, Attachment U-4, provides applicant correspondence with the Umatilla County Sheriff
27 which indicates that the facility site is in an area that has low to medium crime. The letter also
28 indicates that, due to the size of Umatilla County, their response times to incidents on the site
29 may be impacted, however, they would respond as necessary if issues arise on site.

30
31 As discussed further under the evaluation for impacts to fire service providers and in Section
32 IV.N., *Wildfire Prevention and Risk Mitigation* and in Section III.A., *Facility Components*, access
33 roads would be sized for emergency vehicle access which would allow emergency vehicles to
34 navigate onsite. Under Wildfire Prevention and Risk Mitigation Conditions 1-3, the applicant
35 would submit and implement an Emergency Management and Wildfire Mitigation Plan –
36 EMWMP, during construction and operation. The EMWMP includes emergency contact
37 information, pre-emergency planning and training, and emergency response procedures that
38 address fire hazards, equipment safety, and site access.

39
40 The construction staging area, collector substation, switchyard, solar array, and energy storage
41 system would be within a 6 to 10-foot-tall fence line with gated access which would prevent
42 outside persons from accessing the facility site during construction and operation which would
43 minimize theft and potential impacts to law enforcement. Further, as discussed under the
44 traffic safety section under this standard, and under Public Services Condition 2, the applicant

1 proposes, and Council imposes the implementation of a Construction Traffic Management Plan
2 (Attachment U-1 to this order), which includes measures to reduce safety issues associated
3 with construction traffic such as timing deliveries and using flagging and pilot vehicles.
4

5 Facility operations would not be likely to impact police protection providers, because
6 approximately two to five workers would be deployed on an as-needed basis for operations,
7 maintenance (O&M) and repairs. Furthermore, these workers are expected to be hired locally
8 (within 3 hours of the facility), with the exception of positions that may require previous solar
9 generation facility experience. In addition to the O&M workers, specialized third party
10 contractors may be required for equipment repairs, the intermittent frequency of these trips
11 would not be anticipated to impact police protection providers.
12

13 Based on the above reasoning analysis, the Council finds that the construction and operation of
14 the facility would not be likely to impact law enforcement providers from providing service
15 within the analysis area.
16

17 IV.M.8 Fire Protection 18

19 Construction and operation of the facility could result in impacts to fire protection providers
20 within the analysis area due to increased fire risk from and to the proposed facility.
21 Construction-related activities would increase the risk of fires igniting on site. Facility
22 components including the solar array, substation electrical equipment and transformers, and
23 the battery storage system could result in fire hazards. Findings of compliance of how the
24 applicant characterized wildfire risk within the analysis area and how the facility will be
25 designed, constructed, and operated in compliance with a Wildfire Mitigation Plan (Included in
26 an Emergency Management and Wildfire Mitigation Plan – EMWMP) are discussed further in
27 Section IV.N., *Wildfire Prevention and Risk Mitigation*, of this order. The EMWMP describes the
28 procedures and standards that the applicant will use to inspect facility components and
29 manage vegetation as well as identify preventative actions and programs that the applicant will
30 carry out to minimize the risk of facility components causing wildfire.
31

32 The Umatilla County Fire District #1 (UCFD #1) provides fire protection services for facility site
33 and the nearest fire station is Station 24 located in Stanfield, approximately 2.4 miles away.²¹³
34

35 Construction-related fire hazards could result from workers smoking and vehicle and
36 equipment refueling, and operating equipment off roadways in areas of tall dry grass that could
37 ignite upon contact with hot vehicle parts, particularly in dry seasons. ASC Exhibit U as well as
38 ASC Exhibit V (Wildfire Risk), Attachment V-1 (EMWMP) (imposed under Wildfire Prevention
39 and Risk Mitigation Condition 1) provides a summary of the best management practices (BMPs)
40 that would be implemented during construction to reduce the potential for construction-
41 related fires, which include:
42

²¹³ WESAPPD03-21 ASC Exhibit U Public Services 2022-09-28, Section 3.3.8.2.

- 1 • Keeping water trucks on-site to keep the ground and vegetation moist during extreme
2 fire conditions.
- 3 • Plan and manage the work and the movement of vehicles. No off-road driving would be
4 done while working alone.
- 5 • Smoking would only be allowed in designated smoking areas in the site boundary.
- 6 • Each vehicle used on-site would have a shovel and fire extinguisher of sufficient type
7 and capacity to suppress small fires around vehicles.
- 8 • Prior to start of construction work activities, contact local fire department(s) and advise
9 them of work type, location, and probable duration.

10
11 The risks of fires igniting during operation of the facility would vary depending on the type of
12 operating facility component and depending on climatic conditions. There could be the
13 potential for electrical fires from electrical equipment associated with solar modules,
14 substation components, and the lithium-ion batteries associated with the Energy Storage
15 System (ESS). Electrical equipment associated with the solar panels and cabling, substations,
16 and the ESS could short-circuit and generate sparking, which could cause fires. Electrical
17 equipment associated with the sub and switchyard stations such as the connection lines and
18 transformers could spark, especially if there is contact with foreign objects such as an animal.
19 The chemicals used in lithium-ion batteries are generally nontoxic but do present a flammability
20 hazard because these batteries are susceptible to overheating and typically require cooling
21 systems dedicated to each ESS enclosure, especially at the utility scale such as the proposed
22 facility.

23
24 The applicant provides measures to avoid, minimize and mitigate the potential for fires and
25 other safety risks during proposed facility operation are discussed in ASC Exhibits B, U, and V.
26

27 As discussed in Section III.A.2., *Related or Supporting Facilities* and in Section IV.N., *Wildfire*
28 *Prevention and Risk Mitigation*, approximately 3.4 miles new permanent access roads would be
29 constructed to access the solar array, BESS, substations, and O&M building within the site
30 boundary fence line. Access roads located within the solar array site would be approximately 12
31 feet to 20 feet wide, depending on location, with an internal turning radius of likely up to 28
32 feet in accordance with 2019 Oregon Fire Code requirements, including Section 503 and
33 Appendix D - Fire Apparatus Access Roads.²¹⁴ All newly constructed roads would be graded and
34 graveled with cross sections that consist of 6 inches of compacted gravel supported on 6 inches
35 of compacted native dirt. Further, vegetation would be cleared and maintained along perimeter
36 roads to provide a vegetation clearance for fire safety.

37
38 The Supervisory Control and Data Acquisition (SCADA) system consists of fiber optic and copper
39 communication lines that would be installed with the collector line system and connects the
40 facility components to allow for remote operations of the facility, including notification of
41 malfunctions and the ability to shut off power.
42

²¹⁴ WESAPPD03-1 ASC Exhibit B Project Description 2022-10-22, Section 3.0.

1 Solar panels and BESS:

- 2 • Proper installation and maintenance of electrical equipment would prevent short-
- 3 circuits and consequent sparking.
- 4 • Vegetation management and low growing to reduce the chance of fire.
- 5 • The solar array would have shielded electrical cabling, as required by applicable code, to
- 6 prevent electrical fire.
- 7 • Vegetation near and under solar panels may be mowed periodically, and weeds would
- 8 be managed in accordance with the weed management procedures described in the
- 9 Weed Management Plan (discussed further in Section IV.H., *Fish and Wildlife Habitat*)
- 10 • Electrical equipment would meet NESC standards reducing significant fire risk.
- 11 • The areas immediately around the O&M Building, substations, and BESS would be
- 12 graveled, with no vegetation present.
- 13 • The batteries would be contained in completely leak-proof modules and stored upon a
- 14 concrete pad.
- 15 • Transportation of lithium-ion batteries is subject to 49 CFR 173.185 – Department of
- 16 Transportation Pipeline and Hazardous Material Administration. This regulation contains
- 17 requirements for prevention of a dangerous evolution of heat; prevention of short
- 18 circuits; prevention of damage to the terminals; and prevention of batteries coming into
- 19 contact with other batteries or conductive materials.
- 20 • Adherence to the requirements and regulations, personnel training, safe interim
- 21 storage, and segregation from other potential waste streams will minimize any public
- 22 hazard related to transport, use, or disposal of batteries.

23
24 ASC Exhibit U, Attachment U-6 includes a letter from the UDFD #1 which confirms that the
25 facility site is within the boundaries of the Fire District who provides services for fire, hazardous
26 materials, and emergency medical services. In its letter, the UCFD #1 requests training on the
27 solar arrays and safely operating around them and any proposed battery storage as this is the
28 first significant installation within their fire district.²¹⁵ Facility design measures that reduce the
29 risk of fire to and from the facility, such as road width and surfaces materials, are further
30 represented in the applicant’s Emergency Management and Wildfire Mitigation Plan –
31 EMWMP, imposed under Wildfire Risk Mitigation Conditions 1 through 3. Under these
32 conditions, the applicant would provide UDFD #1 copies of the construction EMWMP and
33 operational EMWMP.

34
35 To minimize the impacts to fire protection service providers that would serve the facility site
36 and to address the UDFD #1 request, below, the Council imposes Public Service Conditions 4
37 and 5, which require training for both the applicant and fire department .

²¹⁵ Umatilla County Fire District #1 letter also states that Section 1204 of the 2019 Oregon Fire Code (OFC) would provide adequate safety provisions if required maintenance in those sections is carried out. Council highlights that 2019 OFC provisions from 1204.1 – 1204.4.1 focus on fire and safety measures such as vegetation clearances and ground cover, however based on 1201.1 of the 2019 OFC, fire codes do not apply to utility-scale energy facilities which are under the control of a lawfully designated agency, in this case the Energy Facility Siting Council. Applicant’s may elect to apply these codes and there may be other OFC applicable to the construction and operation of the facility.

1
2 **Public Services Condition 4:** Prior to operation the certificate holder shall contact the
3 Umatilla County Fire District #1 (UDFD #1) to schedule an on-site orientation to review
4 facility layout and safety procedures. In its annual report required under General
5 Standard of Review Condition 10, the certificate holder shall indicate the date that the
6 training will occur or occurred.

7 [PRO-PS-01]
8

9 **Public Services Condition 5:** Annually during operation the certificate holder shall
10 contact the Umatilla County Fire District #1 (UDFD #1) to offer an on-site training to
11 review facility layout and safety procedures. In its annual report required under General
12 Standard of Review Condition 10, the certificate holder shall indicate the dates that they
13 contacted UDFD #1 and offered training, and any trainings scheduled or already
14 conducted.

15 [OPR-PS-01]
16

17 Based on the findings of fact and analysis provided above and compliance with the above-
18 Public Services Conditions, the Council finds that the construction and operation of the facility
19 is not likely to result in significant adverse impacts to the ability of fire protection service
20 providers to provide fire protection services.

21
22 IV.M.9 Housing
23

24 Potential impacts to public and private housing providers could result if there were an
25 inadequate supply of housing in relation to the demand from the new temporary and
26 permanent residents (workers) associated with the construction and operation of the facility.
27 Examples of public housing providers would be government provided housing, and potentially
28 subsidized housing for low-income people and through a variety of government loans and other
29 incentives. It is not anticipated that temporary or permanent workers associated with the
30 facility would use public housing. Examples of private housing options are: motels; hotels;
31 trailer or RV parking areas; campgrounds; and house, room or apartment rentals.
32

33 Applicant estimates that during the peak construction period a maximum of 500 works may be
34 needed on-site and that and estimated 60 percent of workers would commute from up to 70
35 miles away from the facility, which leaves and estimated 25 percent of workers requiring
36 temporary housing in the analysis area which means on average there may be 75 construction
37 workers looking for temporary housing and during peak construction 125 workers looking for
38 housing.²¹⁶ The applicant assumes that the commutable distance for temporary works would be
39 70 miles around the facility site, so evaluated housing options available in that range, and
40 includes the communities of Hermiston, Stanfield, Boardman, and Pendleton.
41

²¹⁶ WESAPPD03-21 ASC Exhibit U Public Services 2022-09-28, Section 3.4.5.1.

1 Temporary construction workers are expected to utilize housing options that include hotels,
2 campgrounds, recreational vehicle (RV) parks, and to a lesser extent, rental houses. ASC Exhibit
3 U details that there are approximately 63 hotels or motels with approximately 3,939
4 hotel/motel rooms, and 19 RV parks with a minimum of 1,000 RV spaces that are available in
5 the analysis area.²¹⁷ According to 2021 Oregon Tourism Commission data, the lodging vacancy
6 rate for eastern Oregon was approximately 47.1 percent, where hotel and RV site vacancy,
7 occupancy of RV sites is anticipated to be higher during the summer months than during the
8 rest of the year. The Council estimates that even with a 70 percent occupancy rate of hotel
9 rooms and RV sites during the summer months, there would still be approximately 1,492 hotel
10 rooms and RV spaces available. The Council finds that this availability of temporary housing
11 would be able to accommodate the estimated maximum of 125 temporary works in the
12 analysis area during construction, and that construction of the facility would not adversely
13 impact their ability to provide temporary housing.

14
15 Given that operational personnel that would visit the site as needed would be two to five
16 workers, it is not anticipated that the operational personnel requiring housing, if needed, would
17 impact housing in the analysis area. Therefore, the Council finds that the construction and
18 operation of the facility would not be likely to cause significant adverse impact on the ability of
19 housing providers to provide housing.

20
21 IV.M.10 Schools and Healthcare

22
23 Facility construction and operation could result in increased demand of health care providers.
24 Good Shepherd Health Care Services provides hospital and healthcare services to the analysis
25 area, with an office approximately 4.7 miles from the facility site. The Umatilla County Fire
26 District #1 (UCFD#1), located in Hermiston and discussed above, would provide first responder
27 services to the site. The nearest Level III trauma center is the Good Shepard Medical Center and
28 the nearest Level I trauma centers are located in the city of Portland: Oregon Health & Science
29 University Hospital and Legacy Emmanuel Medical Center.

30
31 Impacts to health care providers could occur if facility construction activities result in an
32 unexpected increase in emergency services to such a degree that it overwhelms local providers.
33 Potential impacts could include accidents on-site during construction or traffic-related incidents
34 from the increased traffic. As discussed in Section IV.N., *Wildfire Prevention and Risk Mitigation*,
35 and imposed as Wildfire Prevention and Risk Mitigation Conditions 1-3, the applicant would
36 submit and implement an Emergency Management and Wildfire Mitigation Plan – EMWMP,
37 during construction and operation. The EMWMP includes training, emergency preparation and
38 response procedures which would reduce emergency incidents related to construction and

²¹⁷ ASC Exhibit U also provides the vacancy/availability of apartments and short-term rental houses, where the estimated number of vacant rental units is calculated as a percentage of total vacant housing units; that percentage is based on the ratio of renter-occupied dwellings to owner-occupied dwellings. Using this method, the applicant estimates that 1,231 housing units would be available for rent in Umatilla County, and 1,499 housing units would be available for rent in Benton County. However, the Council does not anticipate that temporary workers within the area for the approximate 12 months construction period would secure this type of housing.

1 operation of the facility. These measures would help avoid impacts to health care providers and
2 responders. Based on the relatively small number of new temporary residents during
3 construction and new permanent residents during operation, and the implementation of the
4 EMWMP, the Council finds that the facility is not likely to cause significant adverse impact on
5 the ability of communities to provide health care.

6
7 Facility construction would not be expected to increase demand of school providers due to the
8 temporary nature of the activity and low likelihood that families would relocate permanently.
9 The applicant estimates that during operations, up to two new permanent households, with a
10 maximum of four new schoolchildren could move to the analysis area. Due to the relatively
11 small number of new temporary residents and new permanent residents, significant new
12 demands are not expected from schools that serve the area. Therefore, the Council finds that
13 the construction and operation of the facility are not likely to result in significant adverse
14 impacts to the ability of school providers to provide schools.

15
16 **Conclusions of Law**

17
18 Based on the foregoing analysis, finding of facts, and site certificate conditions, the Council
19 finds that the construction and operation of the facility, taking into account mitigation, are not
20 likely to result in significant adverse impact to the ability of public and private providers within
21 the analysis area to provide their services.

22
23 **IV.N Wildfire Prevention and Risk Mitigation: OAR 345-022-0115**

24
25 *(1) To issue a site certificate, the Council must find that:*

26
27 *(a) The applicant has adequately characterized wildfire risk within the analysis area*
28 *using current data from reputable sources, by identifying:*

29
30 *(A) Baseline wildfire risk, based on factors that are expected to remain fixed for*
31 *multiple years, including but not limited to topography, vegetation, existing*
32 *infrastructure, and climate;*

33 *(B) Seasonal wildfire risk, based on factors that are expected to remain fixed for*
34 *multiple months but may be dynamic throughout the year, including but not*
35 *limited to, cumulative precipitation and fuel moisture content;*

36 *(C) Areas subject to a heightened risk of wildfire, based on the information*
37 *provided under paragraphs (A) and (B) of this subsection;*

38 *(D) High-fire consequence areas, including but not limited to areas containing*
39 *residences, critical infrastructure, recreation opportunities, timber and*
40 *agricultural resources, and fire-sensitive wildlife habitat; and*

41 *(E) All data sources and methods used to model and identify risks and areas*
42 *under paragraphs (A) through (D) of this subsection.*

1 (b) *That the proposed facility will be designed, constructed, and operated in*
2 *compliance with a Wildfire Mitigation Plan approved by the Council. The Wildfire*
3 *Mitigation Plan must, at a minimum:*

4
5 (A) *Identify areas within the site boundary that are subject to a heightened risk*
6 *of wildfire, using current data from reputable sources, and discuss data and*
7 *methods used in the analysis;*

8 (B) *Describe the procedures, standards, and time frames that the applicant will*
9 *use to inspect facility components and manage vegetation in the areas*
10 *identified under subsection (a) of this section;*

11 (C) *Identify preventative actions and programs that the applicant will carry out*
12 *to minimize the risk of facility components causing wildfire, including*
13 *procedures that will be used to adjust operations during periods of*
14 *heightened wildfire risk;*

15 (D) *Identify procedures to minimize risks to public health and safety, the health*
16 *and safety of responders, and damages to resources protected by Council*
17 *standards in the event that a wildfire occurs at the facility site, regardless of*
18 *ignition source; and*

19 (E) *Describe methods the applicant will use to ensure that updates of the plan*
20 *incorporate best practices and emerging technologies to minimize and*
21 *mitigate wildfire risk.*

22 ***

23 **Findings of Fact**

24
25 The Wildfire Prevention and Risk Mitigation standard requires the Council to find the applicant
26 has adequately characterized wildfire risk associated with a proposed facility; and that the
27 facility would be operated in compliance with a Council-approved wildfire mitigation plan.
28 Because the effective date of OAR 345-022-0115 was July 29, 2022, and the application for site
29 certificate was deemed complete on September 9, 2022, this standard applies to the proposed
30 facility. The analysis area to evaluate potential wildfire risks is the site boundary and one-half
31 mile from the site boundary.²¹⁸

32
33 *Characterization of Wildfire Risk within Analysis Area*

34
35 To adequately characterize the wildfire risk within the analysis area as required under OAR 345-
36 022-0115(1)(a), the applicant used data from the Northwest Interagency Coordination Center
37 (NWCC) Predictive Services group which provides fire weather advisories, and the Oregon
38 Wildfire Risk Explorer which is an online planning tool maintained in partnership with the
39 Oregon Department of Forestry, Oregon State University Institute for Natural Resources, and

²¹⁸ OAR 345-001-0010(35)(c).

1 the U.S. Forest Service.²¹⁹ The applicant also evaluated climate and weather data from the
2 National Oceanic and Atmospheric Administration (NOAA).

3
4 Based upon the applicant and Council evaluation of baseline and seasonal fire risk, areas
5 subject to heightened fire risk, and high-fire consequence areas using current and reputable
6 data sources and methods, the Council finds that the area within the site boundary is
7 characterized as having moderate wildfire risk and the area within the analysis area as having
8 moderate or low wildfire risk.

9
10 *Baseline Fire Risk [OAR 345-022-0115(1)(a)(A)]*

11
12 The applicant evaluated baseline wildfire risk within the analysis area, based on factors that are
13 expected to remain fixed for multiple years, including topography of the site, vegetation,
14 existing infrastructure and fire hazards to potential infrastructure, the history of fires, status of
15 active fires, burn probability, and the regional climate.

16
17 *Topography*

18
19 The site boundary and surrounding analysis area are located in north-central Oregon, an area of
20 rolling hills covered in grasslands and desert vegetation. The topography of the facility site
21 includes slopes ranging from approximately zero to 15 percent, with an average slope of less
22 than 2 percent, and elevation ranges from approximately 665 feet to 732 feet above mean sea
23 level.²²⁰ Because the average slope is 2 percent within the facility site, the topography is
24 considered to be relatively flat, and thus less of a risk for wildfire to spread quicker on steeper
25 slopes.

26
27 *Vegetation*

28 According to the Oregon Wildfire Risk Explorer, the Vegetation Type within the site boundary is
29 mapped as shrubland with patches of non-native grass and grassland, while the vegetative
30 cover to the north, south, and west of the site boundary are mapped as agricultural and areas
31 east of the site boundary are mapped similar to the site (shrubland with patches of non-native
32 grass, grassland, and conifer).²²¹ ASC Exhibit V, Figure V-3 illustrates the distribution and

²¹⁹ As of October 6, 2022, the Oregon Wildfire Risk Explore website states, “The Senate Bill 762 statewide wildfire risk map and homeowner risk reports are unavailable while the map is being updated. The maps presented here are from the 2018 Quantitative Wildfire Risk Assessment and the rest of this site is still ready for you to explore.” https://tools.oregonexplorer.info/OE_HtmlViewer/index.html?viewer=wildfire Accessed 10-04-2022. Applicant indicates that, prior to the removal of the statewide wildfire risk map, it was able to evaluate the site boundary and analysis area and the area within the site boundary was mapped as having moderate wildfire risk and the area within the analysis area as having moderate or low wildfire risk.

²²⁰ WESAPDoc3-8 ASC Exhibit H Geological Soil Stability 2022-09-28, Section 2.1.

²²¹ Vegetation Type is a data layer derived from the LANDFIRE (2010) dataset, where existing vegetation is mapped using predictive landscape models based on extensive field reference data, satellite imagery, biophysical gradient layers, and classification and regression methods. The data represents the current distribution of terrestrial ecological systems, a group of plant community types that tend to co-occur within landscapes with similar

1 coverage of vegetation within the analysis area, where most vegetation is shrubland and
2 grasslands. This is reiterated in ASC Exhibit P and in Section IV.H., *Fish and Wildlife Habitat*,
3 where the majority of the site boundary is Category 4 and 5 habitat, mapped as Upland
4 Grassland, Shrub-steppe and Shrubland and Category. Generally speaking, lower vegetation
5 such as grass and shrublands have less of a fire risk because fires tend to burn quickly and
6 diffuse decreasing fire intensity and damage.

7
8 *Fire Hazards to Infrastructure*
9

10 Most of the area within the site boundary and analysis area is mapped as having very low to
11 low hazard to potential structures with some discrete areas showing moderate to high hazard
12 to potential structures (see Figure V-1).²²² The only infrastructure within the site boundary are
13 the existing BPA and PacifiCorp transmission lines and towers.²²³ The existing transmission
14 towers are considered low-density infrastructure because of their spacing and lack of direct
15 contact with other infrastructure and vegetation. However, if a wildfire were ignited onsite, the
16 areas around the poles and the poles themselves would be subject to heightened risk and may be
17 considered areas of high fire consequence as there is the potential for high fire hazard for these
18 structures. The analysis area contains one house off Canal Road and several agricultural
19 structures north, west, and south of the site boundary as well as irrigation infrastructure. These
20 agricultural structures and irrigation infrastructure areas may be considered areas of high-fire
21 consequence; however, the Hazard to Potential Structures layer identifies these areas as having
22 low to moderate hazard to potential structures as they are located within or adjacent to
23 irrigated agricultural fields which have a reduced fire hazard compared to the shrub/grassland
24 vegetation within and east of the site boundary.²²⁴

25
26 The surrounding agricultural areas have agricultural infrastructure such as watering systems
27 and S. Edwards Road is directly to the east of the facility. Neither of these types of
28 infrastructure are anticipated to increase or be significantly damaged from a wildfire; S.
29 Edwards Road would act as a fire break from fire spreading east to and from the facility site.

30
31 Under OAR 345-022-0115(1)(a)(C), the Council must find that the applicant has adequately
32 characterized wildfire risk within the analysis area using current data from reputable sources by
33 identifying areas subject to a heightened risk of wildfire, based on the information provided in
34 support of the baseline and seasonal wildfire risk evaluation under OAR 345-022-0115(1)(a)(A)
35 and (B). Because the applicant adequately describes the areas of heightened fire risk within the
36 analysis area, the Council finds this description meets OAR 345-022-0115(1)(a)(C).
37

ecological processes, substrates, and/or environmental gradients. This type of data provides the basis for fuel models used in wildfire risk assessment and other wildfire modeling.

²²² The Oregon Wildfire Risk Explorer, Hazard to Potential Structures data layer shows impact levels to structures within 150 meters of a burnable fuel type, as if structures were present, and if a wildfire occurs. This data is based on modeled vegetation and not on building construction materials.

²²³ WESAPPD03-22 ASC Exhibit V Wildfire Risk Management 2022-09-28, Section 2.0.

²²⁴ WESAPPD03-22 ASC Exhibit V Wildfire Risk Management 2022-09-28, Section 2.0.

1 Additionally, under OAR 345-022-0115(1)(a)(D), the Council must find that the applicant has
2 adequately characterized wildfire risk within the analysis area using current data from
3 reputable sources by identifying high-fire consequence areas, which include but are not limited
4 to areas containing residences, critical infrastructure, recreation opportunities, timber and
5 agricultural resources, and fire-sensitive wildlife habitat. Under this factor (Fire Hazards to
6 Infrastructure), the applicant describes the existing transmission lines as potential areas of
7 heightened fire risk within the analysis area, therefore, the Council finds this evaluation also
8 meets OAR 345-022-0115(1)(a)(D).

9
10 *Fire History, Active Fires, and Burn Probability*

11
12 The Oregon Wildfire Risk Explorer provides several layers based on a dataset including fire
13 locations from 1992 to 2019, fire perimeters from 2000 to 2020 and current fire points and
14 perimeters. According to this source, and as of October 2022, no historic or active fire locations
15 or perimeters occurred within the site boundary or analysis area.²²⁵

16
17 Burn Probability shows the likelihood of a wildfire greater than 250 acres burning a given
18 location, based on wildfire simulation modeling. This is an annual burn probability, adjusted to
19 be consistent with the historical annual area burned. Viewing local small fires in conjunction
20 with this layer can give a more comprehensive view of local fire history and potential. The
21 majority of the site boundary is mapped as having a moderate or low burn probability with
22 discreet areas of very low burn probability along S. Edwards Road (see Figure V-2). Most of the
23 areas in the greater analysis area north, south, and west (agricultural areas) of the site
24 boundary are unmapped in this layer. However, areas east of the site boundary are mapped as
25 either very low burn probability (along S. Edwards Road), low burn probability, and moderate
26 burn probability.

27
28 *Regional Climate*

29
30 The applicant explains that the site boundary has a moderate wildfire risk mainly due to the
31 existing vegetation and the relatively dry climate in this region. The facility site boundary and
32 analysis area are within the southern portion of the Columbia Plateau, which consists of a large
33 plateau formed by a series of historical basalt flows.²²⁶ The Columbia Plateau ecoregion made
34 up of lowlands, with an arid climate, cool winters, and hot summers.²²⁷ Where arid regions
35 receive little precipitation, less than 10 inches of rain per year, and semi-arid regions receive 10
36 to 20 inches of rain per year.²²⁸ The area around Hermiston, Oregon receives between

²²⁵ WESAPPD03-22 ASC Exhibit V Wildfire Risk Management 2022-09-28, Section 2.0.

²²⁶ WESAPPD03-8 ASC Exhibit H Geological Soil Stability 2022-09-28, Section 2.2.

²²⁷ <https://oregonconservationstrategy.org/ecoregion/columbia-plateau/>. Accessed 10-20-2022.

²²⁸ <https://www.nps.gov/subjects/geology/arid-landforms.htm>. Accessed 10-20-2022.

1 approximately 8.00 to 10.5 inches pf rain annually, with a mean annual precipitation rate of
 2 8.61 inches, which would be considered an arid climate.²²⁹

3

4 *Seasonal Wildfire Risk [OAR 345-022-0115(1)(a)(B)]*

5

6 The applicant evaluated seasonal wildfire risk within the analysis area and site boundary using
 7 factors that are expected to remain fixed for multiple months but may be dynamic throughout
 8 the year, including cumulative annual and monthly precipitation, weather advisories which
 9 include fuel moisture content data, and an evaluation of Average Flame Length which is the
 10 average length of flames expected during a fire, given local fuel and weather conditions.

11

12 *Precipitation*

13

14 ASC Exhibit V provides monthly climate data from 1991 to 2020 measured at the weather
 15 station at Hermiston Municipal Airport (Station USW00004113, located 1.7 miles northwest of
 16 the facility site boundary). Table 15: Summary of Monthly Normal Temperature and
 17 Precipitation at Hermiston Municipal Airport (1991-2020), provides a summary of the weather
 18 data. The analysis area receives most of its precipitation from November to February with a
 19 mean annual precipitation of 8.61 inches, and the summer months of July through September
 20 are typically the driest with the highest temperatures.

21

Table 15: Summary of Monthly Normal Temperature and Precipitation at Hermiston Municipal Airport (1991-2020)

Month	Max Temp (°F)	Ave Temp (°F)	Precip (Inch)
January	43.3	36	1.14
February	49.4	39.3	0.86
March	59.1	46.4	0.77
April	66.6	52.8	0.78
May	76.2	61.2	0.83
June	82.2	67.6	0.64
July	92.7	75.6	0.12
August	91	73.9	0.17
September	81.2	64.6	0.33
October	66.5	52.7	0.8
November	50.7	41.5	1.05
December	42.1	35.2	1.12

Source: WESAPDoc3-22 ASC Exhibit V Wildfire Risk Management 2022-09-28, Table V-1. NOAA, National Centers for Environmental Information. Station: Hermiston Muni Ap, OR

22

23

Fuel Moisture Content and Flame Length

²²⁹ WESAPDoc3-22 ASC Exhibit V Wildfire Risk Management 2022-09-28, Section 2.0, WESAPDoc3-9 ASC Exhibit I Soil Conditions 2022-09-28, Section 3.0, and <https://www.usclimatedata.com/climate/hermiston/oregon/united-states/usor0159>. Accessed on 10-20-2022.

1
2 Fuel moisture content varies depending on changes in weather (both seasonally and during
3 short periods) and determination of exact fuel-moisture values at any time is complicated by
4 both the nature of the fuels and their responses to the environment. Therefore, fuel moisture
5 content is dynamic throughout the year.²³⁰ Living plants and dead fuels respond differently to
6 weather changes and the nature of the drying and wetting processes of dead fuels is such that
7 the moisture content of these fuels is strongly affected by weather changes. These moisture
8 contents are influenced by precipitation, air moisture, air and surface temperatures, wind, and
9 cloudiness, as well as by fuel factors such as surface to volume ratio, compactness, and
10 arrangement.²³¹ Therefore, current conditions such as precipitation to-date, current fuel
11 moisture data, and local weather may increase or decrease seasonal fire risk.

12
13 The Northwest Interagency Coordination Center (NWCC) Predictive Services group provides fire
14 weather advisories (such as Red Flag Warnings) and fuel and fire behavior advisories (including
15 fuel status reports and fuel moisture content predictions) for each predictive service area (PSA)
16 in the northwest. The site boundary is located within PSA NW10.²³² During facility construction
17 and operation, fire danger forecasts for the analysis area would be monitored, and facility
18 activities and mitigation measures would be adjusted based on their annual variations under
19 the methods and measures identified in the Emergency Management and Fire Mitigation Plan,
20 discussed further below.

21
22 According to the 2018 Oregon Wildfire Risk Explorer, Average Flame Length shows the average
23 length of flames expected, given local fuel and weather conditions. Flame lengths have
24 potential to exceed the mapped values shown, even under normal weather conditions. Flame
25 length is commonly used as a direct visual indication of fire intensity and is a primary factor to
26 consider for firefighter safety and for gauging potential impacts to resources and assets. It can
27 also guide mitigation work to reduce the potential for catastrophic fires by showing where work
28 can be done to reduce higher potential flame lengths/fire intensities to lower flame lengths/fire
29 intensities. As illustrated in ASC Exhibit V, Figure V-4, most of the site boundary area is mapped
30 as having an average flame length of 4 to 8 feet or less than 4 feet.²³³ Fires with a flame length
31 of 4 to 8 feet can be expected to have moderate intensity under normal weather conditions and
32 fires with a flame length of below four feet are expected to be low intensity under normal
33 weather conditions.

34
35 *Wildfire Mitigation Plan*

36
37 Under OAR 345-022-0115(1)(b), the Council must find that the facility will be designed,
38 constructed, and operated in compliance with a Wildfire Mitigation Plan approved by the

²³⁰ WESAPPD03-22 ASC Exhibit V Wildfire Risk Management 2022-09-28, Section 2.0.

²³¹ <https://www.nwccg.gov/publications/pms425-1/weather-and-fuel-moisture> Chapter 11. Accessed on 10-20-2022.

²³² WESAPPD03-22 ASC Exhibit V Wildfire Risk Management 2022-09-28, Section 2.0.

²³³ WESAPPD03-22 ASC Exhibit V Wildfire Risk Management 2022-09-28, Section 2.0.

1 Council. The applicant includes its Emergency Management and Wildfire Mitigation Plan
2 (EMWMP) as Attachment V-1 of ASC Exhibit V. In addition to general emergency response
3 protocols and information, the Emergency Management and Wildfire Mitigation Plan also
4 addresses the criteria under OAR 345-022-0115(1)(b)(A) through (E), as summarized below.
5

6 EMWMP Section 4.2.1.2 provides preventative actions and programs that the applicant would
7 carry out to minimize the risk of facility components and personnel causing wildfire during
8 construction. Some of these construction-related avoidance, reduction, and mitigation
9 measures include:

- 10 • No smoking policy, fire permit requirement, hazardous material and combustible
11 storage areas, pre task planning to assess fire risks, relevant fire awareness, lockout-
12 tagout requirement, hazardous materials documentation and management.
- 13 • Water truck would be on-site to keep the ground and vegetation moist during extreme
14 fire conditions.
- 15 • Each vehicle used on-site will have a shovel and a fire extinguisher of sufficient type and
16 capacity to suppress small fires around vehicles. Vehicle occupants shall be familiar with
17 the location of these fire extinguishers.
- 18 • Facility will be deenergized for most of the construction period, only during the final
19 commissioning stage it's expected to be connected to grid.

20
21 EMWMP Section 1.2.1 discusses multiple design features of the facility that would facilitate
22 safe operations of the facility as well as help reduce the risk of wildfire from and to the facility.
23 These measures are also discussed under Section III.A., *Facility Components*. The project design
24 features that are preventative actions and programs that the applicant will carry out to
25 minimize the risk of facility components causing wildfire are:

- 26 • Project roads would be 12 to 20 feet wide with an internal turning radius of 28 feet and
27 less than 10 percent grade to provide access to emergency vehicles.
- 28 • Maintain a five-foot noncombustible, defensible space clearance along the fenced
29 perimeter of the site boundary.
- 30 • The collector system and substation/switchyard will have redundant surge arrestors to
31 deactivate the Project during unusual operational events that could start fires.
- 32 • The areas immediately around the substation, BESS, and switchyard would be graveled,
33 with no vegetation present. The collector substation, switchyard, and battery storage
34 will have also sufficient spacing between equipment to prevent the spread of fire.

35 EMWMP Section 1.3.3 discusses the areas within the site boundary and analysis area that are
36 subject to a heightened risk of wildfire which includes the existing transmission infrastructure,
37 such as the power poles.
38

39 EMWMP Section 1.2.3.1 outlines and describes the procedures, standards, and time frames
40 that the applicant will use to inspect facility components such as the battery storage units,
41 substation, and solar panels.

- 1 • The facility will be monitored and operated remotely using the Supervisory Control and
2 Data Acquisition (SCADA) System which will be installed to collect operating and
3 performance data from the solar arrays.
- 4 • The BESS will have an integrated fire safety system that monitors heat, and smoke, and
5 provides dedicated annunciation/alarming in the event a fire condition is detected,
6 automatically returns the system to a standby mode and if necessary, automatically
7 deploys an appropriate suppression agent. The fire alarm functions are handled by a
8 common fire alarm control panel (FACP) in the auxiliary control cabinet, which monitors
9 the status of the detectors and initiates an alarm if a fire is detected.
- 10 • Onsite inspections of facility equipment will occur quarterly. Onsite inspections will
11 include check lists provided by the Original Equipment Manufacturer and the use of
12 utility industry best practices.

13

14 EMWMP Section 4.2.2 describes the procedures, standards, and time frames that the applicant
15 will use to manage vegetation in the areas of heightened fire risk as well as a vegetation
16 management program for all vegetation within the site boundary. Some provisions of the
17 vegetation management procedures include:

- 18 • Vegetation within the fence line and below the solar arrays will be maintained to a
19 height of 18- inches and provide a minimum of 24-inch clear distance to any exposed
20 electrical cables.
- 21 • Vegetation will be removed within 10-foot perimeter of the inverter, transformer, and
22 battery unit pads. Gravel or similar noncombustible base will be located within the 10-
23 foot perimeter of these pads.
- 24 • BMPs for vegetation removal may include physical vegetation control such as mowing or
25 introduction of a non-invasive species that is low growing.
- 26 • A physical vegetation survey assessment of the fenced area will be completed at least
27 once annually to monitor for vegetation clearances, maintenance of fire breaks, and
28 monitor for wildfire hazards. The vegetation survey assessment will occur in May or
29 June, prior to the start of the dry season. Results of the survey will be used to assess the
30 frequency of the periodic vegetation maintenance.

31

32 During operations, and periods of heightened wildfire risk, the design features that allow for
33 remote monitoring and control of the facility and the vegetative maintenance procedures,
34 would act as preventative actions and programs to minimize the risk of facility components
35 causing wildfire. Additionally, Section 4.4.3 of the EMWMP states that fire danger forecasts for
36 the analysis area for PSA NW10 will be monitored by the Site Operations Manager or designee,
37 and operational activities and mitigation measures will be adjusted as needed to address fire
38 risks.

39

40 Section 1.1.1 of the EMWMP describes the purpose of the Plan as an outline and description of
41 procedures to minimize risks to public health and safety and the health and safety of
42 responders. The EMWMP will be shared with the Umatilla County Fire District #1 (UCFD #1)
43 which would serve the facility in the event of an emergency, including fires. This is a provision

1 included below in the Wildfire Prevention and Risk Mitigation Conditions. Further, under Public
2 Services Conditions 4 and 5, the applicant would provide the fire department with on-site
3 trainings. The measures outlined in the EMWMP would also protect against damages to
4 resources protected by Council standards in the event that a wildfire occurs at the facility site,
5 regardless of ignition source. However, the Council notes that no significant resources
6 protected under other Council standards including fish and wildlife habitat, wetlands, and
7 historic, cultural and archaeological resources. The applicant notes, however, that the existing
8 transmission lines could be considered an above-ground historic resource because of the age of
9 the operating infrastructure. The Council finds that the provisions identified in the EMWMP
10 would identify fire risk to this infrastructure and would adequately provide protections and
11 mitigation measures to protect them, to the extent practicable, from wildfire.

12
13 Finally, Section 1.1.1 and Section 1.3.4 of the EMWMP describe the process and timeframes the
14 applicant describes to ensure that updates of the plan incorporate best practices and emerging
15 technologies to minimize and mitigate wildfire risk. The applicant explains that it will conduct a
16 review and update of the EMWMP every five years during operation, which will include an
17 evaluation of wildfire risks consistent with the requirements of OAR 345-022-0115(1). Based
18 upon this review of wildfire risk, the applicant would update the applicable section of the
19 EMWMP. Best practices and emerging technologies that could be updated could relate to
20 vegetation management, equipment updates, or updates in remote monitoring devices. If the
21 EMWMP is updated after each five-year review, a copy of the updated plan will be provided to
22 the Department with the annual compliance report required under OAR 345-026-008(2) and
23 imposed under General Standard of Review Condition 10. If after the 5-year review of the
24 EMWMP, a determination is made that no updates are required, an explanation of this
25 determination will be provided in the annual compliance report. Furthermore, the applicant will
26 incorporate a summary of the results of the quarterly facility inspections and the annual
27 vegetation survey assessment into each of the annual compliance reports required under OAR
28 345-026-008(2). A summary of the vegetation management conducted within the fence line will
29 also be included in the annual report. As required under OAR 345-022-0115(1)(b), and to reflect
30 the applicant representations to evaluate and reduce the risk of wildfire during construction
31 and operation of the facility in the EMWMP, the Council imposes the following conditions:

32
33 **Wildfire Prevention and Risk Mitigation Condition 1:** Prior to construction of the facility,
34 facility components or phase, as applicable, the certificate holder shall submit to the
35 Department and the Umatilla County Fire District #1 (UCFD #1), a Final Construction
36 Emergency Management and Wildfire Mitigation Plan (EMWMP) which includes the
37 applicable measures provided in the Draft Emergency Management and Wildfire Mitigation
38 Plan (EMWMP) (Attachment V-1 of the Final Order on ASC).

39 [PRE-WF-01]

40
41 **Wildfire Prevention and Risk Mitigation Condition 2:** Prior to operation of the facility and
42 based upon final design, the certificate holder shall submit to the Department and the
43 Umatilla County Fire District #1 (UCFD #1), an Operational Emergency Management and
44 Wildfire Mitigation Plan (EMWMP) which includes the applicable measures provided in the

1 Draft Emergency Management and Wildfire Mitigation Plan (EMWMP) (Attachment V-1 of
2 the Final Order on ASC).
3 [PRO-WF-01]
4

5 **Wildfire Prevention and Risk Mitigation Condition 3:** During operation of the facility the
6 certificate holder shall:

- 7 a. Implement the Operational Emergency Management and Wildfire Mitigation Plan
8 (EMWMP) submitted under Wildfire Prevention and Risk Mitigation Condition 2.
- 9 b. Every 5 years after the first operational year, review and update the evaluation of
10 wildfire risk under OAR 345-022-0115(1)(b) and submit the results in the annual report
11 required under General Standard of Review Condition 10 for that year.
- 12 c. Submit an updated EMWMP to the Department and the Umatilla County Fire District
13 #1 (UCFD #1) if substantive changes are made to the EMWMP as a result of the review
14 under sub (b) of this condition, or at any other time substantive revisions are made
15 to the EMWMP.

16 [OPR-WF-01]
17

18 Based upon the applicant and Council evaluation of baseline and seasonal fire risk, areas
19 subject to heightened fire risk, and high-fire consequence areas using current and reputable
20 data sources and methods, the Council finds that the area within the site boundary is
21 characterized as having moderate wildfire risk and the area within the analysis area as having
22 moderate or low wildfire risk. Furthermore, the Council finds that facility will be designed,
23 constructed, and operated in compliance with the Emergency Management and Wildfire
24 Mitigation Plan and approved the Plan.
25

26 **Conclusions of Law**

27

28 Based on the foregoing findings of fact and site certificate conditions, the Council finds that the
29 applicant has adequately characterized wildfire risk within the analysis area using current data
30 from reputable sources and that the facility will be designed, constructed, and operated in
31 compliance with a Wildfire Mitigation Plan under OAR 345-022-0115(1).
32

33 **IV.O Waste Minimization: OAR 345-022-0120**

34

35 *(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the*
36 *Council must find that, to the extent reasonably practicable:*

37
38 *(a) The applicant's solid waste and wastewater plans are likely to minimize*
39 *generation of solid waste and wastewater in the construction and operation of the*
40 *facility, and when solid waste or wastewater is generated, to result in recycling and*
41 *reuse of such wastes;*
42

1 (b) *The applicant’s plans to manage the accumulation, storage, disposal and*
2 *transportation of waste generated by the construction and operation of the facility*
3 *are likely to result in minimal adverse impact on surrounding and adjacent areas.*

4
5 (2) *The Council may issue a site certificate for a facility that would produce power from*
6 *wind, solar or geothermal energy without making the findings described in section (1).*
7 *However, the Council may apply the requirements of section (1) to impose conditions on*
8 *a site certificate issued for such a facility.*

9 ***

10
11 **Findings of Fact**

12
13 *Solid Waste*

14
15 Facility construction, operation and decommissioning would result in solid waste generation.
16 The applicant estimates the volume of construction waste would be one 40-cubic-yard roll-off
17 per week during active construction.²³⁴ The solid waste generated includes general construction
18 debris, such as scrap metal, wood, glass, plastics, cardboard, waste concrete, and excavated
19 soils. Solid waste would be generated from the packaging materials from the solar photovoltaic
20 modules and associated equipment, which would consist of cardboard, wood pallets, and
21 plastic materials. Erosion control materials, such as straw and silt fencing, would also be
22 generated during construction. The waste generated from construction may also include small
23 amounts of hazardous waste, such as paint, spent lubrication oils, pesticides, and solvents. The
24 hazardous materials required for construction would be stored in accordance with U.S.
25 Environmental Protection Agency and U.S. Occupational Safety and Health Administration
26 regulations as they apply, and any spills of these materials would be cleaned up according to
27 the construction Spill Prevention, Control and Countermeasure (SPCC).

28
29 The applicant describes that waste generated during construction would be minimized by
30 implementing efficient construction practices and ensuring that detailed amounts of materials
31 are delivered on site. Waste that can be recycled includes metals, glass, paper, and yard debris.
32 Recyclable waste will be sorted, stored in dumpsters or other suitable containers, and then
33 transported to Columbia Ridge Landfill near Arlington or Finley Buttes Landfill near Boardman,
34 Oregon. Additional discussion of waste disposal and recycling facility capacity within the
35 analysis area, see Section IV.M., *Public Services*.

36
37 During operations, the primary waste generated would be solid waste from maintenance and
38 ongoing operational activities. The applicant estimates approximately two yards of solid waste
39 would be generated per month.²³⁵ Waste such as universal waste (lightbulbs and batteries)
40 would be minimized and recycled according to applicable regulations. Solar panels that are
41 nonfunctional, exchanged during operations or are retired would be recycled to the maximum

²³⁴ WESAPPD03-23 ASC West End Solar Exhibit W Waste 2022-09-28, Section 2.1.1.

²³⁵ WESAPPD03-23 ASC West End Solar Exhibit W Waste 2022-09-28, Section 2.1.2.

1 extent feasible through the Solar Energy Industries Association (SEIA) National PV Recycling
2 Program.²³⁶ Solid waste would also be generated during operations when the lithium-ion
3 batteries are replaced because batteries lose their
4 effectiveness through repeated charge/discharge cycles. The frequency of battery replacement
5 would depend on final technologies selected, however may occur every 10 years. The following
6 procedures would be implemented for lithium-ion battery replacement during operations and
7 retirement.²³⁷

- 8
- 9 • The facility operator would disconnect and de-energize battery system prior to removal
- 10 from the installed racks and package the batteries for transport to a licensed facility.
- 11 • At the recycling facility, the qualified contractor would dismantle battery modules and
- 12 prepare individual cells for metals recovery.
- 13 • Individual cells would be processed in a furnace to recover metals. Recovered metals
- 14 may include aluminum, calcium, lithium, and a metal alloy comprising cobalt, copper,
- 15 nickel, and iron.
- 16 • Recovered metals would be recycled or separated to recover individual metals where
- 17 economically viable.
- 18

19 The applicant explains in ASC Exhibit G that during operation small amounts of hazardous
20 materials may be generated including oils, lubricants, and solvents on site, which would be
21 stored similar to the materials on-site during construction. Soil Protection Conditions 5 and 6
22 require an operational Spill Prevention Control and Countermeasure Plan (SPCC), which would
23 provide procedures for any spills during operations including from non-hazardous and small
24 amounts of hazardous. Secondary containment design features, such as siting the batteries and
25 transformers on concrete or gravel pads, to avoid impacts associated with spills, are discussed
26 further in Section IV.D., *Soil Protection*.

27

28 At the time of facility retirement and decommissioning, as discussed further in Section IV.G.,
29 *Retirement and Financial Assurance*, aboveground equipment would be removed, sold for
30 scrap, reused or recycled, or disposed of at a local landfill. Electrical cables would be rendered
31 inert; aboveground cables would be removed, and underground cables would be left in place if
32 below three feet below ground. The applicant maintains that similar procedures for minimizing,
33 recycling, and disposing of solid waste during construction will be employed during retirement
34 of the facility. The retirement of the battery storage system, if constructed and operated, would

²³⁶ WESAPPD03-23 ASC West End Solar Exhibit W Waste 2022-09-28, Section 3.1. The purpose of the SEIA is to combine services offered by recycling partners in order to provide cost-effective and environmentally responsible end-of-life management solutions for solar facility components.

²³⁷ Id.

1 involve disposing of battery components at an offsite facility approved for disposal or recycling
2 of batteries, similar as the procedures during operations.

3
4 To require that the applicant develop and implement plans that, to the greatest extent
5 practicable, reduce, minimize and recycle solid waste and wastewater during the construction
6 and operation of the facility, the Council imposes the following condition:
7

8 **Waste Minimization Condition 1:** The certificate holder shall develop and implement
9 plans that are likely to minimize the generation of solid waste and wastewater during
10 construction and operation of the facility, and which would result in reuse and recycling
11 solid waste and wastewater.

12 [GEN-WM-01]
13

14 Furthermore, to ensure that adverse impacts to surrounding and adjacent areas are minimized
15 and that the applicant maintains plans to manage the accumulation, storage, disposal and
16 transportation of waste generated by operation of the facility, the Council imposes Waste
17 Minimization Condition 2 provided below:
18

19 **Waste Minimization Condition 2:** In the annual report required under General Standard
20 of Review Condition 10, the certificate holder shall include results of its waste
21 management and recycling plans, including but not limited to:

- 22 a. Quantities of solar panels and lithium-ion batteries recycled or disposed of.
- 23 b. Identification of the availability of programs or licensed facilities that recycle
24 solar panels and lithium-ion batteries and their capacity to accept materials.
25 Identification of final recycling destination facility or program for recycled solar
26 panels and lithium-ion batteries.
- 27 c. If recycling programs or facilities are not available, the identification of final
28 disposal destination facility or program for disposed solar panels and lithium-ion
29 batteries and their capacity to accept waste.

30 [OPR-WM-01]
31

32 *Wastewater* 33

34 Wastewater generated during construction would result from construction personnel using
35 portable toilets, which would be serviced by a local contractor for offsite disposal in accordance
36 with state law. The construction contractor will provide an adequate number of portable toilets
37 to accommodate construction staff on site. These would be serviced a minimum of once per
38 week, and wastewater generated during construction would be transported via trucks by a local
39 licensed subcontractor to a treatment facility. Portable handwashing stations would also be
40 used during construction would be hauled off site as well.
41

42 Other than washwater periodically generated from washing panels, industrial wastewater
43 would not be generated during facility operation. Solar panel washing and wastewater disposal
44 is discussed further in Section IV.D., *Soil Protection*, and the wastewater would not include

1 cleaning solvents, and would be discharged by evaporation and seepage into the ground. Based
2 on the limited sources of wastewater, the Council finds that it would be unlikely for the
3 surrounding area to be impacted by facility wastewater generation.

4
5 **Conclusions of Law**

6
7 Based on the foregoing findings of fact and site certificate conditions, the Council finds that the
8 applicant's plans will likely minimize solid waste and waste water generated, that solid waste
9 and wastewater would be recycled and reused, and that the accumulation, storage, disposal
10 and transportation of waste generated by the construction and operation of the facility are
11 likely to result in minimal adverse impact on surrounding and adjacent areas, under the
12 Council's Waste Minimization Standard.

13
14 **IV.P Division 23 Standards**

15
16 The Division 23 standards apply only to "nongenerating facilities" as defined in ORS
17 469.503(2)(e)(K), except nongenerating facilities that are related or supporting facilities. The
18 facility would not be a nongenerating facility as defined in statute and therefore Division 23 is
19 not applicable.

20
21 **IV.Q Division 24 Standards**

22
23 The Council's Division 24 standards include specific standards for the siting of energy facilities,
24 including wind projects, underground gas storage reservoirs, transmission lines, and facilities
25 that emit carbon dioxide.

26
27 **IV.Q.1 Siting Standards for Transmission Lines: OAR 345-024-0090**

28
29 *To issue a site certificate for a facility that includes any transmission line under Council*
30 *jurisdiction, the Council must find that the applicant:*

- 31
32 *(1) Can design, construct and operate the proposed transmission line so that alternating*
33 *current electric fields do not exceed 9 kV per meter at one meter above the ground*
34 *surface in areas accessible to the public;*
35 *(2) Can design, construct and operate the proposed transmission line so that induced*
36 *currents resulting from the transmission line and related or supporting facilities will be*
37 *as low as reasonably achievable.*

38
39 **Findings of Fact**

40 The Siting Standards for Transmission Lines address issues associated with alternating current
41 electric fields and induced currents generated by high-voltage transmission lines. ASC Exhibit
42 AA provides the applicant's analysis to support Council's review of the proposed facility's
43 compliance with the standard.

1
2 The applicant is not proposing a transmission line in the ASC as a related or supporting facility
3 and states that it would connect to one of three existing transmission lines within or adjacent
4 to the site boundary, therefore, OAR 345-024-0090 does not apply to this facility.
5

6 **IV.R Other Applicable Regulatory Requirements Under Council Jurisdiction**
7

8 Under ORS 469.503(3) and under the Council’s General Standard of Review (OAR 345-022-
9 0000), the Council must determine whether the facility complies with “all other Oregon statutes
10 and administrative rules...as applicable to the issuance of a site certificate for the proposed
11 facility.” This section addresses the applicable Oregon statutes and administrative rules that are
12 not otherwise addressed in Council standards, including noise control regulations, regulations
13 for removal or fill of material affecting waters of the state, and regulations for water rights.
14

15 **IV.R.1 Oregon Department of Environmental Quality (DEQ) Noise Control**
16 **Regulations for Industry and Commerce: OAR 340-035-0035**
17

18 *(1) Standards and Regulations:*

19 ***

20 *(b) New Noise Sources:*

21 *(A) New Sources Located on Previously Used Sites: No person owning or*
22 *controlling a new industrial or commercial noise source located on a*
23 *previously used industrial or commercial site shall cause or permit the*
24 *operation of that noise source if the statistical noise levels generated by that*
25 *new source and measured at an appropriate measurement point, specified in*
26 *subsection (3)(b) of this rule, exceed the levels specified in Table 8, except as*
27 *otherwise provided in these rules. For noise levels generated by a wind energy*
28 *facility including wind turbines of any size and any associated equipment or*
29 *machinery, subparagraph (1)(b)(B)(iii) applies.*

30 *(B) New Sources Located on Previously Unused Site:*

31 *(i) No person owning or controlling a new industrial or commercial noise*
32 *source located on a previously unused industrial or commercial site shall*
33 *cause or permit the operation of that noise source if the noise levels*
34 *generated or indirectly caused by that noise source increase the ambient*
35 *statistical noise levels, L10 or L50, by more than 10 dBA in any one hour,*
36 *or exceed the levels specified in Table 8, as measured at an appropriate*
37 *measurement point, as specified in subsection (3)(b) of this rule, except as*
38 *specified in subparagraph (1)(b)(B)(iii).*

39 *(ii) The ambient statistical noise level of a new industrial or commercial noise*
40 *source on a previously unused industrial or commercial site shall include*
41 *all noises generated or indirectly caused by or attributable to that source*
42 *including all of its related activities. Sources exempted from the*
43 *requirements of section (1) of this rule, which are identified in subsections*

1 *(5)(b) - (f), (j), and (k) of this rule, shall not be excluded from this ambient*
2 *measurement.*

3 ***

4 *(3) Measurement:*

5 *(a) Sound measurements procedures shall conform to those procedures which are*
6 *adopted by the Commission and set forth in Sound Measurement Procedures*
7 *Manual (NPCS-1), or to such other procedures as are approved in writing by the*
8 *Department;*

9 *(b) Unless otherwise specified, the appropriate measurement point shall be that*
10 *point on the noise sensitive property, described below, which is further from the*
11 *noise source:*

12 *A. 25 feet (7.6 meters) toward the noise source from that point on the noise*
13 *sensitive building nearest the noise source;*

14 *B. That point on the noise sensitive property line nearest the noise source.*

15 *(4) Monitoring and Reporting:*

16 *(a) Upon written notification from the Department, persons owning or controlling*
17 *an industrial or commercial noise source shall monitor and record the statistical*
18 *noise levels and operating times of equipment, facilities, operations, and*
19 *activities, and shall submit such data to the Department in the form and on the*
20 *schedule requested by the Department. Procedures for such measurements shall*
21 *conform to those procedures which are adopted by the Commission and set*
22 *forth in Sound Measurement Procedures Manual (NPCS-1);...*

23 *(5) Exemptions: Except as otherwise provided in subparagraph (1)(b)(B)(ii) of this rule,*
24 *the rules in section (1) of this rule shall not apply to:*

25 ***

26 *(c) Sounds created by the tires or motor used to propel any road vehicle*
27 *complying with the noise standards for road vehicles;*

28 ***

29 *(g) Sounds that originate on construction sites.*

30 ***

31 *(k) Sounds created by the operation of road vehicle auxiliary equipment*
32 *complying with the noise rules for such equipment as specified in OAR 340-035-*
33 *0030(1)(e);*

34 ***

35 The Oregon Department of Environmental Quality's (DEQ) Noise Control Regulations for
36 Industry and Commerce apply to operational noise from proposed energy facilities, as industrial
37 noise sources. In 1991, DEQ's Noise Control Program was terminated; however, the rules
38 remain in effect.²³⁸ Regulated sources of noise are legally responsible for complying with the
39 applicable provisions and standards of the regulations. As described above, because ORS
40 469.503(3) and the Council's General Standard of Review (OAR 345-022-0000) requires Council
41 to find that a facility complies with all other applicable requirements, including DEQ's noise
42 control regulations, and because DEQ no longer implements, enforces or monitors the

²³⁸ OAR 340-035-0110.

1 regulations, Council assumes the authority as the decision maker to interpret and implement
2 the DEQ noise rules.

3

4 **Findings of Fact**

5

6 OAR 340-035-0035 establishes noise limits for new industrial or commercial noise sources
7 based upon whether those sources would be developed on a previously used or previously
8 unused site.^{239, 240} Section IV.E, *Land Use*, and ASC Exhibit K explain that the land within the site
9 boundary is private property in EFU zone, made up of two tracts owned by different property
10 owners. Landowner representations of the underlying land uses are that Tract 1 has not been
11 used for agricultural enterprise or farming and has never had water rights or been irrigated and
12 that Tract 2 has no water rights and farming was attempted however the land has been left
13 fallow.²⁴¹ The Council considers this as evidence that the facility site has not been in industrial
14 or commercial use at any time during the last 20 years. Therefore, the facility is considered an
15 industrial noise source and the site is considered a previously unused site and evaluated per the
16 requirements of OAR 340-035-0035(1)(b)(B). The analysis area for evaluating compliance with
17 the DEQ noise regulation includes the area within and extending one-mile from the site
18 boundary as designated under OAR 345-021-0010 and the project order.

19

20 This section includes an evaluation of noise generated from construction activities to inform the
21 analysis under other applicable Council standards, however, under OAR 340-035-0035(5)(g)
22 construction-related noise is specifically exempt from the DEQ noise rules.

23

24 Operational noise generated by the facility is assessed under OAR 340-035-0035(1)(b)(B), which
25 specifies that noise generated by a new industrial or commercial source located on a previously
26 unused site must comply with two standards: the “maximum allowable noise standard,” and
27 the “ambient noise degradation standard.” Both of these standards represent allowable noise
28 levels at “real properties normally used for sleeping,” otherwise referred to as a noise sensitive
29 receptor or NSR, or “noise sensitive property.”²⁴² The applicant used ariel imagery to
30 preliminarily identify 12 NSRs within one mile of the site boundary and then verified the NSRs
31 during field visits in July 2021, the Department also used ariel imagery to confirm these NSRs.

²³⁹ OAR 340-035-0015(47) defines a “previously unused industrial or commercial site” as “property which has not been used by any industrial or commercial noise source during the 20 years immediately preceding commencement of construction of a new industrial or commercial source on that property.”

²⁴⁰ OAR 340-035-0015(24) defines “industrial and commercial noise sources” as “noise generated by a combination of equipment, facilities, operations or activities employed in the production, storage, handling, sale, purchase, exchange, or maintenance of a...service.”

²⁴¹ WESAPPD03-11 ASC Exhibit K Land Use 2022-10-22, Section 4.3.2.

²⁴² OAR 340-035-0015(38) “Noise Sensitive Property” means real property normally used for sleeping, or normally used as schools, churches, hospitals or public libraries. Property used in industrial or agricultural activities is not Noise Sensitive Property unless it meets the above criteria in more than an incidental manner.

1 The applicant states that all NSRs were identified as single-family residential structures or
 2 potential residence.²⁴³

- 3
- 4 • Under the maximum allowable noise standard at OAR 340-035-0035(1)(b)(B)(i), new
 5 industrial or commercial noise sources may not exceed the noise levels specified in
 6 Table 8 of DEQ noise rules, which are represented below in Table 16: *Statistical Noise
 7 Limits for Industrial and Commercial Noise Sources* below.
- 8

Table 16: Statistical Noise Limits for Industrial and Commercial Noise Sources

Statistical Descriptor ¹	Maximum Permissible Hourly Statistical Noise Levels (dBA)	
	Daytime (7:00 AM - 10:00 PM)	Nighttime (10:00 PM - 7:00 AM)
L50	55	50
L10	60	55
L1	75	60

Notes:
 1. The hourly L50, L10 and L1 noise levels are defined as the noise levels equaled or exceeded 50 percent, 10 percent, and 1 percent of the hour, respectively.
 Source: OAR 340-035-0035, Table 8

- 9
- 10 • Under the ambient noise degradation standard, facility-generated noise must not
 11 increase the ambient hourly L10 or L50 noise levels at any noise sensitive property by
 12 more than 10 dBA in any one hour, with ambient noise levels established based on noise
 13 measurements taken at an appropriate noise measurement location (point on the noise
 14 sensitive property line nearest to the noise source).

15

16 *Noise Generated from Construction Activities*

17

18 OAR 340-035-0035(5)(g) specifically exempts noise caused by construction activities; however,
 19 an evaluation of construction-related noise is presented in accordance with OAR Chapter 345
 20 Division 21 information requirements and to inform the construction-related noise analysis
 21 required under the Council’s Protected Areas and Recreation standards, found in Sections IV.F.,
 22 *Protected Areas*, and IV.L., *Recreation*, of this order.

23

24 Facility construction activities that would generate noise include the delivery of construction
 25 equipment and materials, site preparation activities including brush clearing, internal road and
 26 access road construction, excavation and site preparation including grading, foundation
 27 pouring, erection and installation of components, interconnection to existing transmission lines,
 28 and finishing work required to prepare the facility for operation. Table 17: *Construction
 29 Equipment Maximum Noise Levels at 50 and 1200 Feet* shows typical sound levels associated

²⁴³ WESAPDoc3-25 ASC Exhibit Y Noise 2022-10-22, Section 8.0.

1 with common construction equipment and noise levels per phase at 50 feet from the site
 2 boundary and at the closest noise sensitive receptor (NSR). Predicted construction noise levels
 3 range from 23 to 63 dBA at 1,200 feet from the nearest NSR and from 55 to 95 dBA at 50
 4 feet.²⁴⁴ The loudest equipment would be the pneumatic pile drive which is used for installing
 5 the solar panel posts.
 6

Table 17: Construction Equipment Maximum Noise Levels at 50 and 1200 Feet

Construction Phase	Construction Equipment	Usage Factor %	Max. Equipment Noise Level at 50 feet dBA	Composite Max. Equipment Noise Level at Nearest NSR 1200 feet dBA
Demolition	Excavators (168 horsepower [hp])	40	85	59
	Tractors/Loaders/Backhoes (108 hp)	40	80	
	Rough Terrain Forklifts (93 hp)	40	85	
	Dump Truck	40	85	
Site Preparation and Grading	Graders (174 hp)	40	85	61
	Rubber Tired Loaders (164 hp)	40	85	
	Scrapers (313 hp)	40	85	
	Water Trucks (189 hp)	40	88	
	Generator Sets	50	82	
Trenching and Road Construction	Excavators (168 hp)	40	85	61
	Graders (174 hp)	40	85	
	Water Trucks (189 hp)	40	88	
	Trencher (63 hp)	40	85	
	Rubber Tired Loaders (164 hp)	40	80	
	Generator Sets	50	82	
Equipment Installation	Crane (399 hp)	16	85	63
	Forklifts (145 hp)	40	85	
	Pile drivers	20	95	
	Pickup Trucks/ATVs	40	55	
	Water Trucks (189 hp)	40	88	
	Generator Sets	50	82	
Commissioning	Pickup Trucks/ATVs	40	55	23

Source: 2008 Federal Highway Administration (FHWA) Roadway Construction Noise Model, WESAPDoc3-25 ASC Exhibit Y Noise 2022-10-22, Table Y-4

7

²⁴⁴ For reference applicable to construction and operational noise, approximate sound levels for common sounds are 30 dBA for a soft whisper, 40 dBA for bird calls, 70 dBA for a vacuum cleaner, and 90 dBA for heavy truck or motorcycle traffic. ASC Exhibit Y, Table Y-2, adapted from EPA (U.S. Environmental Protection Agency). 1971. Community Noise. NTID300.3 (N-96-01 IIA-231).

1 Construction activities would occur sequentially for groupings of solar arrays, with the potential
2 for overlap of sections of solar arrays. The inverters and distribution transformers would likely
3 be completed while respective solar arrays are being constructed, other facility components,
4 such as operations and maintenance building, may occur independently from the solar array
5 installation. As discussed in Section III.B.1., *Facility Construction Activities*, construction of the
6 facility is anticipated to take 9-12 months, however, under General Standard of Review
7 Condition 1, the Council provides the applicant 24-months to complete construction after
8 construction commencement. Construction activities would be intermittent with variable noise
9 levels depending on the type of construction equipment operating and is generally considered
10 to be a temporary impact.

11

12 *Operational Noise*

13

14 The methods for the operational noise assessment including baseline noise measurements and
15 inputs into the noise model, compliance with OAR 340-035-0035(1)(b)(B) (maximum allowable
16 noise standard, and the ambient noise degradation standard) and conditions of approval, are
17 provided below.

18

19 *Noise-Generating Equipment*

20

21 Noise-generating equipment associated with operation of the facility would include substation
22 transformers, inverters and transformers for the solar arrays, and the cooling systems
23 necessary for the battery storage systems. Sound power level data was used as inputs to the
24 acoustic modeling analysis, where the applicant assumed the maximum number of noise-
25 generating equipment as:

- 26 • 25 inverters, 88 dBA per inverter
- 27 • 25 inverter step-up transformers, 77 dBA per transformer
- 28 • 2 main power transformers, 102 dBA per transformer
- 29 • 200 battery storage HVAC units, 98 dBA per unit

30

31 ASC Exhibit Y includes a noise assessment which assumes a maximum number of noise-
32 generating equipment in two different design or build-out scenarios:

33

- 34 1. Distributed Battery Storage (Figure Y-1): Eight (8) battery energy storage units
35 collocated with each of the 25 inverter skids (200 battery energy storage units total);
36 and
- 37 2. Centralized Battery Storage (Figure Y-2): Two hundred (200) battery storage units would
38 be located in one consolidated area in proximity to the collector substation.
39

40 *Methods and Results for Baseline Ambient Noise Levels*

41

42 To evaluate the maximum potential noise generated from a facility, the noise assessment must
43 begin with a baseline, ambient, or existing noise level analysis because existing noise levels at

1 any site may vary depending on nearby roads, agricultural operations, residences, weather, and
2 wildlife, etc. The applicant conducted measurements of the existing sound levels for both the
3 daytime and nighttime periods because the proposed facility would be operational during the
4 day and nighttime hours.²⁴⁵

5
6 Ambient sound measurements were collected on July 23 – 24, 2021, when the weather was
7 fair, with no precipitation and wind speeds ranged from 0 to 12 mph.²⁴⁶ Three sound
8 measurement locations were selected within the analysis area at publicly accessible land in as
9 close proximity to NSRs as possible because access to the properties was not granted by
10 landowners.²⁴⁷ The measurement locations were selected to represent the nearest NSRs to the
11 site boundary and to facility components. OAR 340-035-0035(3)(b) establishes acceptable
12 procedures based on the DEQ Sound Measurement Procedure Manual (NPCS-1) adopted by the
13 DEQ’s Environmental Quality Commission, or as otherwise approved by the Department or
14 Council. Pursuant to OAR 340-035-0035(1)(b)(B)(i) and -0035(3), noise standards must be
15 evaluated at an appropriate measurement point at noise sensitive properties. Unless otherwise
16 specified, the measurement point must be a point on the noise sensitive property either 25 feet
17 toward the noise source from that point on the noise sensitive building nearest the noise
18 source, or a point on the noise sensitive property line nearest the noise source, whichever is
19 further.²⁴⁸ ASC Exhibit Y, Figures Y-1 and Y-2 illustrate the Ambient Sound Monitoring Locations
20 relative to the representative NSRs that are closest to the proposed facility site boundary. In
21 response to Department information requests the applicant provided pictures of the
22 monitoring positions relative to the residences, which illustrate the close proximity to the NSR.
23 Because of access restrictions, the applicant placed the baseline measurement equipment at
24 publicly accessible land located near to each representative NSR location, this location would
25 be closer to the proposed noise source and further way from the NSR property which means
26 anticipated noise generated from the facility experienced at each NSR may be less than
27 represented in the applicant’s modeling. The Council finds that the three locations (ST-1, ST-2,
28 ST-3) where the applicant evaluated baseline noise are appropriate because the three locations
29 are near NSRs that are closest to the site boundary which would be the NSR’S most impacted by
30 the worst-case noise scenario. The Council also finds that the three baseline measurement
31 points located on publicly accessible land closest to the corresponding NSR are appropriate
32 because the three locations are near NSRs that are closest to the site boundary, and these
33 locations are closer to the noise source and further from the NSR residence, therefore a
34 conservative location to gather baseline noise data.

²⁴⁵ OAR 340-035-0035(1)(b)(A) defines daytime (7:00 AM – 10:00 PM) and nighttime (10:00 PM – 7:00 AM).

²⁴⁶ WESAPDoc3-25 ASC Exhibit Y Noise 2022-10-22, Section 3.1.

²⁴⁷ WESAPDoc11-6 Applicant Responses to RAIs Exhibit D_F_G_M_O_W_X_V and ODFW Combined 2022-09-01 and 2022-09-07; Exhibit X-West End Solar Project_RAI NC-8_08-31-22.

²⁴⁸ The Sound Measurement Procedure Manual was developed in 1974 and last modified in 1983 and includes methodology based on hand tallies. As previously described, because DEQ does not fund, administer, or enforce the noise control requirements established in OAR 345-035-0035, yet they are applicable OARs to the facility, the Council assumes authority to review, interpret, and apply the rules. Therefore, the Council has authority to review and approve sound measurement procedures that differ from the Sound Measurement Procedures Manual (NPCS-1) or the DEQ Noise Rules, when specified in the rules.

1
 2 All baseline measurements were taken with a Larson Davis 831 real-time sound level analyzer,
 3 equipped with a PCB model 377B02 ½-inch precision condenser microphone which meets or
 4 exceeds all requirements set forth in the American National Standards Institute standards for
 5 Type 1 sound level meters for quality and accuracy. During monitoring, the applicant made site-
 6 specific field observations where typical sound sources were related to traffic, wildlife (birds)
 7 and barking dogs. Noise from homes in the evaluation area was minimal most of the time, with
 8 items such as air conditioners or heat pumps producing noticeable sound within their
 9 immediate vicinity.²⁴⁹ Other sound sources that could reasonably be expected, though not
 10 observed during the survey, would be farm equipment during planting and harvest time, and
 11 impact sprinklers in the agricultural fields. Because the existing transmission lines are
 12 operational, sound from the transmission lines was included in the ambient baseline sound
 13 levels. Ambient sound monitoring location ML-1 is approximately 300 feet from the existing
 14 PacifiCorp transmission line and 1,000 feet from the existing Bonneville Power Administration
 15 transmission line. The existing Bonneville Power Administration transmission is approximately
 16 0.4 miles northeast of ML-2 and the existing PacifiCorp transmission line is approximately
 17 southwest of ML-3.²⁵⁰ Since corona noise from transmission lines occurs most frequently during
 18 foul weather (light rain) and fair-weather conditions were observed during the sound
 19 monitoring surveys, sound contribution of the existing transmission lines was minimal.
 20

21 Table 18: *Summary of Ambient Sound Survey Results* presents results at each monitoring
 22 location, which demonstrates that existing noise levels during the day and at night are generally
 23 low/quiet.

Table 18: Summary of Ambient Sound Survey Results

Baseline Monitoring Location ID	Distance to Nearest Facility Fence Line (feet/meters)	Time Period	Baseline Sound Level Metric			
			L _{eq}	L ₁₀	L ₅₀	L ₉₀
ST-1	1,172/357	Day	38	39	38	36
		Night	37	40	35	34
ST-2	3,897/1,188	Day	40	42	39	39
		Night	42	46	40	39
ST-3	5,247/1,599	Day	44	49	40	38
		Night	41	45	40	38

Leq = equivalent sound level; L10 = intrusive sound level; L50 = median sound level; L90 = residual sound level;
 UTM = Universal Transverse Mercator.
 Source: WESAPDoc3-25 ASC Exhibit Y Noise 2022-10-22, Table Y-3.

24
 25 *Methods and Results from Noise Assessment with Proposed Facility*
 26

²⁴⁹ WESAPDoc3-25 ASC Exhibit Y Noise 2022-10-22, Section 3.2.

²⁵⁰ WESAPDoc3-25 ASC Exhibit Y Noise 2022-10-22, Section 3.2.

1 The Cadna-A computer noise prediction model was used to calculate sound levels from the
2 operation of the facility based on the maximum of noise-generating equipment and two design
3 scenarios bulleted above, 200 battery storage units with distributed and centralized locations.
4 Cadna-A is used to describe noise emission and propagation modeling from facilities that
5 consist of various equipment and technologies and has been used for noise modeling for other
6 EFSC-approved facilities.^{251, 252} Inputs and assumptions included in the Cadna-A computer noise
7 prediction model and outdoor noise propagation modeling are:

- 8 • All noise-generating equipment is operating concurrently during the daytime and
9 nighttime periods at the representative manufacturer-rated sound levels.
- 10 • Sound attenuation was calculated under weather conditions that are favorable for
11 sound propagation, such as for downwind propagation or atmospheric inversion,
12 conditions which are typically considered worst-case.
- 13 • Sound propagation from source to NSR locations incorporate physical effects including
14 geometric divergence, reflection from surfaces, atmospheric absorption, screening from
15 topography and obstacles, ground effects, source sound power, directivity, and
16 cumulative effects.
- 17 • It was assumed that all equipment would operate consistently during both daytime and
18 nighttime periods.
- 19 • For the acoustic modeling analysis, a semi-reflective value of $G = 0.5$ was used to
20 represent the analysis area, while a value of $G = 0$ was used to represent the facility site
21 boundary.²⁵³

22
23 The results of the noise modeling are provided below in Table 19 and Table 20. Table 19
24 provides the results of the noise modeling for the centralized battery storage layout and Table
25 20 provides the results of the noise modeling for the distributed battery storage layout. As
26 demonstrated in Table 19, under the centralized battery scenario, the maximum allowable
27 noise standard of 50 dBA at L_{50} under OAR 340-035-0035(1)(b)(B), would not be exceeded and
28 the ambient statistical noise levels would increase by 6 dBA which is less than 11 dBA
29 therefore both the maximum allowable noise standard and the ambient noise degradation
30 standard are met.

²⁵¹ MSEFAPPDoc4-1 Final Order on ASC for Madras Solar Energy Facility 2021-08-02; BSPAPPDoc2 Final Order on
ASC for Bakeoven Solar Project 2020-04-24.

²⁵² The outdoor noise propagation model is based on the 1996 International Organization for Standardization (ISO)
9613, Part 2: "Attenuation of Sound during Propagation Outdoors".

²⁵³ Ground absorption rates are described by a numerical coefficient. For pavement and water bodies, the
absorption coefficient is defined as $G = 0$ to account for reduced sound attenuation and higher reflectivity. In
contrast, ground covered in vegetation, including suburban lawns, are acoustically absorptive and aid in sound
attenuation (i.e., $G = 1.0$). WESAPPDoc3-25 ASC Exhibit Y Noise 2022-10-22, Section 4.3.

Table 19: Acoustic Modeling Results, Layout with Centralized Battery Storage

NSR ID	Time Period	Background Noise (dBA, L ₅₀)	Solar Project Noise (dBA)	Combined Noise (Background/Solar Project) (dBA)	Change in Noise (dBA)	Compliant with OAR 340-035-0035?
1	Day	38	39	42	4	Yes
	Night	35	39	41	6	Yes
2	Day	38	34	39	1	Yes
	Night	35	34	37	2	Yes
3	Day	40	33	41	1	Yes
	Night	40	33	41	1	Yes
4	Day	40	33	41	1	Yes
	Night	40	33	41	1	Yes
5	Day	40	34	41	1	Yes
	Night	40	34	41	1	Yes
6	Day	40	30	40	0	Yes
	Night	40	30	40	0	Yes
7	Day	38	31	39	1	Yes
	Night	35	31	37	2	Yes
8	Day	38	33	39	1	Yes
	Night	35	33	37	2	Yes
9	Day	39	34	40	1	Yes
	Night	40	34	41	1	Yes
10	Day	39	35	40	1	Yes
	Night	40	35	41	1	Yes
11	Day	39	33	40	1	Yes
	Night	40	33	41	1	Yes
12	Day	39	32	40	1	Yes
	Night	40	32	41	1	Yes

1
2 As demonstrated in Table 20 below, under the distributed battery scenario, the maximum
3 allowable noise standard of 50 dBA at L₅₀ under OAR 340-035-0035(1)(b)(B), would be
4 exceeded at NSR 1 with a L₅₀ nighttime noise level of 51 dBA. Additionally, at NSR 1 with the
5 distributed battery layout, the ambient statistical noise levels would increase by 13 dBA during
6 the day and 16 dBA at nighttime, therefore, the ambient noise degradation standard is also
7 not met. Thus, under the distributed battery layout, at one NSR, the applicant does not meet
8 the maximum noise or the ambient noise degradation standards under OAR 340-035-0035,
9 and is addressed by the conditions below.
10

Table 20: Acoustic Modeling Results, Layout with Distributed Battery Storage

NSR ID	Time Period	Background Noise (dBA, L ₅₀)	Solar Project Noise (dBA)	Combined Noise (Background/Solar Project) (dBA)	Change in Noise (dBA)	Compliant with OAR 340-035-0035?
1	Day	38	51	51	13	No
	Night	35	51	51	16	No
2	Day	38	39	41	3	Yes
	Night	35	39	40	5	Yes
3	Day	40	36	41	1	Yes
	Night	40	36	41	1	Yes
4	Day	40	37	42	2	Yes
	Night	40	37	42	2	Yes
5	Day	40	39	42	2	Yes
	Night	40	39	42	2	Yes
6	Day	40	36	41	1	Yes
	Night	40	36	41	1	Yes
7	Day	38	38	41	3	Yes
	Night	35	38	40	5	Yes
8	Day	38	40	42	4	Yes
	Night	35	40	41	6	Yes
9	Day	39	44	45	6	Yes
	Night	40	44	45	5	Yes
10	Day	39	43	44	5	Yes
	Night	40	43	45	5	Yes
11	Day	39	41	43	4	Yes
	Night	40	41	43	3	Yes
12	Day	39	39	42	3	Yes
	Night	40	39	43	3	Yes

1
2 The applicant's noise modeling with a maximum operational capacity with maximum amount of
3 noise-generating equipment under the distributed battery scenario results in the exceedance of
4 the maximum allowable noise standard and the ambient noise degradation standard. Measures
5 applicant may employ to ensure compliance with DEQ noise rules include detailed design of a
6 distributed battery storage layout by siting the inverter skids/battery storage equipment an
7 adequate distance away from NSR ID 1 to reduce the operational sound to a level compliant
8 with the Oregon noise standard, specifying quieter equipment (when available), and/or
9 installing improved acoustical enclosures or barriers. Final equipment specifications and noise
10 warranty data and final locations of the inverter skids/battery storage units will be reviewed by
11 an acoustician to ensure compliance with OAR 340-035-0035.

12

1 The applicant has not requested that Council consider an exception or variance under the
2 regulation; therefore, the facility is precluded from the maximum scenario presented with
3 distributed battery storage.²⁵⁴ The Council imposes Noise Control Condition 1 to ensure that
4 final facility design and layout comply the maximum allowable noise standard and ambient
5 noise degradation standard.
6

7 **Noise Control Condition 1:** Prior to construction, the certificate holder shall provide to the
8 Department:

- 9 a. Final facility layout; and number, type, and noise level (dBA) of all noise generating
10 equipment. Identify differences in equipment noise level (dBA), based on manufacturer
11 specifications, compared to noise levels presented in ASC Exhibit Y. If there are
12 differences in equipment noise level (dBA), certificate holder shall provide updated
13 acoustic modeling results, if determined necessary by the Department. The certificate
14 holder may rely on ambient noise measurements included in ASC Exhibit Y or may
15 obtain updated ambient noise measurements, if measurement locations and protocol
16 are approved by the Department.
17 b. If the final design of the facility includes distributed battery storage, provide an acoustic
18 modeling analysis using manufacturer based noise levels (dBA) that demonstrate
19 compliance with the ambient degradation standard and maximum allowable noise
20 standards. The certificate holder may rely on ambient noise measurements included in
21 ASC Exhibit Y or may obtain updated ambient noise measurements, if measurement
22 locations and protocol are approved by the Department.

23 [PRE-NC-01]
24

25 Pursuant to the DEQ noise standards under OAR 340-035-0035(4)(a), the Council has authority
26 to require the owner of an operating noise source to monitor and record the statistical noise
27 levels upon written notification. In the event of a complaint regarding noise levels during
28 proposed facility operation, the Council has the authority to act in the place of DEQ to enforce
29 this provision to verify that the certificate holder is operating the facility in compliance with the
30 noise control regulations. Therefore, the Council adopts the following conditions:
31

32 **Noise Control Condition 2:** Prior to operation, the certificate holder shall:

- 33 a. Identify a facility contact that will receive, track and respond to noise complaints
34 during facility operations.
35 b. Send to Noise Sensitive Receptors (NSRs) identified in ASC Exhibit Y Table Y-9,
36 information about the facility, facility operational noise levels and the process for
37 filing a noise complaint to facility operational personnel, as identified in (a) of the
38 condition.

²⁵⁴ Applicant indicates the noise assessment, based on final design, will demonstrate that the facility meets the ambient noise degradation test and maximum allowable test at the appropriate measurement point for all potentially-affected noise sensitive properties, or that the applicant has obtained the legally effective easement or real covenant for expected exceedances of the ambient noise degradation test. Council highlights that under OAR 340-035-0035 in place at the time of this order, does not contemplate “noise waivers” for solar facilities. WESAPPD03-25 ASC Exhibit Y Noise 2022-10-22, Section 5.0.

1 [PRO-NC-01]
2

3 **Noise Control Condition 3:** During operations, the certificate holder shall track and
4 respond to any noise complaints received. Certificate holder shall notify the Department
5 within three working days of receiving a noise complaint related to the facility and shall
6 identify the date the certificate holder received the complaint, the nature of the
7 complaint, the complainant’s contact information, the location of the affected property,
8 and any actions taken, or planned to be taken, by the certificate holder to address the
9 complaint.

10 [OPR-NC-01]
11

12 **Conclusions of Law**
13

14 Based on the findings of fact and compliance with the site certificate condition requiring the
15 applicant to design the facility in a manner that does not exceed the DEQ noise standards, the
16 Council finds that the facility would comply with the Noise Control Regulations in OAR 340-035-
17 0035(1)(b)(B).
18

19 **IV.R.2 Removal-Fill Law**
20

21 The Oregon Removal-Fill Law (ORS 196.795 through 196.990) and Department of State Lands
22 (DSL) regulations (OAR 141-085-0500 through 141-085-0785) require a removal-fill permit if 50
23 cubic yards or more of material is removed, filled, or altered within any “waters of the state.”²⁵⁵
24 The Council, in consultation with DSL, must determine whether a removal-fill permit is needed
25 and if so, whether a removal-fill permit should be issued. The analysis area for wetlands and
26 other waters of the state is the area within the site boundary. If a removal-fill permit is needed
27 for the facility, it is Council that makes a determination whether or not DSL should issue such a
28 permit.
29

30 **Findings of Fact**
31

32 ASC Exhibit J provides the applicant’s analysis of the presence or absence of wetlands and other
33 nonwetland waters of the state within the analysis area, which encompasses the 324 acre
34 facility site boundary. To inform the analysis, the applicant conducted literature and desktop
35 reviews as well as field studies. The literature review included an evaluation of the following
36 sources:
37

38 The applicant’s consultant, Tetra Tech, and the Department reviewed the National Wetlands
39 Inventory (NWI) database for the presence of mapped wetland and waterways, the National
40 Hydrologic Database (NHD) which provides data about known hydrology, hydric soils data from
41 the Natural Resources Conservation Service, and aerial imagery from 2019 and 2020 Google
42 Earth 2019, 2020 to identify potential wetlands and other waters occurring within the analysis

²⁵⁵ ORS 196.800(15) defines “Waters of this state.” The term includes wetlands and certain other waterbodies.

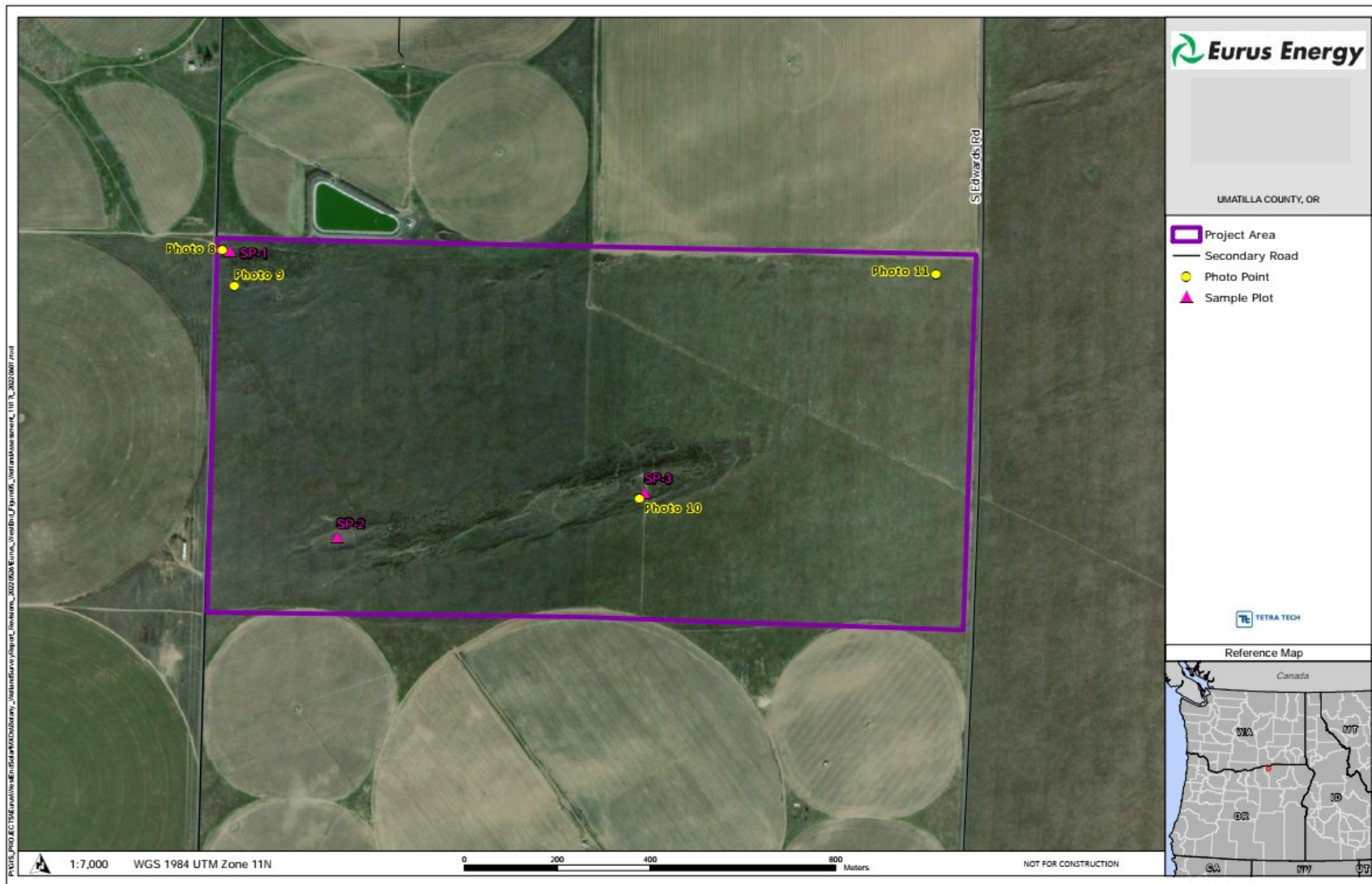
1 area. The review of NWI and NHD data and aerial imagery did not identify any wetlands or
2 stream features mapped within the site boundary. Data from the NRCS indicated that
3 approximately 73 percent of the site soils are Adkins fine sandy loam soils with zero to 5
4 percent slopes which is considered non-hydric, whereas 27 percent of the mapped soils are
5 Quincy fine sand which may meet the criteria for hydric soils, especially in areas where there
6 are depressions in the topography.²⁵⁶

7
8 To confirm the absence of wetland and water features, Tetra tech conducted field surveys for
9 wetlands and WOS following the methods in the 1987 *Wetlands Delineation Manual, Technical*
10 *Report Y-87-1* and the 2008 *Regional Supplement to the Corps of Engineers Wetland Delineation*
11 *Manual: Arid West*, which are the industry and DSL standard manuals directing on-site
12 delineation surveys as designated in OAR 141-090-0030.²⁵⁷ As recommended in these manuals,
13 three field indicators of wetlands (hydrophytic vegetation, hydric soils, and wetland hydrology)
14 must be present to make a positive wetland determination. Field surveys focused on
15 documenting the presence/absence of each of these indicators in order to conclude if wetlands
16 or other waters of the state were present in the analysis area. Figure 14 below illustrates the
17 locations where plants, soils, and hydrology were assessed within the site boundary.

²⁵⁶ ASC Exhibit J Section 3.3 and Attachment J-1, Section 3.1.2.

²⁵⁷ OAR 141-090-0030 (1) Wetland determinations and delineations shall be conducted in accordance with the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual ("the manual"), including regional supplements and applicable guidance, and any supporting technical or guidance documents issued by the Department.

1 **Figure 14: Site Boundary Wetland Assessment Sample Plot Locations**



2

1 On June 13, 2022, the Department submitted Attachment J-1, the Botanical and Wetland
2 Survey Report to DSL, with an Off-site Determination Request for signed by the applicant. On
3 July 21, 2022, DSL provided its preliminary jurisdictional determination which indicated that;
4 “Based on available offsite information and additional information provided by the applicant, it
5 is unlikely that jurisdictional wetlands or waterways are present on the property.”²⁵⁸ The
6 Council also evaluates the presentation of data for hydrophytic vegetation, hydric soils, and
7 wetland hydrology below, and finds that it is not likely that wetlands or other WOS are present
8 within the site boundary and therefore, no removal-fill permit is necessary for the construction
9 and operation of the facility.

10
11 *Hydrophytic vegetation*

12
13 As discussed above, desktop studies, literature review and consultation were conducted to
14 evaluate the presence of plant species associated with wetlands within the site boundary.
15 Furthermore, the applicant’s consultant, Tetra Tech, conducted field surveys for botanical
16 resources and wetland/non-wetland waters on July 3, 2019, June 22, 2020, and May 19, 2022.
17 Botanical field surveys were conducted using the Intuitive Controlled survey method, standard
18 and accepted survey protocols used by the USFS and BLM which incorporates meandering
19 transects that traverse the site boundary, and that target the full array of major vegetation
20 types, aspects, topographical features, habitats, and substrate types.²⁵⁹ Attachment 2 of the
21 Botanical and Wetland Survey Report lists the vascular plants observed within the site boundary
22 which includes a column indicating each plants’ wetland indicator status from the Army Corps
23 of Engineer’s 2020 National Wetland Plant List for the Arid West Region, which indicates there
24 were not any Obligate or Facultative Wet plants observed in the site boundary.²⁶⁰ Attachment 4
25 of the 2019-2022 Botanical and Wetland Survey Report includes Wetland Determination Data
26 Forms used by wetland specialists and DSL to record features associated with soils, plants and
27 hydrology. The Dominance Test and Prevalence Index worksheets in the data forms indicate
28 that the majority of the species identified in the survey were predominantly Facultative Upland
29 species and that the Facultative species documented were intermixed with Upland (non-
30 wetland) plant species and for that reason, no area within the proposed site boundary meets
31 the criteria for hydrophytic vegetation.²⁶¹

32

²⁵⁸ DSL also indicated that the offsite wetland and waters determination process is best reserved for property owners, real estate agents and appraisers, etc. interested in smaller properties. Determinations for larger study areas (such as this one) are best addressed by submitting a complete wetland delineation report to DSL for review and approval. WESAPDoc6-10 pASC Reviewing Agency Comment Offsite Determination No Wetlands_DSL_Ryan 2022-07-28.

²⁵⁹ ASC Exhibit J, Attachment J-1, Section 3.2.1.

²⁶⁰ Obligate = OBL plants that always occur in standing water or in saturated soils; FACW = Facultative Wet plants that nearly always occur in areas of prolonged flooding, standing water, or saturated soils; FAC= Facultative plants occur in a variety of habitats, including wetland and non-wetland habitats and commonly occur in standing water or saturated soils; FACU = Facultative Upland plants typically occur in non-wetland habitats but may frequently occur in standing water or saturated soils; and UPL = Upland plants almost never occur in water or saturated soils. USACE National Wetland Plan List Fact Sheet. In Attachment 2 applicant also includes NI = No Indicator.

²⁶¹ ASC Exhibit J, Attachment J-1 2019-2022 Botanical and Wetland Survey Report, Section 4.3.

1 *Hydric soils*

2

3 As noted above and discussed in Section IV.D., *Soil Protection*, the data reviewed for the
4 analysis area shows that soils are comprised primarily (235.8 acres or 73 percent) of Adkins fine
5 sandy loam with zero to 5 percent slopes, and the remaining portions (88 acres or 27 percent)
6 are composed of Quincy fine sand with zero to 5 percent slopes.²⁶² The Adkins fine sandy loam,
7 zero to 5 percent slopes soil type, is considered non-hydric, well-drained, with no frequency of
8 ponding or flooding.²⁶³ The NRCS describes hydric soil categories on a spectrum from hydric to
9 nonhydric, where “predominantly nonhydric” soils are soils where no major component listed
10 for a given map unit is rated as hydric, and at least one contrasting minor component is rated
11 hydric. Quincy fine sand soil does not contain a major component that is rated as hydric,
12 therefore it is considered “predominantly nonhydric” by NRCS’s State Soil Data Access Hydric
13 Soils Rating by Map Unit.²⁶⁴ Even so, because the Quincy fine sand located in depressions may
14 meet the criteria for hydric soils the consultant targeted these on-site depressional areas for
15 the field assessment conducted on May 19, 2022.²⁶⁵ Attachment 4 of the 2019-2022 Botanical
16 and Wetland Survey Report includes Wetland Determination Data Forms which identify the
17 sample plots where soils were sampled in the areas of topographical depressions to a depth of
18 20 inches and there were not any hydric soil indicators listed from the soil sampling.

19

20 *Wetland hydrology*

21

22 As noted already, the applicant’s desktop review of NWI and NHD data did not identify any
23 wetlands or stream features mapped by the NWI or NHD within the analysis area. The sample
24 plots for the on-site surveys focused in the topographical depressions where it would be most
25 likely for there to be hydrological features present, these features can be seen in Figure 14: *Site*
26 *Boundary Wetland Assessment Sample Plot Locations*, above. The applicant indicates that none
27 of these areas would appear to hold water for a sustained period of time. Other hydrologic
28 indicators of wetlands such as sediment deposits, water marks, or drainage patterns were also
29 not present and not documented in Attachment 4 of the 2019-2022 Botanical and Wetland
30 Survey Report Wetland Determination Data Forms. Visual comparison with the select site
31 photographs included as Attachment 3 also affirms the absence of hydrologic features.

32

33 The Department and DSL reviewed that applicant’s desktop data and results from the field
34 assessments, including subsurface investigations which were conducted at the 3 locations most
35 likely to have wetland features and concur that they do not identify any hydrophytic

²⁶² Exhibit J, Attachment J-1, Figure 3. See also References section in ASC Exhibit J.

²⁶³ ASC Exhibit J, Attachment J-1, Section 3.4.2 and NRCS Soil Map Unit Descriptions for the site boundary, accessed by Department 07-29-2022. <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>.

²⁶⁴ ASC Exhibit J Section 3.4.2 and State Soil Data Access (SDA) Hydric Soils Rating by Map Unit, accessed by Department 07-29-2022.

https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcseprd1389479.html#reportref.

²⁶⁵ ASC Exhibit J, Attachment J-1, Botanical and Wetland Survey Report Figure 5, illustrates the locations within the depressional areas where sample plots and photographs were taken, which are provided in ASC Exhibit J, Attachment 3.

1 vegetation, hydric soils, or wetland hydrology. Based upon the Council’s review of the
2 applicant’s wetland survey data, independent confirmation of references, and cross-referencing
3 information in ASC Exhibit J, and the preliminary determination from DSL that it is unlikely that
4 jurisdictional wetlands or waterways are present on the property, the Council finds that it is not
5 likely that wetlands or other waters of the state are present within the site boundary, and
6 therefore, no removal-fill permit is necessary.

7
8 **Conclusions of Law**

9
10 Based on the foregoing findings of fact and conclusions, the Council finds that a removal-fill
11 permit is not needed for the facility because there are no wetlands or WOS present based on
12 the lack of hydrophilic plants, hydric soils, and on-site hydrology.

13
14 *IV.R.3 Water Rights*

15
16 Under ORS Chapters 537 and 540 and OAR Chapter 690, the Oregon Water Resources
17 Department (OWRD) administers water rights for appropriation and use of the water resources
18 of the state. Under OAR 345-022-0000(1)(b), the Council must determine whether the facility
19 would comply with these statutes and administrative rules. OAR 345-021-0010(1)(o)(F) requires
20 that if a facility needs a groundwater permit, surface water permit, or water right transfer, that
21 a decision on authorizing such a permit rests with the Council.

22
23 **Findings of Fact**

24
25 As described in ASC Exhibit O and in Section IV.M., *Public Services* of this order, construction-
26 related water use would include civil and site preparation for road compaction and dust
27 suppression, as well as water used for concrete mixing for foundations, and fire protection.
28 Water trucks would be used to control dust generation in all disturbed areas during road
29 construction, foundation installation, final cleanup, reclamation, and restoration.

30
31 The applicant estimates that approximately 10.5 to 12.8 million gallons (Mgal) of water would
32 be used during a 12-month construction period for the uses described above, or about 1 Mgal
33 of water use per month. During facility operation, water would be used for solar module
34 washing, approximately twice a year amounting to approximately 1.65 Mgal each year. The
35 applicant is not proposing the installation and operation of on-site wells.

36
37 The applicant maintains that no groundwater permit, surface water permit, or water right
38 transfer is needed for the construction and operation of the proposed facility because water for
39 facility construction and operation would be obtained under existing water rights held by the
40 City of Hermiston under an existing municipal water right. The applicant provided
41 correspondence from the City which confirms, that under normal circumstances, the City can
42 provide up to 18.3 Mgal of water for construction and operation of the facility.²⁶⁶ Under OWRD

²⁶⁶ WESAPPDoc3-15 ASC Exhibit O Attachment O-1. Record of Correspondence with the City of Hermiston

1 rules, examples of municipal water use include but are not limited to domestic water use,
2 irrigation of lawns and gardens, commercial water use, industrial water use, fire protection,
3 irrigation, and other water uses.²⁶⁷ Previously, OWRD has affirmed and Council has found that
4 water use for the construction and operation for the proposed facility qualifies under 690-300-
5 0010(25) as “industrial water use”, which includes the use of water associated with the
6 processing or manufacture of a product, such as the construction, operation, and maintenance
7 of an industrial site like a solar facility. The Council finds that the solar facility, as an industrial or
8 commercial use, qualifies as a municipal use under OWRD rules.

9
10 To affirm the facility’s water use during construction, and the ability of the City of Hermiston or
11 any other municipality, to provide water for facility construction, the Council imposes the
12 following conditions:

13
14 **Water Rights Condition 1:** Prior to construction of the facility, facility component or
15 phase, as applicable, the certificate holder shall:

- 16 a. Identify all water-related needs and estimate daily and annual water demand for
17 each construction phase, as applicable.
- 18 b. Provide excerpts of agreements or other similar conveyance from the water-
19 providing entity to the Department demonstrating that construction activities will be
20 adequately and legally served by service providers or third-party permits.

21 [PRE-WR-01]

22
23 **Water Rights Condition 2:** During construction of the facility, facility component or
24 phase, as applicable, if a water right, limited water use license or water rights transfer is
25 needed and would not be obtained by a third-party, submit and obtain approval of the
26 applicable water permit through the site certificate amendment process.

27 [CON-WR-01]

28
29 **Conclusions of Law**

30
31 Based on the foregoing findings of fact and site certificate conditions, the Council concludes
32 that the facility does not need a groundwater permit, surface water permit, or water right
33 transfer.

34

²⁶⁷ OAR 690-300-0010(29).

1 **V. FINAL CONCLUSIONS AND ORDER**

2
3 EE West End Solar LLC submitted an application for site certificate (ASC) to construct and
4 operate up to 99 MWs of solar photovoltaic power generation equipment and related or
5 supporting facilities to be located in Umatilla County. Subject to the representations in the ASC,
6 compliance with the imposed site certificate conditions, and based on the preponderance of
7 evidence on the record, the Council finds that:

- 8
9 1. The West End Solar Project complies with the requirements of the Oregon Energy
10 Facility Siting Statutes, ORS 469.300 to 469.520.
11
12 2. The West End Solar Project complies with the standards adopted by the Council
13 pursuant to ORS 469.501.
14
15 3. The West End Solar Project complies with all other Oregon statutes and
16 administrative rules identified in the Project Order as applicable to the issuance of a
17 site certificate for the proposed facility.
18

19 Based on the findings of fact, reasoning, site certificate conditions, and conclusions of law in
20 this final order, the Council concludes that the applicant has satisfied the requirements for
21 issuance of a site certificate for the West End Solar Project. Pursuant to ORS 469.401, the Chair
22 Grail executes the site certificate authorizing the applicant to construct, operate and retire the
23 facility subject to the conditions set forth in the site certificate.
24

25 **Issued this 24th day of March 2023**

The OREGON ENERGY FACILITY SITING COUNCIL

By: 
Marcia L. Grail (Mar 30, 2023 12:31 PDT)

Marcia L. Grail, Chair

26
27
28
29
30
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32
33

- 1 **Attachments:**
- 2 Attachment A: Site Certificate
- 3 Attachment B: Reviewing Agency Comments and Documents Relied upon in Order
- 4 Attachment B-2: Draft SPCC Plan
- 5 Attachment I-1: Draft Erosion and Sediment Control Plan and Best Management Practices
- 6 Attachment P-3: Wildlife Monitoring and Adaptive Management Plan
- 7 Attachment P-4: Draft Noxious Weed Control Plan
- 8 Attachment P-5: Draft Habitat Mitigation Plan
- 9 Attachment S-3: Draft Inadvertent Discovery Plan
- 10 Attachment U-1: Draft Traffic Management Plan
- 11 Attachment V-1: Draft Emergency Management and Wildfire Mitigation Plan
- 12 Attachment X-1: EFSC-Approved Bond and Letter of Credit Templates

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Notice of the Right to Appeal

This Order is subject to judicial review as provided in ORS 469.403. Any party to the contested case proceeding may appeal the Order. Issues on appeal shall be limited to those raised by the parties to the contested case proceeding before the Council.

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Attachment A: Site Certificate

**ENERGY FACILITY SITING COUNCIL
OF THE
STATE OF OREGON**

**Site Certificate for the
West End Solar Project**

**ISSUE DATE
March 24, 2023**

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1.0 Introduction and Site Certification

This site certificate is a binding agreement between the State of Oregon (State), acting through the Energy Facility Siting Council (EFSC or Council), and EE West End Solar, LLC (certificate holder), a wholly owned subsidiary of Eurus Energy America Corporation (parent company). Both the State and certificate holder must abide by local ordinances, state law, and the rules of the Council in effect on the date this site certificate is executed. However, upon a clear showing of a significant threat to public health, safety, or the environment that requires application of later-adopted laws or rules, the Council may require compliance with such later-adopted laws or rules (ORS 469.401(2)). As authorized under Oregon Revised Statute (ORS) Chapter 469, the Council issues this site certificate authorizing the certificate holder to construct, operate, and retire the West End Solar Project (facility) within the below described approved site boundary in Umatilla County, subject to the conditions set forth herein.

This site certificate binds the State and all counties, cities and political subdivisions in Oregon as to the approval of the site and the construction, operation, and retirement of the facility as to matters that are addressed in and governed by this site certificate (ORS 469.401(3)). Each affected state agency, county, city, and political subdivision in Oregon with authority to issue a permit, license, or other approval addressed in or governed by this site certificate, shall upon submission of the proper application and payment of the proper fees, but without hearings or other proceedings, issue such permit, license or other approval subject only to conditions set forth in this site certificate. In addition, each state agency or local government agency that issues a permit, license or other approval for this facility shall continue to exercise enforcement authority over such permit, license or other approval (ORS 469.401(3)). For those permits, licenses, or other approvals addressed in and governed by this site certificate, the certificate holder shall comply with applicable state and federal laws adopted in the future to the extent that such compliance is required under the respective state agency statutes and rules (ORS 469.401(2)).

This site certificate does not address, and is not binding with respect to, matters that are not included in and governed by this site certificate, and such matters include, but are not limited to: employee health and safety; building code compliance; wage and hour or other labor regulations; local government fees and charges; other design or operational issues that do not relate to siting the facility (ORS 469.401(4)); and permits issued under statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council (ORS 469.503(3)).

The obligation of the certificate holder to report information to the Department or the Council under the conditions listed in this site certificate is subject to the provisions of ORS 192.502 *et seq.* and ORS 469.560. To the extent permitted by law, the Department and the Council will not publicly disclose information that may be exempt from public disclosure if the certificate holder has clearly labeled such information and stated the basis for the

exemption at the time of submitting the information to the Department or the Council. If the Council or the Department receives a request for the disclosure of the information, the Council or the Department, as appropriate, will make a reasonable attempt to notify the certificate holder and will refer the matter to the Attorney General for a determination of whether the exemption is applicable, pursuant to ORS 192.450.

The Council shall have continuing authority over the site and may inspect, or direct the Oregon Department of Energy (Department) to inspect, or request another state agency or local government to inspect, the site at any time in order to ensure that the facility is being operated consistently with the terms and conditions of this site certificate (ORS 469.430).

The duration of this site certificate shall be the life of the facility, subject to termination pursuant to OAR 345-027-0110 or the rules in effect on the date that termination is sought, or revocation under ORS 469.440 and OAR 345-029-0100 or the statutes and rules in effect on the date that revocation is ordered. The Council shall not change the conditions of this site certificate except as provided for in OAR Chapter 345, Division 27.

In interpreting this site certificate, any ambiguity will be clarified by reference to the following, in order, incorporated herein by this reference: 1) *Final Order on the Application for Site Certificate for the West End Solar Project* issued on March 24, 2023 (hereafter, *Final Order on the ASC*) 2) the record of the proceedings that led to the Final Order on the ASC.

The definitions in ORS 469.300 and OAR 345-001-0010 apply to the terms used in this site certificate, except where otherwise stated, or where the context clearly indicates otherwise.

2.0 Facility Location, Site Boundary and Micrositing Areas

The approved facility site is located in Umatilla County, Oregon, approximately 1 mile east of the city limits of Hermiston, Oregon and 1 mile north of the city limits of Stanfield, Oregon, as presented in Attachment 1, Figure 1: *Facility Regional Location*. The approved site boundary includes approximately 324 acres of private land zoned as exclusive farm use (EFU).¹

A micrositing corridor, by definition, means a continuous area of land within which construction of facility components may occur, subject to site certificate conditions.² Micrositing corridors or areas are intended to allow some flexibility in specific component locations and design in response to site-specific conditions and engineering requirements to be determined prior to

¹ As defined in OAR 345-001-0010, “site boundary” means the perimeter of the site of a proposed energy facility and its related or supporting facilities, all temporary laydown and staging areas and all corridors proposed by the applicant; “site” means all land upon which an energy facility and its related or supporting facilities is located or proposed to be located.¹ After Council approves a Final Order on an application for site certificate and issues a site certificate, the “proposed facility” becomes the approved facility or facility.

² OAR 345-001-0010(32)

construction. The approved 324-acre site boundary is considered a “micrositing area”.

3.0 Facility Description

The approved facility is a solar photovoltaic (PV) energy generation facility and related or supporting facilities³ with an approved nominal and average generating capacity of up to 99 megawatts (MW). The facility would be contained within a 6 to 10-foot-tall chain link perimeter fence.

The facility is approved to install approximately 180,000 solar modules (using either mono- or poly-crystalline cells contained within antireflective glass panels) that would be connected in series to form long rows connected via electrical cables as “Strings”. The solar module strings would be mounted on single-axis tracker systems that rotate the modules to follow the path of the sun throughout the day. The modules on posts and trackers would be approximately 16 feet in height when tilted on the single-axis tracking system.

The tracker system would be supported by approximately 33,000 steel posts, which could be round hollow posts or pile-type posts (i.e., H-pile, C-pile, S-pile) or helical. The type of post and post depth may vary depending on soil conditions, but the posts would typically be installed 4 to 8 feet below grade, and protrude 4 to 7 feet above grade. Posts at the end of tracker rows are usually installed to greater depth to withstand wind uplift. In some soil conditions, concrete backfill would be required for each post.

The approximate dimensions and specifications of energy facility and related or supporting facility components approved to be constructed and operated are presented in Table 1 below. The final design of the energy facility and related or supporting facility components must substantially comply with these dimensions and specifications. Final facility design must be substantially similar to the design/technical specifications presented in Table 1.

Table 1 : Facility Component Summary

Component and Design Standard	No.	Unit
Solar Components		
Solar micrositing area	324	acres
PV Solar Modules		
Approx. Total number	180,000	modules
Max Height at full-tilt	16	feet
Posts		
Approx. Total number	33,000	posts
Inverters/Transformer Units		
Approx. Total number	25	
Noise level, per unit	88	dBA

³ OAR 345-001-0010(21) and – (50)

Table 1 : Facility Component Summary

Component and Design Standard	No.	Unit
Transformer oil-containing capacity	550	gallons
Related or Supporting Facility Components		
<i>34.5 kV Collection System</i>		
Collector line length, belowground	15	miles
<i>Perimeter Fence</i>		
Length	15,400	Linear feet
Height	10	feet
<i>Roads</i>		
New road (length, width)	3.4; 12-20	Miles, feet
<i>Grid-Interconnect</i>		
No. of Structures	2	
Structure type, height	Utility pole, 30	feet
<i>Battery Energy Storage System (Lithium-ion)</i>		
Approx. total batteries	70	MW
Approx. total containers	200	
Approx. container dimensions	8 x 10 x 10	H x W x L, feet
HVAC noise level, per unit	98	dBA at 6 feet
<i>Substations/Switchyard</i>		
Switchyard	1	
No. of substations	1	
No. of main power transformers	2	
Transformer oil-containing capacity	15,000	gallons
Transformer noise level	102	dBA
<i>O&M Enclosure</i>		
Size	20 x 600	Height x width
Buildings	Dry storage shed, workspace, storage area	

Related or Supporting facility components would include:

- Battery storage system
- 34.5 kV electrical collector lines
- Collector substation
- Switchyard substation
- Supervisory Control and Data Acquisition (SCADA) System
- Operations and Maintenance (O&M) Enclosure
- Security fencing and gates
- Site Access and service roads
- Construction staging areas

Battery Storage System

The battery storage system is approved to include up to 70 MW of lithium-ion energy storage system (ESS) technology, and is comprised of following elements:

- A thermal management system designed and sized so heat generated could be removed ensuring the batteries operate in an environment that does not exceed the operational temperature range defined by the battery manufacturer.
- Temperature, current, voltage, and humidity sensors which provide a real time information of the conditions inside the enclosures.
- Fire Safety System (FSS) which monitors heat, and smoke, and provides dedicated annunciation/alarming in the event a fire condition is detected, automatically returns the system to a standby mode and if necessary automatically deploys an appropriate suppression agent.
- Designed so that if an internal fire occurs, it can impede flames from moving to adjacent enclosures or the environment.
- Equipped with proper safety labels and signages for the safety of site personnel. The enclosure will be electrically touch safe and grounded.

The ESS is designed as up to 200 modular energy storage units or enclosures (roughly 8 feet wide, 10 feet long, and 10 feet high), located on a gravel surface, that could be linked together to form an energy storage string. The ESS is approved to either be centrally located at the substation, or distributed throughout the site boundary around the solar array. If centrally located, the ESS would be include additional 6 to 8-foot-high wire mesh fencing around its perimeter. Smaller step-up transformers (located at the enclosures) would have an oil containment system to minimize the possibility of accidental leakage. An emergency stop button on the external wall of the energy storage system enclosures would allow on-site personnel to activate an emergency stop. However, the battery storage units would also be remotely controlled, including shut off abilities.

34.5-kV Collector Line System

The facility is approved to include approximately 79,200 feet (approximately 15 miles) of belowground 34.5 kV collector lines that carry power from the switchgear to the approved substation. The 34.5 kV collector lines would be buried to an approximate depth of three feet, likely adjacent to access roads. The collector line system and substation would have redundant surge arrestors to deactivate the facility components during unusual operational events that could start fires.

Collector Substation

The collector substation would combine and step up the voltage of energy generated by the solar arrays to the transmission voltage via main power transformer. The substation includes

three open-air isolation switches, a 34.5-kV main bus open-air isolation switch, the step-up transformer, and a circuit breaker and open-air isolation switch. The substation would also include protective relay and metering equipment; utility and customer revenue metering; a station service transformer (which provides power to the substation and substation control house); and redundant surge arrestors to deactivate the operation of the facility during unusual operational events that could start fires.

The main power transformer would use approximately 15,000 gallons of non-polychlorinated biphenyl oil. The main power transformer would be ground-mounted, constructed on concrete or gravel pads, and would feature secondary spill containment traps to minimize the possibility of accidental leakage.

The substation would be up to 30 feet in height and sited on approximately 15 acres of graveled area, together with the O&M enclosure. The Substation and O&M enclosure would be fenced and likely located on the eastern edge of the site boundary. The fencing would consist of 6 to 8-foot-high wire mesh.

Switchyard Substation

The switchyard substation would be up to 30 feet tall, and constructed adjacent the collector substation, in a separately fenced and graveled area. The switchyard substation would have similar equipment as the collector substation described above, including a control house, however instead of a main power transformer the switchyard would include other small transformers for service power and meters. The switchyard substation would also have interconnection facilities including two utility poles that would support the electric line that connects the Switchyard to the existing transmission line. The switchyard substation may be constructed, owned, and operated by the utility that operates the transmission line that the facility interconnects with (e.g., Umatilla Electric Cooperative, Bonneville Power Administration, or PacifiCorp).

Supervisory Control and Data Acquisition (SCADA) System

A Supervisory Control and Data Acquisition (SCADA) system would be installed to collect operating and performance data from the solar array and would allow remote operation of the facility. Smoke/fire detectors would be placed around the site that will be tied to the SCADA System and would contact local firefighting services. Fiber optic cables for the SCADA system operation would be installed with the 34.5 kV collector line system.

Operations and Maintenance (O&M) Enclosure

The O&M enclosure would consist of a single, 20-foot-tall, 600-square-foot, dry-storage shed located within the collector substation graveled area. The O&M building would include a workspace and storage area. Restroom facilities for employee sanitation would be provided by

portable-toilets and a hand-washing station, while operational required water will be trucked in from offsite sources and bottled water.

The O&M enclosure may store small quantities of lubricants, degreasers, herbicides, or other chemicals. During construction, on-site fuel storage (i.e. for backup generators, etc.) may be placed in designated areas within construction staging areas. Any tank, container or drum of oil, diesel or chemical, equal to or greater than 55 gallons would:

- Include secondary containment of at least 110% of the volume of the primary container;
- Include spill response equipment;
- Site security to control access to equipment and property.

Security Fencing and Gates

The facility is approved to include approximately 3 miles (15,400 linear feet) of 6 to 10-foot chain-link perimeter fencing. The substation, switchyard, and centralized battery enclosure configuration would each be fenced in with additional 6 to 8-foot-high wire mesh fencing. The perimeter fencing features vehicle and pedestrian access gates with locks, with the primary access point likely on the eastern edge of the site boundary, off of S. Edwards Road. A five-foot wide, noncombustible, defensible space clearance along the fenced perimeter of the site boundary would be maintained to protect from fire hazards.

Site Access and Service Roads

The facility's main access point off of S. Edwards Road would require a new driveway off of S. Edwards Road, which would meet that applicable design standards designated by Umatilla County Development Code (UCDC). Approximately 3.4 miles of newly constructed roads would be graded and graveled to meet load requirements for all equipment. Road cross sections would consist of 6 inches of compacted gravel supported on 6 inches of compacted native dirt. Access roads within the solar array site would be approximately 12 feet to 20 feet wide, depending on location, with an internal turning radius of up to 28 feet. These roads would have less than a 10 percent grade, or a similar profile, depending on exact siting which would maintain safety standards as well as help maintain erosion and sediment control. Vegetation would be cleared and maintained along perimeter roads to provide a vegetation clearance for fire safety.

Construction Staging Areas

During construction, temporary staging areas would be used within the fenced site boundary to support construction and store supplies and equipment. The staging areas would consist of a crushed gravel surface and would be considered a permanent impact.

4.0 Facility Development

4.1 Construction

Construction of the facility is anticipated to take 9-12 months, and shall commence on or before March 24, 2026. Construction shall be completed within 24 months after construction commencement. Upon commencement, construction activities would employ an average of 300 people and a maximum of 500 people during peak summer months, and would require up to 400 round trips and 800 one-way trips for daily worker vehicle trips, and up to 45 round trips and 90 one-way trips per day for delivery vehicles.

Construction-related activities include:

- Clearing and grubbing of vegetation in construction staging areas, solar array, and new access roads
- Grading of access roads, substation and O&M areas
- Site preparation including stockpiling soils for later use, and decompaction performed as needed prior to final grading for site revegetation, gravel placement or foundation installation
- Delivery of construction equipment, and facility components and materials (All construction vehicles would be limited to 20 miles per hour on all facility access roads)

If the facility is constructed in phases, in accordance with ORS 469.300(6), preconstruction conditions, if specified, may be satisfied for the applicable phase, facility component or for the facility, as applicable, based on final design and configuration.

4.2 Operations and Maintenance

The estimated life of the facility is 30 years. The facility would be remotely operated except for routine maintenance and facility repair activities. Repair activities would require approximately two to five workers to be deployed to the facility site. O&M activities would include routine inspections of the battery storage, transformers, and other electrical equipment, vegetation management, solar panel washing, and changing the lithium-ion batteries and solar panels. Operational water may be trucked in and stored in a water tank or trucked in for specific uses.

Inspections of the inverters, transformers, and battery system would be conducted according to the manufacturer's recommendations, which are assumed to be monthly inspections. Vegetation and weed management in areas not graveled, including under the solar arrays, would be implemented through manual, mechanical or chemical (i.e., herbicide) control measures. The solar panels may need to be washed up to twice per year and wash water would be applied via tanker truck without any cleaning solvents added to the water so it may be absorbed into the ground after application. The lithium-ion batteries would need to be changed

approximately every 10 years or two to three times throughout the life of the facility. The following procedures would be implemented for the battery replacement:

- Facility operator would disconnect and de-energy battery systems prior to removal from the installed racks and package the batteries for transport to a licensed recycling facility.
- At the recycling facility, the qualified contractor would dismantle the battery modules and prepare individual cells for metals recovery.
- Individual cells would be processed in a furnace to recover metals. Recovered metals may include aluminum, calcium, lithium, and a metal alloy comprising cobalt, copper, nickel, and iron.
- Recovered metals would be recycled or separated to recover individual metals where economically viable.

Solar modules and electrical equipment would need to be repaired or replaced over the lifetime of the facility. Solar panels that are nonfunctional or are retired would be recycled to the maximum extent feasible.

4.3 Retirement

Retirement of the facility must adhere to the requirement under OAR 345-027-0110 and OAR 345-025-0006(9). The description provided below is intended to address OAR 345-025-0006(3)(a), but is not intended to conflict with the previously mentioned rule requirements.

Retirement and decommissioning activities of the facility and site begins with disconnecting all electrical equipment disassembling equipment and components such and the battery storage units, solar panels and transformers. Larger containers and equipment would be removed, trucked off-site and recycled and disposed of. None of these materials are considered hazardous. Solar panels would be disconnected, and piles would be removed including the excavation of any concrete foundations. Gravel and foundations from the inverters and transformers, O&M structure, substations, and switching station would be removed by trenching and excavation a minimum depth of 3 feet below grade. The facility site would then be restored through minimal grading and revegetation with plants or seed mix consistent with the Draft Noxious Weed Plan (Attachment P-4 of the Final Order) or landowner interests.

Any hazardous material would be handled by a qualified contractor and adhere to applicable regulations for transport and disposal, including but not limited to 49 Code of Federal Regulations 173.159. The decommissioning of the ESS, if used, would involve disposing of battery components at an off-site facility approved for disposal or recycling of batteries, following the same process as replaced batteries during operations.

Solar panels would be recycled to the greatest extent feasible at the time of facility retirement and solar panels not recycled would be disposed of at a certified disposal site or program for solar panels.

5.0 Site Certificate Conditions

5.1 Condition Format

The conditions in Sections 5.2 through 5.7 of this Site Certificate are organized and coded to indicate the phase of implementation, the standard the condition is required to satisfy, and an identification number (1, 2, 3, etc.).⁴ The table below presents a “key” for phase of implementation:

Key	Type of Conditions/Phase of Implementation
GEN	General Conditions: Design, Construction and Operation
PRE	Pre-Construction Conditions
CON	Construction Conditions
PRO	Pre-Operational Conditions
OPR	Operational Conditions
RET	Retirement Conditions

5.2 General (GEN) Conditions: Design, Construction and Operations

Condition Number	General (GEN) Conditions
<i>STANDARD: GENERAL STANDARD OF REVIEW (GS) [OAR 345-022-0000]</i>	
GEN-GS-01	<p>The certificate holder shall begin and complete construction of the facility by the dates specified in the site certificate.</p> <ol style="list-style-type: none"> a. Construction of the facility, facility component or phase, shall commence on or before March 24, 2026. Within 7 days of construction commencement, the certificate holder shall provide the Department written verification that it has met the construction commencement deadline by satisfying applicable preconstruction conditions and completing at least \$250,000 work at the site. b. Construction of the facility shall be completed within 24-months after the construction commencement date. Within 7 days of construction completion, the certificate holder shall provide the Department written verification that it has met the construction completion deadline. <p>[Mandatory Condition OAR 345-025-0006(4), General Standard of Review Condition 1]</p>

⁴ The identification number is not representative of an order that conditions must be implemented; it is intended only to represent a numerical value for identifying the condition.

Condition Number	General (GEN) Conditions
GEN-GS-02	<p>The certificate holder shall design, construct, operate and retire the facility:</p> <ul style="list-style-type: none"> a. Substantially as described in the site certificate; b. In compliance with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances in effect at the time the site certificate is issued; and c. In compliance with all applicable permit requirements of other state agencies. <p>[Mandatory Condition OAR 345-025-0006(3), General Standard of Review Condition 3]</p>
GEN-GS-03	<p>If the certificate holder becomes aware of a significant environmental change or impact attributable to the facility or any phase of the facility, the certificate holder shall, as soon as possible, submit a written report to the Department describing the impact on the facility and any affected site certificate conditions.</p> <p>[Mandatory Condition OAR 345-025-0006(6), General Standard of Review Condition 5]</p>
GEN-GS-04	<p>Before any transfer of ownership of the facility, any phase of the facility, or ownership of the site certificate holder, the certificate holder shall inform the Department of the proposed new owners. The requirements of OAR 345-027-0400 apply to any transfer of ownership that requires a transfer of the site certificate.</p> <p>[Mandatory Condition OAR 345-025-0006(15), General Standard of Review Condition 7]</p>
GEN-GS-05	<p>The certificate holder shall:</p> <ul style="list-style-type: none"> a. Design, construct and operate electrical infrastructure in accordance with the requirements of the National Electrical Safety Code as approved by the American National Standards Institute; and b. The certificate holder shall develop and implement a program that provides reasonable assurance that all fences, gates, cattle guards, trailers, or other objects or structures of a permanent nature that could become inadvertently charged with electricity are grounded or bonded throughout the life of the line. c. Design the battery storage system in accordance with the requirements of the National Fire Protection Association’s (NFPA) 855: Standard for the Installation of Stationary Energy Storage Systems (NFPA, 2020) or most current version. <p>[Site Specific Condition OAR 345-025-0010(4), General Standard of Review Condition 8]</p>
GEN-GS-06	<p>Upon completion of construction, the certificate holder shall restore vegetation to the extent practicable and shall landscape all areas disturbed by construction in a manner compatible with the surroundings and proposed use. Upon completion of construction, the certificate holder shall remove all temporary structures not required for facility operation and dispose of all timber, brush, refuse and flammable</p>

Condition Number	General (GEN) Conditions
	<p>or combustible material resulting from clearing of land and construction of the facility. [Mandatory Condition OAR 345-025-0006(11), General Standard of Review Condition 6]</p>
STANDARD: Organizational Expertise (OE) [OAR 345-022-0010]	
GEN-OE-01	<p>Any matter of non-compliance under the site certificate is the responsibility of the certificate holder. Any notice of violation issued under the site certificate will be issued to the certificate holder. Any civil penalties under the site certificate will be levied on the certificate holder. [Organizational Expertise Condition 1]</p>
GEN-OE-02	<p>The certificate holder must notify the Department within 72 hours of any occurrence of the following:</p> <ol style="list-style-type: none"> a. There is an attempt by anyone to interfere with the facility’s safe operation. b. There is a significant nature event such as a fire, earthquake, flood, tsunami or tornado, or human-caused event such as a fire or explosion. c. There is any fatal injury at the facility. <p>[OAR 345-026-0170, Organizational Expertise Condition 2]</p>
GEN-OE-03	<p>The certificate holder shall, as soon as reasonably possible:</p> <ol style="list-style-type: none"> a. Report incidents or circumstances that may violate the terms or conditions of the site certificate, terms or conditions of any order of the Council, or the terms or conditions of any order issued under OAR 345-027-0230, to the Department. In the report to the Department, the certificate holder shall provide all pertinent facts including an estimate of how long the conditions or circumstances existed, how long they are expected to continue before they can be corrected, and whether the conditions or circumstances were discovered as a result of a regularly scheduled compliance audit; b. Initiate and complete appropriate action to correct the conditions or circumstances and to minimize the possibility of recurrence; c. Submit a written report within 30 days of discovery to the Department. The report must refer to the language in (d) of the condition and contain: <ol style="list-style-type: none"> i. A discussion of the cause of the reported conditions or circumstances; ii. The date of discovery of the conditions or circumstances by the responsible party; iii. A description of immediate actions taken to correct the reported conditions or circumstances; iv. A description of actions taken or planned to minimize the possibility of recurrence; and v. For conditions or circumstances that may violate the terms or conditions of a site certificate, an assessment of the impact on the resources considered under the standards of OAR Chapter 345 Divisions 22 and 24 as a result of the reported conditions or circumstances.

Condition Number	General (GEN) Conditions
	<p>d. Upon receipt of the written report in sub(c) of this condition, the Department may review the facility record for incidents or circumstances reported or reportable under sub(a) related to public health and safety, the environment, or other resources protected under Council standards. If these incidences are determined by the Department to impact the adequacy of the facility decommissioning cost, the Department or Council may adjust the contingencies identified in Final Order on ASC Table 4 and shall request and receive an updated bond or letter of credit from certificate holder in the adjusted amount.</p> <p>[OAR 345-029-0010, Organizational Expertise Condition 3]</p>
GEN-OE-04	<p>The certificate holder shall contractually require its third-party contractor used to transport and dispose battery and battery waste to comply with all applicable federal regulations and manufacturer recommendations related to the transport and handling of battery related waste.</p> <p>[Organizational Expertise Condition 9]</p>
GEN-OE-05	<p>The certificate holder shall:</p> <p>a. Provide to the Department a list of federal, state and local permits, including any third-party permits related to facility siting; and a schedule for obtaining identified permits.</p> <p>b. Once obtained, certificate holder shall provide copies of all permits, including third-party permits, required for facility siting to the Department.</p> <p>[Organizational Expertise Condition 10]</p>
STANDARD: Structural Standard (SS) [OAR 345-022-0020]	
GEN-SS-01	<p>The certificate holder shall design, engineer and construct facility components based on Site Class (soils-related category) determined through the site-specific geotechnical investigation (PRE-SS-01), as reviewed and approved by the Department in consultation with its third-party consultant or DOGAMI.</p> <p>[Structural Standard Condition 2]</p>
GEN-SS-02	<p>The certificate holder must design, engineer and construct the facility to avoid dangers to human safety and the environment presented by seismic hazards affecting the site that are expected to result from all maximum probable seismic events. As used in this rule “seismic hazard” includes ground shaking, ground failure, landslide, liquefaction triggering and consequences (including flow failure, settlement buoyancy, and lateral spreading), cyclic softening of clays and silts, fault rupture, directivity effects and soil-structure interaction. For coastal sites, this also includes tsunami hazards and seismically-induced coastal subsidence.</p> <p>[Mandatory Condition OAR 345-025-0006(12), Structural Standard Condition 3]</p>
GEN-SS-03	<p>The certificate holder must notify the Department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if site investigations or trenching reveal that conditions in the foundation rocks differ significantly from those described in the application for a site certificate. After the Department</p>

Condition Number	General (GEN) Conditions
	receives the notice, the Council may require the certificate holder to consult with the Department of Geology and Mineral Industries and the Building Codes Division to propose and implement corrective or mitigation actions. [Mandatory Condition OAR 345-025-0006(13), Structural Standard Condition 4]
GEN-SS-04	The certificate holder must notify the Department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if shear zones, artesian aquifers, deformations or clastic dikes are found at or in the vicinity of the site. After the Department receives notice, the Council may require the certificate holder to consult with the Department of Geology and Mineral Industries and the Building Codes Division to propose and implement corrective or mitigation actions. [Mandatory Condition OAR 345-025-0006(14), Structural Standard Condition 5]
STANDARD: Retirement and Financial Assurance (RF) [OAR 345-022-0050]	
GEN-RF-01	The certificate holder shall prevent the development of any conditions on the site that would preclude restoration of the site to a useful, non-hazardous condition to the extent that prevention of such site conditions is within the control of the certificate holder. [Mandatory Condition OAR 345-025-0006(7), Retirement and Financial Assurance Condition 1]
STANDARD: Historic, Cultural and Archeological Resources (HC) [OAR 345-022-0090]	
GEN-HC-01	During construction and ground disturbing operational activities, implement the final Inadvertent Discovery Plan. [Historic, Cultural, and Archeological Resources Condition 2]
STANDARD: Waste Minimization (WM) [OAR 345-022-0120]	
GEN-WM-01	The certificate holder shall develop and implement plans that are likely to minimize the generation of solid waste and wastewater during construction and operation of the facility, and which would result in reuse and recycling solid waste and wastewater. [Waste Minimization Condition 1]

5.3 Pre-Construction (PRE) Conditions

Condition Number	Preconstruction (PRE) Conditions
STANDARD: GENERAL STANDARD OF REVIEW (GS) [OAR 345-022-0000]	
PRE-GS-01	Except as necessary for the initial survey or as otherwise allowed for wind energy facilities, transmission lines or pipelines under this section, the certificate holder shall not begin construction, as defined in OAR 345-001-0010, or create a clearing on any part of the site until the certificate holder has construction rights on all parts of the site. For the purpose of this rule, “construction rights” means the legal right to engage

Condition Number	Preconstruction (PRE) Conditions
	<p>in construction activities. For the transmission line associated with the energy facility if the certificate holder does not have construction rights on all parts of the site, the certificate holder may nevertheless begin construction, as defined in OAR 345-001-0010, or create a clearing on a part of the site if the certificate holder has construction rights on that part of the site and the certificate holder would construct and operate part of the facility on that part of the site even if a change in the planned route of a transmission line occurs during the certificate holder’s negotiations to acquire construction rights on another part of the site.</p> <p>[Mandatory Condition OAR 345-025-0006(5), General Standard of Review Condition 4]</p>
PRE-GS-02	<p>At least 90 days prior to beginning construction, (unless otherwise agreed to by the Department), the certificate holder shall submit to the Department a compliance plan documenting and demonstrating actions completed or to be completed to satisfy the requirements of all site certificate terms and conditions and applicable statutes and rules. The plan shall be provided to the Department for review and compliance determination for each requirement. The Department may request additional information or evaluation deemed necessary to demonstrate compliance.</p> <p>[OAR 345-026-0048, General Standard of Review Condition 9]</p>
<p>STANDARD: Organizational Expertise (OE) [OAR 345-022-0010]</p>	
PRE-OE-01	<p>Prior to construction, the certificate holder shall select a construction contractor with a low rate of historic environmental and safety compliance citations. Certificate holder shall provide the following documentation to the Department:</p> <ul style="list-style-type: none"> a. Qualifications and contact information of the of the major design, engineering and construction contractor(s) and subcontractors, as applicable. b. Construction contractor compliance history. c. Contract excerpt affirming that contractors are required to comply with the terms and conditions of the site certificate, including selecting design layout and construction materials that minimize impacts to resources protected under Council standards. <p>[Organizational Expertise Condition 4]</p>
PRE-OE-02	<p>Prior to construction, the certificate holder shall provide to the Department the qualifications and contact information of the certificate holder’s construction manager.</p> <p>[Organizational Expertise Condition 5]</p>
<p>STANDARD: Structural Standard (SS) [OAR 345-022-0020]</p>	
PRE-SS-01	<p>Before beginning construction, the certificate holder shall submit a site-specific geotechnical investigation report, consistent with the Oregon State Board of Geologist Examiners Guideline for Preparing Engineering Geologic Reports, or newer guidelines if available to the Department, for review in consultation with its third-party consultant or DOGAMI. The site specific geotechnical investigation report shall include information on any potentially active faults within the site boundary, soil characteristic</p>

Condition Number	Preconstruction (PRE) Conditions
	and Site Class determination, and include a site-specific seismic hazards assessment to inform Site Class design. [Structural Standard Condition 1]
STANDARD: Soil Protection (SP) [OAR 345-022-0022]	
PRE-SP-01	Prior to construction, the certificate holder shall submit for review and approval to the Department, in consultation with ODEQ, the Erosion Sediment Control Measures to be implemented during construction, consistent with the measures included in Attachment I-1 of the Final Order on the ASC. Components of the plan to be finalized shall take into consideration site specific information obtained during the preconstruction geotechnical investigation, and the final facility design. [Soil Protection Condition 1]
PRE-SP-02	Prior to construction, the certificate holder shall prepare and submit to the Department a construction Spill Prevention Control and Countermeasure Plan (SPCC), based on the draft SPCC Plan outline included in Attachment B-2 of the Final Order on the ASC. [Soil Protection Condition 4]
STANDARD: Land Use (LU) [OAR 345-022-0030]	
PRE-LU-01	Prior to construction of facility structures, as applicable, subject to the Council’s jurisdiction and authority pursuant to ORS 469.504(1), the certificate holder shall obtain conditional use permits and zoning permits issued by the Planning Director, per affected tax lot, from Umatilla County Planning Department; copies of permits shall be provided to the Department. [Land Use Condition 1]
PRE-LU-02	Prior to construction of the facility, facility component or phase, as applicable, the certificate holder shall submit to the Department and Umatilla County a site plan that adheres to the following development standards: <ul style="list-style-type: none"> a. For the property line parallel to S. Edwards Road and Canal Road, facility structures shall be set back 60 feet from the centerline of the road or 30 feet to the property line, whichever is greater. This setback does not apply to the perimeter fence. b. On the north and south sides of the site boundary, facility structures shall be setback a minimum of 5 feet from the property line. This setback does not apply to underground collector lines or internal access roads. c. On the interior boundary between the two adjacent properties within the site boundary, facility structures shall be set back a minimum of 5 feet from the property line. This setback does not apply to underground collector lines or internal access roads. [Land Use Condition 2]
PRE-LU-03	Prior to submission of a zoning permit application to Umatilla County for the driveway off of S. Edwards Road, the certificate holder shall submit to Umatilla County, and the Department, the final design of the driveway in compliance with the following:

Condition Number	Preconstruction (PRE) Conditions
	<ul style="list-style-type: none"> a. Construction materials shall be similar, or the same, as S. Edwards Road. b. Driveway shall extend at least 25 feet back from the edge of the existing travel lane surface of S. Edwards Road. c. Driveway shall include a minimum 10 foot vision clearance area (triangular area on the lot at the intersection of driveway and S. Edwards Road). <p>[Land Use Condition 3]</p>
PRE-LU-04	<p>Prior to submission of a zoning permit application for the facility, facility component or phase, the certificate holder shall submit to Umatilla County, and the Department, the final site plan of the facility demonstrating that:</p> <ul style="list-style-type: none"> a. Perimeter fence will include a minimum 10 foot vision clearance area (triangular area on the lot to any offsite roadway intersections). b. Perimeter fence complies with Oregon Uniform Building Code requirements. <p>[Land Use Condition 4]</p>
PRE-LU-05	<p>Prior to construction of the facility, facility component or phase, as applicable, the certificate holder shall:</p> <ul style="list-style-type: none"> a. Provide evidence to the Department of coordination with landowners of active agricultural operations on property adjacent to the site boundary on construction schedule, including site preparation and grading activities, road construction and heavy equipment and worker traffic periods. b. Provide to the Department a site preparation and grading plan, based on final facility design, that includes phased levels of disturbance as necessary based on landowner consultation and availability of dust and erosion control measures. <p>[Land Use Condition 7]</p>
PRE-LU-06	<p>Prior to construction, the certificate holder shall complete all applicable preconstruction requirements established in the Noxious Weed Plan (Attachment P-4 of the Final Order on the ASC).</p> <p>[Land Use Condition 9]</p>
PRE-LU-07	<p>Prior to construction, the certificate holder shall provide to the Department final facility design/layout maps that include at least a 10-foot setback of the southern perimeter fenceline to the pivot irrigation operation on taxlot 4N29000000300.</p> <p>[Land Use Condition 12]</p>
STANDARD: Retirement and Financial Assurance (RF) [OAR 345-022-0050]	
PRE-RF-01	<p>Before beginning construction of the facility or a facility component, the certificate holder shall submit to the State of Oregon, through the Council, a bond or letter of credit naming the State of Oregon, acting by and through the Council, as beneficiary or payee. The total bond or letter of credit amount for the facility is \$5.7 million dollars (Q3 2022 dollars), to be adjusted to the effective date, and adjusted on an annual basis thereafter, as described in sub-paragraph (b) of this condition:</p> <ul style="list-style-type: none"> a. The certificate holder may adjust the amount of the bond or letter of credit based on the design configuration of the facility, or any phase of the facility, by applying the unit costs presented in Table 4 of the Final Order on the ASC, and

Condition Number	Preconstruction (PRE) Conditions
	<p>the contingencies illustrated in Table 4 of the Final Order on the ASC and may further make adjustments based on unit costs for task and actions presented in ASC Exhibit X Attachment X-1. Any revision to the restoration costs should be adjusted to the effective date as described in (b). Any modification to the unit costs presented in Table 4 of the Final Order on the ASC are subject to review and approval by the Council. The Department and Council reserve the right to adjust the contingencies, as appropriate and necessary to ensure that costs to restore the site are adequate to maintain health and safety of the public and environment.</p> <ul style="list-style-type: none"> b. The certificate holder shall adjust the amount of the bond or letter of credit using the following calculation: <ul style="list-style-type: none"> i. Adjust the amount of the bond or letter of credit (expressed in Q3 2022 dollars) to present value, using the U.S. Gross Domestic Product Implicit Price Deflator, Chain Weight, as published in the Oregon Department of Administrative Services’ “Oregon Economic and Revenue Forecast” or by any successor agency and using the third quarter 2022 index value and the quarterly index value for the date of issuance of the new bond or letter of credit. If at any time the index is no longer published, the Council shall select a comparable calculation to adjust third quarter 2022 dollars to present value. ii. Round the result total to the nearest \$1,000 to determine the financial assurance amount. c. The financial institution issuing of the bond or letter of credit must be on the Council’s pre-approved financial institution list. The bond or letter of credit form approved by the Council is included as Attachment X-1 to the Final Order on ASC,. <p>[Mandatory Condition OAR 345-025-0006(8), Retirement and Financial Assurance Condition 4]</p>
STANDARD: Fish and Wildlife Habitat (FW) [OAR 345-022-0060]	
PRE-FW-01	<p>Prior to construction, the certificate holder shall:</p> <ul style="list-style-type: none"> a. Calculate the size of the habitat mitigation area (HMA) for permanent habitat impacts, based on final facility design. The calculation must be based on the ratios and methods presented in the Final Order on the ASC and provided to the Department for review and approval. b. Provide evidence to the Department demonstrating that an agreement of outright purchase, conservation easement or similar conveyance has been executed for the enhancement and protection of the HMA under the requirements of the Habitat Mitigation Plan, to extend for the life of the facility. c. Submit a final Habitat Mitigation Plan to the Department for review and approval, substantially similar to the draft plan provided in Attachment P-5 of the Final Order on the ASC.

Condition Number	Preconstruction (PRE) Conditions
	[Fish and Wildlife Habitat Condition 1]
PRE-FW-02	<p>Prior to construction, the certificate holder shall provide evidence to the Department that the design measures included in the Wildlife Monitoring and Adaptive Management Plan (Attachment P-3 of the Final Order on the ASC) have been included in the final facility design and construction contractor contracts, as applicable.</p> <p>[Fish and Wildlife Habitat Condition 3]</p>
STANDARD: Threatened and Endangered Species (TE) [OAR 345-022-0070]	
PRE-TE-01	<p>Prior to construction of the facility, facility component or phase, as applicable, that would occur within suitable Washington Ground Squirrel (WGS) habitat:</p> <ol style="list-style-type: none"> a. The certificate holder must conduct protocol-level WGS surveys within 1000 feet of any ground disturbing activity, where accessible. Where suitable WGS habitat is not accessible (e.g., on adjacent properties where access is not granted) an assessment must be conducted from accessible areas and based on desktop sources using methods similar to those used during the pre-application assessment, which was conducted consistent with ODFW recommendations. b. Suitable WGS habitat can be defined as any terrestrial habitat that has not been developed e.g. active agricultural lands, paved roads), particularly shrub-steppe and grassland habitats. Protocol-level surveys include two sets of surveys at least two weeks apart, in the active squirrel season (March 1 to May 31), in suitable habitat that is contiguous with areas of ground disturbing activity (e.g., excluding areas across a paved road from ground disturbance). Protocol-level surveys are valid for three (3) years. If construction does not commence the year following the protocol-level survey, any active burrows or colonies shall be checked prior to the year of construction to evaluate any changes that may occur in the location and delineation of Category 1 and 2 habitat. c. The certificate holder shall submit the WGS Survey Report to the Department and ODFW. The certificate holder shall clearly identify whether WGS were observed or colonies and burrows were identified, and include a facility layout map demonstrating how temporary and permanent impacts to WGS and WGS habitat will be avoided (i.e., Category 1 habitat associated with WGS colonies and burrows) will be avoided. <p>[Threatened and Endangered Species Condition 1]</p>
STANDARD: Historic, Cultural and Archeological Resources (HC) [OAR 345-022-0090]	
PRE-HC-01	<p>Prior to construction of the facility, facility component or phase, submit to the Department an Inadvertent Discovery Plan (based on Attachment S-3 of Final Order on ASC), finalized with current contact information for the coordination protocol (3).</p> <p>[Historic, Cultural, and Archeological Resources Condition 1]</p>
STANDARD: Public Services (PS) [OAR 345-022-0100]	
PRE-PS-01	<p>Prior to construction of the facility, or facility component, as applicable, the certificate holder shall:</p>

Condition Number	Preconstruction (PRE) Conditions
	<ul style="list-style-type: none"> a. Based on final design, finalize, identify, and provide maps of all public roads used for construction, road names, locations, and road conditions and include in Final Traffic Management Plan identified in (b) and (c). b. Submit executed road use agreements between Umatilla County and the certificate holder or its contractor. Any Final Traffic Management Plan that is part of the road use agreements shall include, at a minimum, the provisions designated in Section II of Attachment U-1 of the Final Order on ASC. c. If a Final Traffic Management Plan designated in sub (a) is not included in road use agreements executed with Umatilla County, then submit a Final Traffic Management Plan. A copy of the Final Traffic Management Plan shall be provided to the Department and Umatilla County Public Works Department. The Construction Traffic Management Plan shall, at a minimum, include the provisions in Section II of Attachment U-1 of the Final Order on ASC. d. Submit to the Department, any ODOT permits obtained by the certificate holder, its third-party contractors or subcontractors including but not limited to Oversize Load Movement Permit/Load Registration, Permit to Occupy or Perform Operations Upon a State Highway, and/or an Access Management Permit. e. Submit to the Department, any county permits obtained by the certificate holder, its third-party contractors or subcontractors including but not limited to utility crossing permit and road approach permit. <p>[Public Services Condition 1]</p>
PRE-PS-02	<p>If prior to construction, the Oregon Department of Aviation’s (ODA) Determinations for the facility expire, the certificate holder shall:</p> <ul style="list-style-type: none"> a. First, submit to and receive responses from the ODA of 7460-1 Notice of Proposed Construction or Alteration Forms for all aboveground facility components. The certificate holder shall provide copies of ODA’s responses, which must be consistent with ORS 836.535(2), to the Department. Certificate holder shall respond to ODA recommendations, if applicable. b. Second, once ODA responses on the 7460-1 forms are received and if the FAA determinations have expired, submit to and receive determinations from the Federal Aviation Administration (FAA) for all aboveground facility components. The certificate holder shall provide copies of FAA determinations to the Department. c. Within 5-days of construction, certificate holder shall submit 7460-2 forms to FAA and ODA and shall report both timing of submission and any results to the Department. <p>[Public Services Condition 3]</p>
STANDARD: Wildfire Prevention and Risk Mitigation (WF) [OAR 345-022-0115]	
PRE-WF-01	Prior to construction of the facility, facility components or phase, as applicable, the certificate holder shall submit to the Department and the Umatilla County Fire District

Condition Number	Preconstruction (PRE) Conditions
	<p>#1 (UCFD #1), a Final Construction Emergency Management and Wildfire Mitigation Plan (EMWMP) which includes the applicable measures provided in the Draft Emergency Management and Wildfire Mitigation Plan (EMWMP) (Attachment V-1 of the Final Order on ASC).</p> <p>[Wildfire Prevention and Risk Mitigation Condition 1]</p>
STANDARD: Noise Control Regulations (NC) [OAR 340-035-0035]	
PRE-NC-01	<p>Prior to construction, the certificate holder shall provide to the Department:</p> <ul style="list-style-type: none"> a. Final facility layout; and number, type and noise level (dBA) of all noise generating equipment. Identify differences in equipment noise level (dBA), based on manufacturer specifications, compared to noise levels presented in ASC Exhibit Y. If there are difference in equipment noise level (dBA), certificate holder shall provide an updated acoustic modeling results, if determined necessary by the Department. The certificate holder may rely on ambient noise measurements included in ASC Exhibit Y or may obtain updated ambient noise measurements, if measurement locations and protocol are approved by the Department. b. If the final design of the facility includes distributed battery storage, provide an acoustic modeling analysis using manufacturer based noise levels (dBA) that demonstrates compliance with the ambient degradation standard and maximum allowable noise standards. The certificate holder may rely on ambient noise measurements included in ASC Exhibit Y or may obtain updated ambient noise measurements, if measurement locations and protocol are approved by the Department. <p>[Noise Control Condition 1]</p>
STANDARD: Water Rights (WR) [ORS 537, 540 and 690]	
PRE-WR-01	<p>Prior to construction of the facility, facility component or phase, as applicable, the certificate holder shall:</p> <ul style="list-style-type: none"> a. Identify all water-related needs and estimate daily and annual water demand for each construction phase, as applicable. b. Provide excerpts of agreements or other similar conveyance from the water-providing entity to the Department demonstrating that construction activities will be adequately and legally served by service providers or third-party permits. <p>[Water Rights Condition 1]</p>

5.4 Construction (CON) Conditions

Condition Number	Construction (CON) Conditions
STANDARD: Organizational Expertise (OE) [OAR 345-022-0010]	
CON-OE-01	<p>During construction, the certificate holder shall:</p> <ol style="list-style-type: none"> a. Maintain an onsite construction manager. b. Require that the construction manager implement and monitor all applicable construction related site certificate conditions. c. Within six months after beginning construction, and every six months thereafter during construction of the energy facility and related or supporting facilities, the certificate holder shall submit a semiannual construction progress report to the Department. In each construction progress report, the certificate holder shall describe any significant changes to major milestones for construction. The certificate holder shall report on the progress of construction and shall address the following: <ol style="list-style-type: none"> i. Facility Status: An overview of site conditions, the status of facilities under construction and a summary of the operating experience of facilities that are in operation. The certificate holder shall describe any unusual events, such as earthquakes, extraordinary windstorms, major accidents or the like that occurred during the year and that had a significant adverse impact on the facility. ii. Status of Surety Information: Documentation demonstrating that bonds or letters of credit as described in the site certificate are in full force and effect and will remain in full force and effect for the term of the next reporting period. iii. Compliance Report: A report describing the certificate holder’s compliance with all site certificate conditions that are applicable during the reporting period. For ease of review, the certificate holder shall, in this section of the report, use numbered subparagraphs corresponding to the applicable sections of the site certificate. iv. Facility Modification Report: A summary of changes to the facility that the certificate holder has made during the reporting period without an amendment of the site certificate in accordance with OAR 345-027-0050. [OAR 345-026-0080(1)(a)] <p>[OAR 345-026-0080(1)(a), General Standard of Review Condition 10, Organizational Expertise Condition 6]</p>
STANDARD: Soil Protection (SP) [OAR 345-022-0022]	
CON-SP-01	<p>During construction, the certificate holder shall conduct all work in compliance with the final Erosion Sediment Control Measures approved in Condition PRE-SP-01, as modified by the Department, as necessary.</p> <p>[Soil Protection Condition 2]</p>

Condition Number	Construction (CON) Conditions
CON-SP-02	<p>During construction, the certificate holder shall conduct all work in compliance with the final construction SPCC Plan. Certificate holder shall report spill and cleanup activities to the Department within 72 hours and shall make inspection records available to the Department upon request.</p> <p>[Soil Protection Condition 5]</p>
STANDARD: Land Use (LU) [OAR 345-022-0030]	
CON-LU-01	<p>During construction of the facility, facility component or phase, as applicable, the certificate holder shall:</p> <ol style="list-style-type: none"> a. Adhere to the site preparation and grading plan and any necessary phased levels of disturbance to minimize dust and erosion impacts to adjacent farm practices. b. Ensure adequate dust and erosion control measures are onsite prior to and during any grading and other ground disturbing activities. c. Adhere to the requirements of the Traffic Management Plan under Public Services Condition 1. <p>[Land Use Condition 8]</p>
CON-LU-02	<p>During construction, the certificate holder shall implement and adhere to the requirements of the Noxious Weed Plan (Attachment P-4 of the Final Order on the ASC or as approved to be amended by the Department).</p> <p>[Land Use Condition 10]</p>
STANDARD: Fish and Wildlife Habitat (FW) [OAR 345-022-0060]	
CON-FW-01	<p>During construction, the certificate holder shall adhere to the requirements of the Wildlife Monitoring and Adaptive Management Plan (Attachment P-3 of the Final Order on the ASC). Monitoring records shall be maintained throughout construction and included in the semi-annual report submitted to the Department pursuant to OAR 345-026-0080.</p> <p>[Fish and Wildlife Habitat Condition 4]</p>
STANDARD: Threatened and Endangered Species (TE) [OAR 345-022-0070]	
CON-TE-01	<p>If the WGS surveys required under Threatened and Endangered Species Condition 1 identify Category 1 WGS habitat (buffer extending 785-feet around each active burrow, excluding areas not suitable for WGS foraging or burrow establishment) or Category 2 WGS habitat (buffer extending 4,136-feet from the delineated Category 1 habitat, excluding areas of habitat types not suitable for WGS foraging or burrow establishment), during construction of the facility, facility component or phase, the certificate holder shall:</p> <ol style="list-style-type: none"> a. Map, flag and avoid delineated Category 1 WGS habitat. b. Check the location of active burrow or colonies in subsequent years of construction to evaluate any changes that may occur in the location and delineation of Category 1 habitat. <p>[Threatened and Endangered Species Condition 2]</p>

Condition Number	Construction (CON) Conditions
CON-TE-02	Prior to and during construction of the facility, facility component or phase, as applicable, the certificate holder shall avoid via mapping and flagging, based on a 100 foot buffer (unless otherwise reviewed and approved by the Department and ODA), any incidentally identified occurrence(s) of Lawrence’s milkvetch. [Threatened and Endangered Species Condition 3]
STANDARD: Public Services (PS) [OAR 345-022-0100]	
CON-PS-01	During construction of the facility, or facility component, the certificate holder shall ensure that construction contractors adhere to the requirements of the Final Traffic Management Plan. [Public Services Condition 2]
STANDARD: Water Rights (WR) [ORS 537, 540 and 690]	
CON-WR-01	During construction of the facility, facility component or phase, as applicable, if a water right, limited water use license or water rights transfer is needed and would not be obtained by a third-party, submit and obtain approval of the applicable water permit through the site certificate amendment process. [Water Rights Condition 2]

5.5 Pre-Operational (PRO) Conditions

Condition Number	Pre-Operational (PRO) Conditions
STANDARD: Organizational Expertise (OE) [OAR 345-022-0010]	
PRO-OE-01	Prior to operation, the certificate holder shall provide to the Department the qualifications and contact information of the individuals responsible for monitoring facility operations, including individuals or third-party entity responsible for onsite maintenance. [Organizational Expertise Condition 7]
STANDARD: Soil Protection (SP) [OAR 345-022-0022]	
PRO-SP-01	Prior to operation, the certificate holder shall submit to the Department a final copy of an Operational Spill Prevention Control and Countermeasures Plan (SPCC Plan). [Soil Protection Condition 7]
STANDARD: Land Use (LU) [OAR 345-022-0030]	
PRO-LU-01	Prior to operations, the certificate holder, and underlying landowners on whose property the solar facility components are located, shall record in the real property records of Umatilla County a Covenant Not to Sue with regard to generally accepted farming practices on adjacent farmland. Copies of the recorded covenants shall be provided to the Department. [Land Use Condition 5]
PRO-LU-02	Prior to operation, the certificate holder shall provide to the Department:

Condition Number	Pre-Operational (PRO) Conditions
	<ul style="list-style-type: none"> a. An executed interconnection agreement with Umatilla Electric Cooperative, Bonneville Power Administration or PacifiCorp demonstrating that the facility has an interconnection agreement for the life of the facility, to one of the existing transmission lines, as presented in the Site Certificate, Figure 1. b. An executed shared use agreement with Umatilla Electric Cooperative, Bonneville Power Administration or PacifiCorp (third-party) for shared use of the switchyard substation. <ul style="list-style-type: none"> i. If the third-party proposes to substantially modify the shared switchyard substation, certificate holder shall submit an amendment determination request to obtain a determination from the Department on whether a site certificate amendment is required or request for site certificate amendment to account for any significant change in the decommissioning amount required under Retirement and Financial Assurance Condition 4. <p>[Land Use Condition 6]</p>
STANDARD: Public Services (PS) [OAR 345-022-0100]	
PRO-PS-01	<p>Prior to operation the certificate holder shall contact the Umatilla County Fire District #1 (UDFD #1) to schedule an on-site orientation to review facility layout and safety procedures. In its annual report required under General Standard of Review Condition 10, the certificate holder shall indicate the date that the training will occur or occurred.</p> <p>[Public Services Condition 4]</p>
STANDARD: Wildfire Prevention and Risk Mitigation (WF) [OAR 345-022-0115]	
PRO-WF-01	<p>Prior to operation of the facility and based upon final design, the certificate holder shall submit to the Department and the Umatilla County Fire District #1 (UCFD #1), an Operational Emergency Management and Wildfire Mitigation Plan (EMWMP) which includes the applicable measures provided in the Draft Emergency Management and Wildfire Mitigation Plan (EMWMP) (Attachment V-1 of the Final Order on ASC).</p> <p>[Wildfire Prevention and Risk Mitigation Condition 2]</p>
STANDARD: Noise Control Regulations (NC) [OAR 340-035-0035]	
PRO-NC-01	<p>Prior to operation, the certificate holder shall:</p> <ul style="list-style-type: none"> a. Identify a facility contact that will receive, track and respond to noise complaints during facility operations. b. Send to Noise Sensitive Receptors (NSRs) identified in ASC Exhibit Y Table Y-9, information about the facility, facility operational noise levels and the process for filing a noise complaint to facility operational personnel, as identified in (a) of the condition. <p>[Noise Control Condition 2]</p>

5.6 Operational (OPR) Conditions

Condition Number	Operational (OPR) Conditions
STANDARD: GENERAL STANDARD OF REVIEW (GS) [OAR 345-022-0000]	
OPR-GS-01	<p>The certificate holder shall submit a legal description of the site to the Oregon Department of Energy within 90 days after beginning operation of the facility or any phase of the facility. The legal description required by this rule means a description of metes and bounds or a description of the site by reference to a map and geographic data that clearly and specifically identify the outer boundaries that contain all parts of the facility.</p> <p>[Mandatory Condition OAR 345-025-0006(2), General Standard of Review Condition 2]</p>
OPR-GS-02	<p>The certificate holder shall:</p> <ol style="list-style-type: none"> a. ... b. After January 1 but no later than April 30 of each year after beginning operation of the facility, the certificate holder shall submit an annual report to the Department addressing the following for the calendar year preceding the date of the report: <ol style="list-style-type: none"> i. Facility Status: An overview of site conditions, the status of facilities under construction and a summary of the operating experience of facilities that are in operation. The certificate holder shall describe any unusual events, such as earthquakes, extraordinary windstorms, major accidents or the like that occurred during the year and that had a significant adverse impact on the facility. ii. Reliability and Efficiency of Power Production: For electric power plants, the plant availability and capacity factors for the reporting year. The certificate holder shall describe any equipment failures or plant breakdowns that had a significant impact on those factors and shall describe any actions taken to prevent the recurrence of such problems. iii. Status of Surety Information: Documentation demonstrating that bonds or letters of credit as described in the site certificate are in full force and effect and will remain in full force and effect for the term of the next reporting period. iv. Monitoring Report: A list and description of all significant monitoring and mitigation activities performed during the previous year in accordance with site certificate terms and conditions, a summary of the results of those activities and a discussion of any significant changes to any monitoring or mitigation program, including the reason for any such changes. v. Compliance Report: A report describing the certificate holder’s compliance with all site certificate conditions that are applicable during the reporting period. For ease of review, the certificate holder shall, in this section of the report, use numbered subparagraphs corresponding to the applicable sections of the site certificate.

Condition Number	Operational (OPR) Conditions
	vi. Facility Modification Report: A summary of changes to the facility that the certificate holder has made during the reporting period without an amendment of the site certificate in accordance with OAR 345-027-0350. [OAR 345-026-0080, General Standard of Review Condition 10(b)]
STANDARD: Organizational Expertise (OE) [OAR 345-022-0010]	
OPR-OE-01	During operations, the certificate holder shall maintain records of operations and maintenance activities and shall make available for Department review upon request. [Organizational Expertise Condition 8]
STANDARD: Soil Protection (SP) [OAR 345-022-0022]	
OPR-SP-01	During operation, the certificate holder shall conduct all work in compliance with the final Erosion Sediment Control Measures approved in Soil Protection Condition 1, as applicable, and as modified by the Department, as necessary. [Soil Protection Condition 3]
OPR-SP-02	During facility operation, if solar panel washing is planned to occur, the use of chemicals, soaps, detergents and heated water is prohibited, unless Chemical Safety Data Sheets for low volatile organic compound/biodegradable cleaning chemicals and solvents are submitted to the Department for review and approval. Pressure washing is allowed, so long as it does not remove paint or other finishes. [Soil Protection Condition 6]
OPR-SP-03	During operations, the certificate holder shall submit any updates of the SPCC Plan in the annual report to the Department. Operational activities shall adhere to the requirements of the SPCC Plan. Certificate holder shall report spill and cleanup activities to the Department within 72 hours and shall make inspection records available to the Department upon request. [Soil Protection Condition 8]
STANDARD: Land Use (LU) [OAR 345-022-0030]	
OPR-LU-01	During operation, the certificate holder shall implement and adhere to the applicable requirements of the Noxious Weed Plan (Attachment P-4 of the Final Order on the ASC or as approved to be amended by the Department). [Land Use Condition 11]
STANDARD: Fish and Wildlife Habitat (FW) [OAR 345-022-0060]	
OPR-FW-01	During operation, the certificate holder shall implement and adhere to the requirements of the Habitat Mitigation Plan, as approved per Fish and Wildlife Condition 1. [Fish and Wildlife Habitat Condition 2]
OPR-FW-02	During operation, the certificate holder shall adhere to the requirements of the Wildlife Monitoring and Adaptive Management Plan (Attachment P-3 of the Final Order on the ASC). Monitoring records shall be maintained throughout operation and included in the annual report submitted to the Department pursuant to OAR 345-026-0080.

Condition Number	Operational (OPR) Conditions
	[Fish and Wildlife Habitat Condition 5]
STANDARD: Public Services (PS) [OAR 345-022-0100]	
OPR-PS-01	<p>Annually during operation the certificate holder shall contact the Umatilla County Fire District #1 (UDFD #1) to offer an on-site training to review facility layout and safety procedures. In its annual report required under General Standard of Review Condition 10, the certificate holder shall indicate the dates that they contacted UDFD #1 and offered training, and any trainings scheduled or already conducted.</p> <p>[Public Services Condition 5]</p>
STANDARD: Wildfire Prevention and Risk Mitigation (WF) [OAR 345-022-0115]	
OPR-WF-01	<p>During operation of the facility the certificate holder shall:</p> <ol style="list-style-type: none"> a. Implement the Operational Emergency Management and Wildfire Mitigation Plan (EMWMP) submitted under Wildfire Prevention and Risk Mitigation Condition 2. b. Every 5 years after the first operational year, review and update the evaluation of wildfire risk under OAR 345-022-0115(1)(b) and submit the results in the annual report required under General Standard of Review Condition 10 for that year. c. Submit an updated EMWMP to the Department and the Umatilla County Fire District #1 (UCFD #1) if substantive changes are made to the EMWMP as a result of the review under sub (b) of this condition, or at any other time substantive revisions are made to the EMWMP. <p>[Wildfire Prevention and Risk Mitigation Condition 3]</p>
STANDARD: Waste Minimization (WM) [OAR 345-022-0120]	
OPR-WM-01	<p>In the annual report required under OPR-GS-02, the certificate holder shall include results of its waste management and recycling plans, including but not limited to:</p> <ol style="list-style-type: none"> a. Quantities of solar panels and lithium-ion batteries recycled or disposed of. b. Identification of the availability of programs or licensed facilities that recycle solar panels and lithium-ion batteries and their capacity to accept materials. Identification of final recycling destination facility or program for recycled solar panels and lithium-ion batteries. c. If recycling programs or facilities are not available, the identification of final disposal destination facility or program for disposed solar panels and lithium-ion batteries and their capacity to accept waste. <p>[Waste Minimization Condition 2]</p>
STANDARD: Noise Control Regulations (NC) [OAR 340-035-0035]	
OPR-NC-01	<p>During operations, the certificate holder track and respond to any noise complaints received. Certificate holder shall notify the Department within three working days of receiving a noise complaint related to the facility and shall identify the date the certificate holder received the complaint, the nature of the complaint, the complainant's contact information, the location of the affected property, and any</p>

Condition Number	Operational (OPR) Conditions
	<p>actions taken, or planned to be taken, by the certificate holder to address the complaint.</p> <p>[Noise Control Condition 3]</p>

5.7 Retirement (RET) Conditions

Condition Number	Retirement (RET) Conditions
STANDARD: Retirement and Financial Assurance (RF) [OAR 345-022-0050]	
RET-RF-01	<p>The certificate holder shall retire the facility if the certificate holder permanently ceases construction or operation of the facility. The certificate holder shall retire the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0110. The certificate holder shall pay the actual cost to restore the site to a useful, nonhazardous condition at the time of retirement, notwithstanding the Council's approval in the site certificate of an estimated amount required to restore the site.</p> <p>[Mandatory Condition OAR 345-025-0006(9), Retirement and Financial Assurance Condition 2]</p>
RET-RF-02	<p>If the Council finds that the certificate holder has permanently ceased construction or operation of the facility without retiring the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0110, the Council shall notify the certificate holder and request that the certificate holder submit a proposed final retirement plan to the Department within a reasonable time not to exceed 90 days. If the certificate holder does not submit a proposed final retirement plan by the specified date, the Council may direct the Department to prepare a proposed final retirement plan for the Council's approval. Upon the Council's approval of the final retirement plan, the Council may draw on the bond or letter of credit described in OAR 345-025-0006(8) to restore the site to a useful, nonhazardous condition according to the final retirement plan, in addition to any penalties the Council may impose under OAR Chapter 345, Division 29. If the amount of the bond or letter of credit is insufficient to pay the actual cost of retirement, the certificate holder shall pay any additional cost necessary to restore the site to a useful, nonhazardous condition. After completion of site restoration, the Council shall issue an order to terminate the site certificate if the Council finds that the facility has been retired according to the approved final retirement plan.</p> <p>[Mandatory Condition OAR 345-025-0006(16), Retirement and Financial Assurance Condition 3]</p>

6.0 Successors and Assigns

To transfer this site certificate or any portion thereof or to assign or dispose of it in any other manner, directly or indirectly, the certificate holder shall comply with OAR 345-027-0400.

7.0 Severability and Construction

If any provision of this agreement and certificate is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the agreement and certificate did not contain the particular provision held to be invalid.

8.0 Execution

This site certificate may be executed in counterparts and will become effective upon signature by the Chair of the Energy Facility Siting Council and the authorized representative of the certificate holder.

IN WITNESS THEREOF, this site certificate has been executed by the State of Oregon, acting by and through the Energy Facility Siting Council and EE West End Solar, LLC (certificate holder).


ENERGY FACILITY SITING COUNCIL

By: 
Marcia L. Grail (Mar 29, 2023 17:36 PDT)

Marcia L. Grail, Chair

Date: 29-Mar-2023

EE West End Solar, LLC

By: 
hidenori Mitsuoka (Mar 29, 2023 14:57 PDT)

Authorized Representative

Date: 29-Mar-2023

ATTACHMENT 1: Facility Location Map Sets

Figure 1: Facility Regional Location

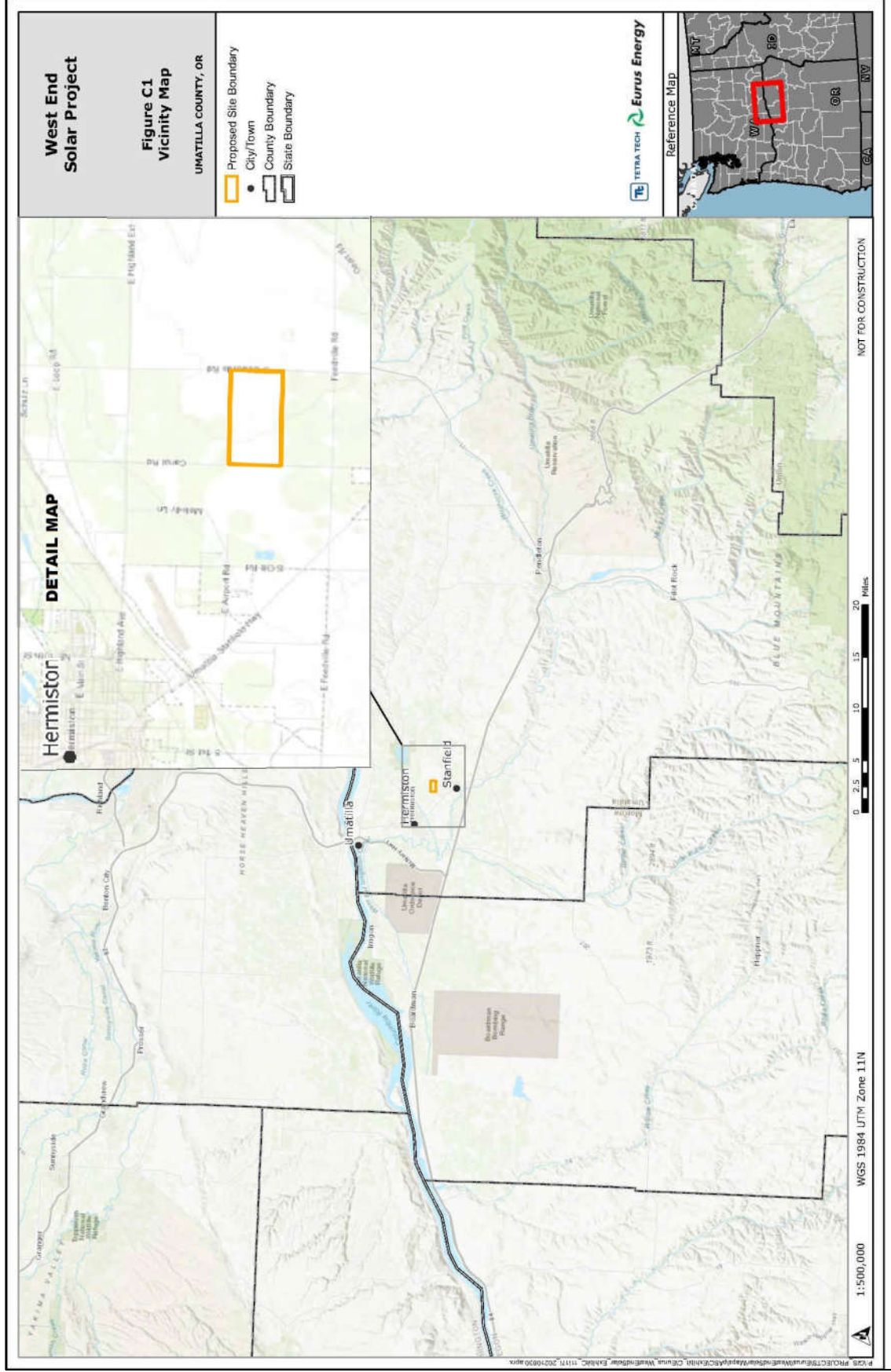
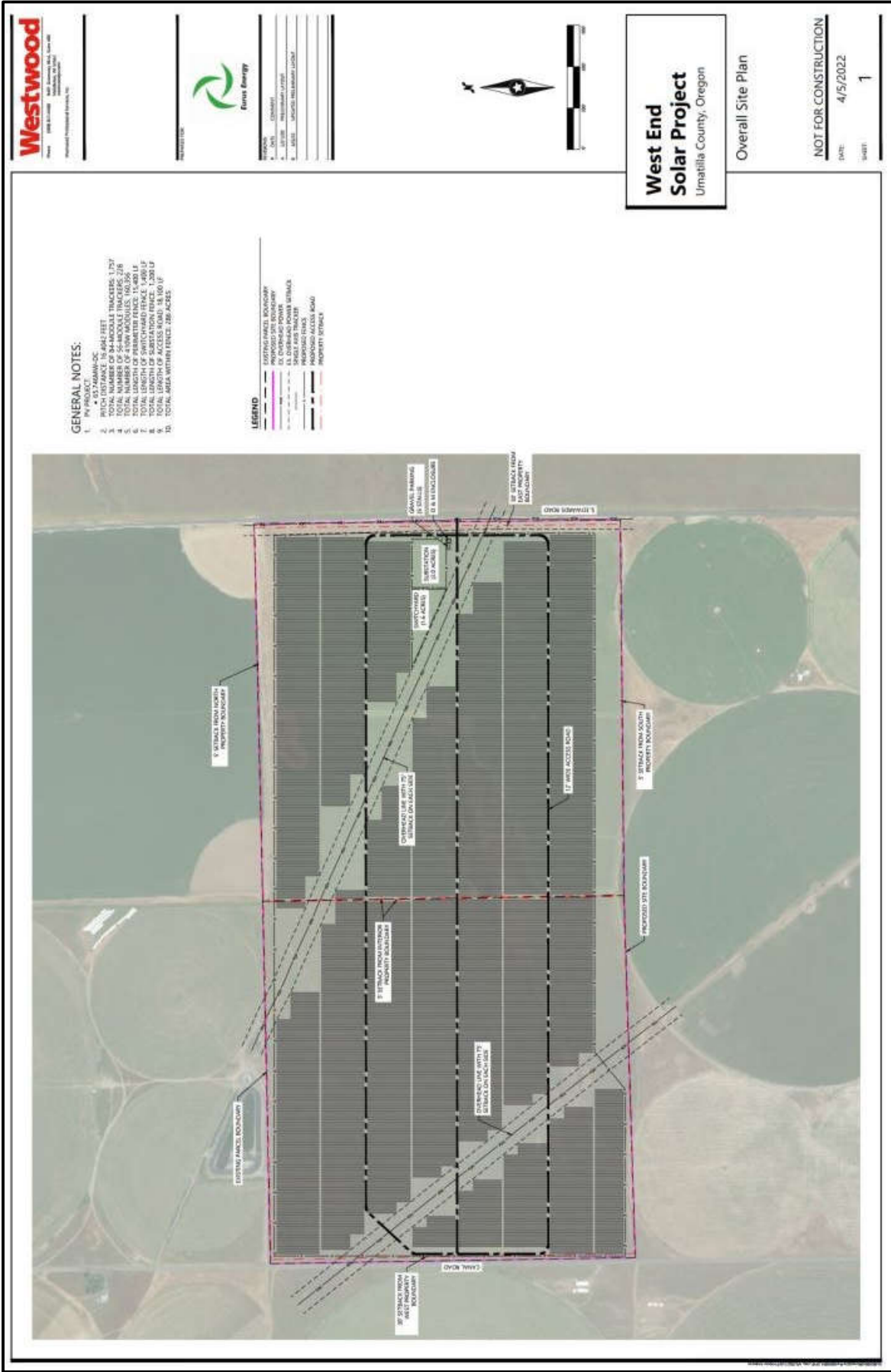


Figure 2: Facility Site Plan













West End Solar - Request for Signature on Site Certificate

Final Audit Report

2023-03-30

Created:	2023-03-29
By:	Energy Siting (Energy.Siting@Oregon.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAzBiTA9t6fR7y6aw4ghgCtil4pPKBR3NW

"West End Solar - Request for Signature on Site Certificate" History

-  Document created by Energy Siting (Energy.Siting@Oregon.gov)
2023-03-29 - 3:50:27 PM GMT- IP address: 67.189.90.239
-  Document emailed to hmitsuoka@eurusenergy.com for signature
2023-03-29 - 3:53:22 PM GMT
-  Email viewed by hmitsuoka@eurusenergy.com
2023-03-29 - 8:21:10 PM GMT- IP address: 172.226.54.8
-  Signer hmitsuoka@eurusenergy.com entered name at signing as hidenori Mitsuoka
2023-03-29 - 9:57:36 PM GMT- IP address: 221.187.216.72
-  Document e-signed by hidenori Mitsuoka (hmitsuoka@eurusenergy.com)
Signature Date: 2023-03-29 - 9:57:38 PM GMT - Time Source: server- IP address: 221.187.216.72
-  Document emailed to marcy@ibew125.com for signature
2023-03-29 - 9:57:39 PM GMT
-  Email viewed by marcy@ibew125.com
2023-03-29 - 10:17:45 PM GMT- IP address: 104.28.111.136
-  Signer marcy@ibew125.com entered name at signing as Marcia L Grail
2023-03-30 - 0:36:23 AM GMT- IP address: 166.216.158.203
-  Document e-signed by Marcia L Grail (marcy@ibew125.com)
Signature Date: 2023-03-30 - 0:36:25 AM GMT - Time Source: server- IP address: 166.216.158.203
-  Agreement completed.
2023-03-30 - 0:36:25 AM GMT



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Acrobat Sign

Attachment B: Reviewing Agency Comments and Documents Referenced in Proposed Order

ESTERSON Sarah * ODOE

Subject: Questions on groundwater restricted areas in Umatilla County

From: KOWITZ Chris C * WRD <Chris.C.KOWITZ@water.oregon.gov>

Sent: Sunday, December 11, 2022 10:13 PM

To: ESTERSON Sarah * ODOE <Sarah.ESTERSON@energy.oregon.gov>

Subject: RE: Questions on groundwater restricted areas in Umatilla County

Hey Sarah,

You provided the following questions to DWR on November 18, 2022 in regards to the West End Solar Project:

- How long has the area been designated as a groundwater restricted area?
- How long is it expected that the area will be groundwater restricted – would the designation ever change or unlikely?
- What does the designation mean in terms of the ability of obtaining or transferring water rights?
- If the area is groundwater restricted, how is it possible that a recent irrigation district was formed and resulted in some level of new water rights/new irrigation on lands within the groundwater restricted area?

Here are our responses:

- The proposed West End Solar Energy Facility is located within Umatilla County– the location of the proposed solar facility is available via the Department’s online webmapping tool per the following hyperlink: [Oregon Energy Facilities-Public \(arcgis.com\)](#)
- The location of the proposed solar facility is located within one of 22 state-designated groundwater administrative areas, specifically the Stage Gulch Critical Groundwater Area
 - The Stage Gulch Critical Groundwater Area is a 183 sq. mile area in Umatilla County, designated as a critical groundwater area since May 15, 1991 (Special Order Vol 45, p. 278)
 - The 1991 Final Order designating the Stage Gulch Groundwater Area identifies that water levels were declining or had declined excessively and that the available groundwater supply was being or was about to be overdrawn; the final opinion states that no new application for a permit to appropriate water from either the upper or the deep basalt groundwater reservoirs within the Stage Gulch Critical Groundwater Area may be accepted.
 - No new water rights can be issued within the designated area, and this is unlikely to change in the future due to ongoing substantial declines in groundwater availability
- A new irrigation district was recently established - the East Improvement Irrigation District – \$7 million in state grant funding was allocated to this district to support pipeline infrastructure from Columbia River to lands within the in and around Stage Gulch Critical Groundwater Area
 - ⊖ The underlying water right for this project allows the district to change where water may be applied every year within a larger place of use boundary identified in the permit. Lands covered within that boundary do not necessarily receive and/or have access to this water as it is limited by membership and physical limitations such as necessary infrastructure to deliver water to all lands covered by this permit.

Thanks!!
Chris



Chris Kowitz

North Central Region Manager
Oregon Water Resources Department
116 SE Dorion Ave | Pendleton, OR 97801
Phone: (541) 278-5456 | (971) 600-6137
<https://www.oregon.gov/owrd/>

Integrity | Service | Technical Excellence | Teamwork | Forward-Looking

ESTERSON Sarah * ODOE

Subject: West End Solar Project - Street Parking and Loading Design Requirements (UCDC 152.562(I) (1) and (3))

From: Carol Johnson <carol.johnson@umatillacounty.gov>

Sent: Friday, December 9, 2022 10:20 AM

To: ESTERSON Sarah * ODOE <Sarah.ESTERSON@energy.oregon.gov>

Cc: Robert Waldher <robert.waldher@umatillacounty.gov>

Subject: Re: West End Solar Project - Street Parking and Loading Design Requirements (UCDC 152.562(I) (1) and (3))

Good morning Sarah,

Bob requested that I reply to your email and additional questions.

On December 2, 2022, you provided the following questions related to comments from the applicant for the West End Solar Project on the applicability of parking lot design requirements under UCDC 152.562, as presented below:

“In the ASC for the West End Solar Project, the applicant identified that UCDC 152.562(I) was applicable and that the proposed O&M enclosure “will meet the applicable design requirements.” In response to this representation, the Department assumed that (1) and (3) as referenced below applied and recommended the following condition be imposed:

(1) Areas used for standing and maneuvering of vehicles shall have paved surfaces maintained adequately for all weather use and so drained as to avoid flow of water across public sidewalks;

(3) Parking spaces along the outer boundaries of a parking lot shall be contained by a curb at least four inches high and set back a minimum of four and one-half feet from the property line, or by a bumper rail;

ODOE Recommended condition:

Parking design at the O&M enclosure shall include paved surfaces, minimum of four inch curb height; and drainage infrastructure.

Following review of the condition, applicant expressed concern on the applicability of UCDC 152.562(I) and requested that the condition allow for Umatilla County Planning Director to review/approve an alternative design – specifically they requested the following change to the condition:

Parking design at the O&M enclosure shall include paved surfaces, minimum of four inch curb height; and drainage infrastructure; or shall include alternative design details reviewed and approved by the Umatilla County Planning Director.

Could you confirm if you have any concerns about the proposed language, or can we affirmatively say whether the design requirements would apply?

Let us know if you would like to arrange a phone call or need any additional information to support review of these questions.

Thank you!”

TARDAEWETHER Kellen * ODOE

From: Teara Farrow Ferman <TearaFarrowFerman@ctuir.org>
Sent: Wednesday, November 16, 2022 9:34 AM
To: TARDAEWETHER Kellen * ODOE
Cc: ESTERSON Sarah * ODOE
Subject: CTUIR Comments on West End Draft Proposed Order on Application for Site Certificate
Attachments: 2022 11 14 CTUIR Comment Memo - West End Solar Project_Draft Proposed Order to Site Certificate Application.pdf

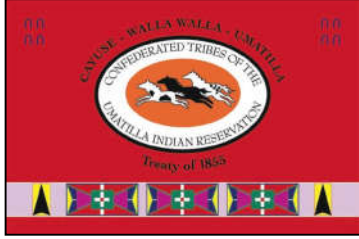
Good morning Kellen,
Attached are the CTUIR's comment on the West End Solar Project. I thought I had sent these on Monday but realized I did not.

Respectfully,

TEARA FARROW FERMAN

Cultural Resources Protection Program Manager | Department of Natural Resources
Assistant General Manager | Átaw Consulting, LLC
Confederated Tribes of the Umatilla Indian Reservation
46411 Timíne Way | Pendleton | Oregon 97801
541.429.7230 Office|Fax
TearaFarrowFerman@ctuir.org

The information in this e-mail may be confidential and intended only for the use and protection of the Confederated Tribes of the Umatilla Indian Reservation. If you have received this email in error, please immediately notify me by return e-mail and delete this from your system. If you are not an authorized recipient for this information, then you are prohibited from any review, dissemination, forwarding or copying of this e-mail and its attachments. Thank you.




**Confederated Tribes *of the*
Umatilla Indian Reservation**
Department of Natural Resources

46411 Timine Way, Pendleton, Oregon 97801

MEMORANDUM

To: Kellen Tardaewether, Senior Siting Analyst
Oregon Department of Energy
550 Capital St. N.E., 1st Floor
Salem, OR 97301
Sent via email to: kellen.tardaewether@energy.oregon.gov

From:  Teara Farrow Ferman, Manager
Cultural Resources Protection Program
Confederated Tribes of the Umatilla Indian Reservation
46411 Timine Way, Pendleton, OR 97801
Sent via email from: TearaFarrowFerman@ctuir.org

Date: November 14, 2022

CC: Sarah Esterson, ODOE Senior Siting Analyst

RE: Confederated Tribes of the Umatilla Indian Reservation's Comments on the Draft Proposed Order on the Application for Site Certificate for the West End Solar Project

General Comments:

Thank you for contacting the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) regarding the West End Solar Project's draft Proposed Order for Site Certificate application. The CTUIR Cultural Resources Protection Program (CRPP) offers the following comments for the project.

Specific Comments:

The location of the proposed West End Solar Project is within the ceded and traditional use lands of the CTUIR.

Attachment S-3, Inadvertent Discovery Plan, the following point of contact information needs to be corrected/updated:

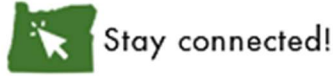
- CTUIR: Please add Teara's cell phone 541-377-2959 and change office phone to 541-429-7230. Remove Shawn Steinmetz and his contact information as he is no longer an employee of the CTUIR. Please add Ashley Morton, Archaeologist II, with the following contact information: office phone 541-429-7214 and email AshleyMorton@ctuir.org.

- Oregon State Police: Chris Allori is no longer the point of contact for Oregon State Police, it is Craig Heuberger, Lieutenant. His contact information is 503-508-0779 and his email is Craig.Heuberger@osp.oregon.gov.
- Oregon Legislative Commission on Indian Services: Danny Santos is no longer the point of contact for Oregon Legislative Commission on Indian Services, it is Patrick Flanagan, Executive Director. His contact information is 503-986-1067 and his email is Patrick.Flanagan@oregonlegislature.gov. Please also add Dr. Elissa Bullion, Physical Anthropologist. Her contact information is 503-986-1066 office, 508-498-8013 cell, and Elissa.Bullion@oregonlegislature.gov.

Lastly, the CTUIR would like to know how the proponent of the project plans to control invasive species. We would also like to add as part of the project a long term sustained effort to control invasive vegetation as to not contribute to the continued establishment and infestation of weeds on the lands.



Sarah T. Esterson
Senior Policy Advisor
550 Capitol St. NE | Salem, OR 97301
M: 503-385-6128
P (In Oregon): 800-221-8035



Please see our responses below:

UCDC 152.562 (I) (1-7) consists of design standards for Parking Lots. Since the Solar Project is not a business open to the public where members of the public would visit and require a dedicated and improved parking area, the parking lot design standards would not generally apply to the West End solar project.

The standards for off-street parking requirements listed under UCDC 152.560 (B) do not specifically list Energy or Solar projects for a calculation of the number of parking spaces. The closest listing of off-street parking requirements may be either (9) Commercial uses, or (10) Industrial uses. Both (9) and (10) were formulated with businesses and buildings in mind where the public likely would visit and thus require parking spaces. Further, 152.560 (B) (11) includes: "Conditional uses: additional spaces may be required by the Hearing Officer in the approval of a conditional use." Since the West End conditional use will not go before a County Hearing Officer, it is believed that beyond parking for "employees" no additional spaces are recommended.

Additionally, County commercial and industrial zoning uses would most often be processed through a design review where parking standards would be addressed and shown on a design review site plan. The Exclusive Farm Use (EFU) zoning uses, although many are commercial and industrial uses, does not consist of specific design standards, instead non-farm uses are processed as conditional uses where parking is generally referenced and addressed under the conditional use section UCDC 152.615.

UCDC 152.612, Procedure for Taking Action on a Conditional Use or Land Use Decision Application.

(D) "An applicant granted a conditional use permit or land use decision must obtain a County zoning permit for each tax lot before establishing the approved use and/or commencing construction."

If we need to discuss this more, please let Bob and I know.

Thank you,
Carol



Carol Johnson

Senior Planner

Department of Land Use Planning

Tel: 541-278-6301 | Fax: 541-278-5480

216 SE 4th Street | Pendleton, OR 97801

<http://www.umatillacounty.gov/planning>

Please Be Aware - Documents such as emails, letters, maps, reports, etc. sent from or received by the Umatilla County Department of Land Use Planning are subject to Oregon Public Records law and are NOT CONFIDENTIAL. All such documents are available to the public upon request; costs for copies may be collected. This includes materials that may contain sensitive data or other information, and Umatilla County will not be held liable for its distribution.

TARDAEWETHER Kellen * ODOE

From: SOMERS Lindsay N * ODFW
Sent: Thursday, November 3, 2022 2:35 PM
To: TARDAEWETHER Kellen * ODOE
Cc: ESTERSON Sarah * ODOE; THOMPSON Jeremy L * ODFW; ROSENBERG Andrew J * ODFW; RIMBACH Gregory P * ODFW
Subject: ODFW Comments on Draft Proposal Order West End Solar
Attachments: 221103 ODFW Comments Draft Proposal Order West End Solar.pdf

Hi Kellen,

I have attached ODFW's comments on the Draft Proposal Order on the ASC for West End solar facility. Please let me know if you have any questions.

Lindsay

Lindsay Somers
Habitat Biologist-John Day Watershed
Oregon Department of Fish and Wildlife
73471 Mytinger Ln
Pendleton, OR 97801
Office: 541-388-6294



MEMORANDUM

Department of Fish and Wildlife
Habitat Division
Intra Departmental

TO: Kellen Tardaewether
Oregon Department of Energy
550 Capitol St N.E.
Salem, OR 97301

FROM: Lindsay Somers, Region Habitat Biologist
Oregon Dept. of Fish and Wildlife
73471 Mytinger Ln.
Pendleton, OR 97801
541-388-6294
Lindsay.n.somers@odfw.oregon.gov

DATE: November 3, 2022

RE: Comments Requested on Draft Proposed Order on the Application for Site Certificate for the West End Solar Project

Dear Kellen,

Oregon Department of Energy (ODOE) has requested comments from the Oregon Department of Fish and Wildlife (ODFW) on Draft Proposed Order on the Application for Site Certificate for the West End Solar Project.

General Comments:

ODFW recommends that ODOE approve the Habitat Mitigation Plan (HMP) as submitted, recognizing the statement below:

- As presented, the proposed HMP would not meet the mitigation goals of either Category 3 or 4 habitats, as proposed enhancement actions do not sufficiently illustrate how no net loss of habitat quantity or quality would be achieved.
- Although the vegetative characteristics within the proposed site boundary are consistent with both category 3 and 4 habitats, they do not serve as functional patches of "important" habitat.

- The West End Solar proposed site boundary is surrounded by existing human footprint, with communities of Stanfield and Hermiston both within closer proximity than the nearest intact wildlife habitat, Cold Springs National Wildlife Refuge. The area is developed with extensive irrigated agricultural pivots in the spaces between communities and this level of disturbance likely reduces the efficacy and use of the habitats found within the project boundary.
- The proposed mitigation plan, when coupled with the minimization realized through siting of the project within the disturbed landscape, is sufficient to offset the impacts to the habitats found within the project boundary.
- ODFW recommends that ODOE approve the Habitat Mitigation Plan as submitted, recognizing that while the vegetative characteristics within the proposed site boundary are consistent with both category 3 and 4 habitats, the proposed project site for West End Solar effectively minimizes impacts to habitat and associated species based on the location of development.

Respectfully,



Lindsay Somers
Habitat Biologist – Pendleton, Oregon

Cc:

Sarah Esterson, Oregon Department of Energy

TARDAEWETHER Kellen * ODOE

From: ROSENBERG Andrew J * ODFW
Sent: Wednesday, January 26, 2022 3:35 PM
To: TARDAEWETHER Kellen * ODOE
Cc: ESTERSON Sarah * ODOE
Subject: ODFW comments West End Solar pASC and dHMP
Attachments: ODFW_comments_pASC_West End Solar.pdf

Kellen,

Please see the attached ODFW comments for the preliminary application for site certificate for West End Solar. Feel free to reach out if you have any questions or need any clarification on anything.

Andrew Rosenberg
ODFW Umatilla district
Assistant District Wildlife Biologist
541 318 7967 Office
541 288 4390 Cell
Andrew.j.rosenberg@odfw.oregon.gov



Oregon

Kate Brown., Governor

Department of Fish and Wildlife

John Day Watershed
Pendleton Field Office
73471 Mytinger Lane
Pendleton, OR 97801
Voice (541) 276-2344
FAX (541) 276-4414
www.dfw.state.or.us/

January 26, 2022

Kellen Tardaewweather, Senior Siting Analyst
Oregon Department of Energy
550 Capital St. NE
Salem, OR 97301



RE: Comments on the preliminary application for site certificate and Draft
Habitat Mitigation Plan for the West End Solar Project.

Dear Kellen:

Oregon Department of Energy (ODOE) has requested comments from the Oregon Department of Fish and Wildlife (ODFW) on the preliminary Application for Site Certificate (pASC) and Draft Habitat Mitigation Plan (dHMP) for West End Solar Project. This Letter contains: (A) ODFW contact information for the project; and (B) ODFW's comments on the pASC and dHMP

A. Contacts

I will be the main contact person for ODFW for the Energy Facility Siting Council (EFSC) permitting process. My contact information is:

Andrew Rosenberg
73471 Mytinger Lane
Pendleton, Oregon 97801
541.318.7967
andrew.j.rosenberg@odfw.oregon.gov

B. Comments on the pASC and dHMP

Comment 1:

Exhibit P of the pASC does not include any reference to pre-construction surveys but page 3 of the dHMP briefly mentions pre-construction surveys. ODFW requests more details on what is specifically planned for pre-construction surveys.

Comment 2:

ODFW agrees with the applicant's assessment of state sensitive species with the potential to occur within the analysis area presented in Table P-4. None of the species listed as unlikely to use the analysis area would be expected by ODFW to utilize habitat at the site frequently, if at all.

Comment 3:

Section 8.0 proposes no post-construction fatality monitoring. The project is in an area with high waterfowl use, especially through fall and winter. There is concern that obligate waterbirds could be attracted to the panels and collision, injury, or stranding could occur. ODFW recommends that the applicant conduct a two-year post-construction fatality monitoring study following the best available science to document any avian and bat mortalities within the Site Boundary. Additionally, we request that mortalities found during routine maintenance activities be documented and reported to ODFW for the life of the project.

Comment 4:

ODFW requests more information describing what will be on the ground between the solar arrays. Will there be some form of vegetation remaining? Will there be weed mats or gravel? Additionally, we request that the applicant provide a noxious weed control plan for the project site describing how they will control noxious weeds to reduce impacts to surrounding habitat and private lands.

Comment 5:

ODFW agrees with the applicant's habitat categorization presented in Table P-6.

Comment 6:

The draft Habitat Mitigation Plan proposes two separate options for permanent impacts to category 5 habitat. The Plan proposes a mitigation ratio of between .1 and .5 acres for every 1 acre of category 5 habitat impacted under Option 1 (Habitat Mitigation Area). Under Option 2, a mitigation ratio of .5:1 is proposed. Option 2 proposes to fund actions that improve habitat condition on ODFW managed lands. Currently ODFW has not identified a location for Option 2, but this could change depending on the timing of construction of the project. If option one is chosen to satisfy habitat mitigation requirements, ODFW recommends a mitigation ratio of at least .5 acres for every acre of category 5 habitat impacted. A ratio of .5 to 1 will allow for higher certainty of success in providing a net benefit in habitat quantity or quality.

Comment 7:

ODFW agrees with the applicant's conclusion in Exhibit Q that no impacts to threatened, endangered, or candidate **wildlife** species are expected to occur as a result of the site.

Respectfully,

A handwritten signature in black ink, appearing to read 'Andrew Rosenberg', written in a cursive style.

Andrew Rosenberg
Acting Assistant District Wildlife Biologist – Pendleton, Oregon

Cc:

Sarah Esterson, ODOE

TARDAEWETHER Kellen * ODOE

From: HOWARD Heather * DSL
Sent: Thursday, July 28, 2022 1:32 PM
To: rcurulla@eurusenergy.com
Cc: Umatilla (planning@umatillacounty.net); TARDAEWETHER Kellen * ODOE
Subject: WD2022-0328 Mailout

In response to your request regarding the offsite wetland determination report, here is a link to the agency decision document, <http://docs.dsl.state.or.us/PublicReview/ElectronicFile.aspx?docid=3841186&&dbid=0>. Please contact Peter Ryan, Aquatic Resource Specialist, at (503) 986-5232 or peter.ryan@dsl.oregon.gov with any questions.

Heather Howard
Support Services Specialist
Oregon Department of State Lands
775 Summer St. NE, Ste. 100
Salem, OR 97301

(503) 986-5235

www.oregon.gov/dsl

**Online Payment Portal, <https://apps.oregon.gov/ECommerce/EPS/DSL>

OFFSITE WETLAND DETERMINATION REPORT
OREGON DEPARTMENT OF STATE LANDS

775 Summer Street NE, Suite 100, Salem OR 97301-1279, Phone: (503) 986-5200

BATCH
WD#: 2022-0328

At your request, an offsite wetland determination has been conducted on the property described below.

County: Umatilla

City: East of Hermiston City Limits

Other Address: Rob Curulla, EE West End Solar LLC (c/o Eurus Energy America Corp), 9255 Towne Center Drive, Suite 840, San Diego, CA 92121

Township: 4N Range: 29E Section: 00 Q/Q: Tax Lot: (Sec. 20) 1500 and 1600

Project Name: West End Solar Project

Site Address/Location: 324 acres property approximately 0.6 north of the intersection of S Edwards and Feedville Roads

- The National and Local Wetlands Inventory shows wetlands/waterways on or adjacent to the property.
- The county soil survey shows hydric (wet) soils on the property. Hydric soils indicate that there may be wetlands.
- It is unlikely that there are jurisdictional wetlands or waterways on the property based upon a review of wetlands maps, the county soil survey and other information. An onsite investigation by a qualified professional is the only way to be certain that there are no wetlands.
- There may be wetlands/waterways on or adjacent to some of the properties subject to the state Removal-Fill Law.
 - A state permit is required for ≥ 50 cubic yards of fill, removal, or ground alteration in the wetlands or waterways.
 - A state permit may be required for any amount of fill, removal, or other ground alteration in the Essential Salmonid Habitat (ESH) and hydrologically associated wetlands.
- A state permit will be/will not be required for the project because/if _____.
- The proposed parcel division may create a lot that is largely wetland and thus create future development problems.
- A wetland determination or delineation may be needed prior to development to determine the location and extent of wetlands on the property. If present, a wetland delineation report should be submitted to the DSL for review and approval prior to initiating the project.
- A permit may be required by the Army Corps of Engineers: (503) 808-4373

Note: This report is for the state Removal-Fill Law only. City or County permits may be required for the proposed activity.

Comments: On June 13, 2022, DSL was contacted to make an offsite wetland determination for a property at the location described above. Based on available offsite information and additional information provided by the applicant, it is unlikely that jurisdictional wetlands or waterways are present on the property. That said, the offsite wetland and waters determination process is best reserved for property owners, real estate agents and appraisers, etc. interested in smaller properties. Determinations for larger study areas (such as this one) usually require more information than what is available to DSL staff working from their desks. Therefore, large study areas are best addressed by submitting a complete wetland delineation report to DSL for review and approval.

Determination by: Pete Ryan Date: 07/21/2022

This jurisdictional determination is valid for five years from the above date unless new information necessitates a revision. Circumstances under which the Department may change a determination and procedures for renewal of an expired determination are found in OAR 141-090-0045 (available on our web site or upon request). The applicant, landowner, or agent may submit a request for reconsideration of this determination in writing within six months from the above date.

This is a preliminary jurisdictional determination and is advisory only.

Copy To: Other rcurulla@eurusenergy.com Enclosures: Site Map, Tax Map
 Umatilla County Planning Department
 kellen.tardaewether@energy.oregon.gov, DOE

FOR OFFICE USE ONLY

Entire Lot(s) Checked? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Waters Present <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Maybe	Request Received: 06 / 13 /2022
LWI Area: <u>NA</u> LWI Code: <u>NA</u> Lat: <u>45.815773</u> Long: <u>-119.215332</u> Related DSL File <u>NA</u>		
Has Wetlands? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N <input type="checkbox"/> Unk	ESH? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Wild & Scenic? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N
	State Scenic? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Coast Zone? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N <input type="checkbox"/> Unk
Adjacent Waterbody: <u>NA</u> NWI Quad: <u>Stanfield</u>		

TARDAEWETHER Kellen * ODOE

From: SOMERS Lindsay N * ODFW
Sent: Thursday, October 13, 2022 2:01 PM
To: TARDAEWETHER Kellen * ODOE
Cc: RIMBACH Gregory P * ODFW; ROSENBERG Andrew J * ODFW; THOMPSON Jeremy L * ODFW
Subject: ODFW Comments Complete ASC West End Solar
Attachments: 221013 ODFW Comments Complete ASC West End Solar.pdf

Hi Kellen,

I have attached a response for ODOE's comment request for the complete application for the West End Solar Project. In your previous email you mentioned that you intended to send a draft proposed order for review before the 10/17 deadline, could you cc me on the email if you send that our way.

Let me know if you have any questions,

Lindsay

Lindsay Somers
Habitat Biologist-John Day Watershed
Oregon Department of Fish and Wildlife
73471 Mytinger Ln
Pendleton, OR 97801
Office: 541-388-6294



MEMORANDUM

Department of Fish and Wildlife

Habitat Division

Intra Departmental

TO: Kellen Tardaewether
Oregon Department of Energy
550 Capitol St N.E.
Salem, OR 97301

FROM: Lindsay Somers, Region Habitat Biologist
Oregon Dept. of Fish and Wildlife
73471 Mytinger Ln.
Pendleton, OR 97801
541-388-6294
Lindsay.n.somers@odfw.oregon.gov

DATE: October 13, 2022

RE: Request for Agency Report on Compliance and Recommended Site Certificate Conditions on the Complete Application for Site Certificate for the Proposed **West End Solar Project**

Dear Kellen,

Oregon Department of Energy (ODOE) has requested comments from the Oregon Department of Fish and Wildlife (ODFW) on the complete application for site certification (ASC) for the West End Solar Project. This Letter contains: (1) ODFW contact information for the project; and (2) ODFW's comments on the Application.

Contacts:

I will be the main contact person for ODFW for the West End Solar Energy Facility Siting Council (EFSC) permitting process. My contact information is 541-276-2344; Lindsay.n.somers@odfw.oregon.gov. I will also be coordinating with Andrew Rosenberg.

Andrew Rosenberg
73471 Mytinger Lane
Pendleton, Oregon 97801
541-318-7967
Andrew.j.rosenberg@odfw.oregon.gov

General Comments: The Oregon Department of Energy (ODOE) has requested comments from the Oregon Department of Fish & Wildlife (ODFW) on West End Solar Project, specifically regarding Exhibits P and Q. There are several items in these exhibits that ODFW would like to address and provide comments and recommendations, which are provided in the Specific Comments section below. In addition to the specific comments, it is notable to mention that ODFW appreciates the Applicant implementing several ODFW recommendations and voluntary measures to avoid and reduce impacts to habitat and wildlife, which includes but is not limited to, minimizing impacts to Category 2 and 3 habitats by siting the project on previously disturbed habitat, capping or otherwise modifying vertical pipes and piles to prevent cavity-dwelling and nesting birds from entering, and clearing vegetation prior to the critical period for ground-nesting birds to avoid disturbing active nests.

Specific Comments: Please see the table below.

West End Solar Project Comments on the Application for Site Certificate (ASC) From Oregon Department of Fish and Wildlife			
Exhibit	Rule/ Ordinance/Law Reference	Pg. / Para. / Sentence Reference (as needed)	Comment or Information Request
P	OAR 345-021-0010(1)(p)(G)	Pg.21-21/Section 7.1.1	ODFW requests that the Applicant incorporate the agreed upon additional gates into the text of section 7.1.1. These gates would be located at or near fence corners to allow deer to escape if they become trapped in the facility and would be in addition to the main access gates for maintenance activities.
P	OAR 345-021-0010(1)(p)(H)	Pg. 23/Section 8.0	The Applicant proposes to conduct no post-construction fatality monitoring for birds and bats. ODFW requests that the statement “All wildlife mortalities found during routine maintenance activities within and near the fenced solar array enclosure be documented and included in mortality reports to ODOE and ODFW” be included in the text of section 8.0.
P/Att P-5/Draft HMP	OAR 635-415-0025(5)(a)	Pg.2/Sect 3.0/Para. 2	Under mitigation option 1, the Applicant proposes a mitigation ratio range of 0.1-0.5 acres for every 1 acre of Category 5 habitat permanently impacted. ODFW recommends a mitigation ratio of at least 0.5 acres for every acre of Category 5 habitat permanently impacted. The mitigation goal for permanently impacted Category 5 habitat is “a net benefit in habitat quantity or quality.” A “net benefit” means an increase in overall habitat quality or quantity after development action and any subsequent mitigation measures have been completed and monitored. Depending on the habitat type and mitigation area chosen, habitat improvement efforts rarely, if ever, achieve complete success. ODFW cautions that this ratio range of 0.1-0.5:1 does not leave any margin to accommodate for the risk of mitigation failure. A ratio of 0.5 to 1 will allow for higher certainty for

West End Solar Project Comments on the Application for Site Certificate (ASC) From Oregon Department of Fish and Wildlife			
Exhibit	Rule/ Ordinance/Law Reference	Pg. / Para. / Sentence Reference (as needed)	Comment or Information Request
			success for the mitigation requirements and provide a cushion for less than fully successful habitat enhancement actions.

West End Solar Project –

Agency Consultation on Threatened and Endangered Species Standard (OAR 345-022-0070)

Oregon Department of Agriculture (ODA) understands that the West End Solar Project is a 50 megawatt (MW) solar photovoltaic energy generation facility, proposed to be located in Umatilla County.

ODA understands that the proposed site boundary, encompassing 324 acres, is within Exclusive Farm Use (EFU) zoned land, but is not currently used for grazing or cultivated agriculture, and that the site is predominately low quality grasslands with some shrub-steppe, and is surrounded on the north, west and southern boundaries by pivot, irrigated agriculture.

ODA understands that botanical surveys were conducted on July 3, 2019 and June 22, 2020 within the 324 acre site boundary, using the Intuitive Controlled Survey method. The survey results identified no target species, including Laurence's milkvetch, a state listed Threatened and Endangered (T&E) Species protected under the Council T&E Species standard.

Recommendations

- Based on the extent of active agriculture on adjacent lands to the site boundary, historic land surrounding Hermiston, distance from known historic Laurence's milkvetch occurrences, and absence of any known extant milkvetch occurrences nearby, ODA considers the likelihood of future occurrences of Laurence's milkvetch within previously surveyed areas to be low. Therefore, preconstruction surveys are unnecessary given the expected construction commencement to occur within 3 years, if the site certificate is approved.
 - o If Laurence's milkvetch are incidentally identified during other preconstruction or construction activity at the site, it is recommended that the occurrence(s) be avoided via mapping and flagging, based on a 100 foot buffer, unless otherwise reviewed and approved by the Department and ODA.
 - o ODA requests that the revegetation plan include a requirement to consult with ODA on revegetation, weed treatment and restoration in areas in proximity to incidentally identified occurrences of Laurence's Milkvetch during other preconstruction surveys or construction activities.

Based on review and discussion with ODOE staff on October 21, 2022, ODA considers that with the recommendations provided, the impacts from the proposed facility would avoid any potential impacts to the survivability or recovery of the Laurence's milkvetch.

Jordan Brown, Program Lead Conservation Biologist
Oregon Department of Agriculture – Native Plant Conservation
635 Capitol St NE, Salem, OR 97301-2532
PH: 541.737.2346 | CELL: 541.224.2245 | WEB: Oregon.gov/ODA

Pronouns: he, him, his

*Please note my email address has changed to jordan.a.brown@oda.oregon.gov

ESTERSON Sarah * ODOE

Subject: West End Solar Project - Follow up on Applicability of UCDC 152.059 and 152.617(II)(7)

From: Robert Waldher <robert.waldher@umatillacounty.gov>

Sent: Wednesday, October 26, 2022 8:21 AM

To: ESTERSON Sarah * ODOE <Sarah.ESTERSON@energy.oregon.gov>

Cc: carol.johnson@umatillacounty.net <carol.johnson@umatillacounty.gov>; TARDAEWETHER Kellen * ODOE <Kellen.TARDAEWETHER@energy.oregon.gov>

Subject: Re: West End Solar Project - Follow up on Applicability of UCDC 152.059 and 152.617(II)(7)

Thanks Sarah - I think this accurately captures our concerns.

Bob

On Tue, Oct 25, 2022 at 10:14 AM ESTERSON Sarah * ODOE <Sarah.ESTERSON@energy.oregon.gov> wrote:

Hi Bob and Carol,

Thanks again for taking the time to discuss West End Solar Project, complete ASC, and questions on applicable substantive criteria. Below is a summary of our discussion – please confirm if you believe it is accurate:

- Comments received from Umatilla County on Dec 15 2021 identified UCDC 152.059 and 152.617(II)(7) as “applicable substantive criteria” for the substation/switching station.
- Based on review of ASC Exhibit C Figure C-4, the substation/switching station will be located within the site boundary, where the site boundary is adjacent to an existing UEC transmission line; the site boundary also includes two existing transmission lines. The applicant indicates that the proposed facility would interconnect to one of these three transmission lines and therefore would not require a grid-interconnection transmission line; the location of the substation/switching station is in very close proximity (feet not miles) to the energy generation infrastructure
- Because the substation/switching station are within the same general site as the energy generation infrastructure, omitting the need for a separate grid-interconnection transmission line, Umatilla County agrees that UCDC 152.059 and 152.617(II)(7) would not separately apply as applicable substantive criteria, and can be evaluated as part of the solar photovoltaic energy generation facility under UCDC 152.060(FF)
 - This basis is solely because the facility omits a grid-interconnection transmission line. For any future projects with a grid-interconnection line in Umatilla County, the county would expect an evaluation under UCDC 152.059 and 152.617(II)(7) for the transmission line and grid integration equipment (i.e. substation/switching station)

Feel free to modify/reject.



Sarah T. Esterson
Senior Policy Advisor
550 Capitol St. NE | Salem, OR 97301
M: 503-385-6128
P (In Oregon): 800-221-8035



Stay connected!

--

Robert Waldher, RLA

Director

Umatilla County Department of Land Use Planning

Tel: 541-278-6251 | Fax: 541-278-5480

216 SE 4th Street | Pendleton, OR 97801



<http://www.umatillacounty.gov/planning>



Please Be Aware - Documents such as emails, letters, maps, reports, etc. sent from or received by the Umatilla County Department of Land Use Planning are subject to Oregon Public Records law and are NOT CONFIDENTIAL. All such documents are available to the public upon request; costs for copies may be collected. This includes materials that may contain sensitive data or other information, and Umatilla County will not be held liable for its distribution.

TARDAEWETHER Kellen * ODOE

From: Hub.HeritagePrograms@oregon.gov
Sent: Wednesday, January 12, 2022 3:39 PM
To: King, Erin
Subject: Oregon Archaeological Site Form Approval

 **CAUTION:** This email originated from an external sender. Verify the source before opening links or attachments. 

Your site Form Submission #26171 has been approved.
A smithsonian number of 35UM00596 has been assigned.
The submission was given a SHPO national register eligibility status of Not Eligible
Comments:

No further action is required.

TARDAEWETHER Kellen * ODOE

From: McClain, Leslie <Leslie.McClain@tetrattech.com>
Sent: Monday, February 7, 2022 3:13 PM
To: TARDAEWETHER Kellen * ODOE; Rob Curulla; King, Erin
Cc: ESTERSON Sarah * ODOE
Subject: RE: West End pASC SHPO Historic Comments
Attachments: Oregon Archaeological Site Form Approval

Hi Kellen,

Thanks for forwarding this letter from SHPO. I'm discussing it with our lead archaeologist Erin King and will be getting back to you with some questions.

In the meantime, attached is the email Erin received from SHPO stating that the site form for EWE-BB-01 (the historic refuse scatter in the northwest corner) was approved by SHPO as not eligible for NRHP status.

Also, per your request, the below link will provide you access to review the Confidential Submittal files for Exhibit S. Let me know if you have any trouble accessing.

https://tetrattechinc-my.sharepoint.com/:f:/g/personal/leslie_mcclain_tetrattech_com/EivvtG1bxwBCpPRujhF9cGMBIjFgTJb6Og2Y5FerAhT0g?email=kellen.TARDAEWETHER%40energy.oregon.gov&e=tFT3WI

Thanks,
Leslie

Leslie McClain | Senior Environmental Planner and Project Manager

Cell: 503.290.9580

leslie.mcclain@tetrattech.com

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From: TARDAEWETHER Kellen * ODOE <Kellen.TARDAEWETHER@energy.oregon.gov>
Sent: Tuesday, February 1, 2022 9:36 AM
To: Rob Curulla <rcurulla@eurusenergy.com>; McClain, Leslie <Leslie.McClain@tetrattech.com>
Cc: ESTERSON Sarah * ODOE <Sarah.Esterson@oregon.gov>
Subject: West End pASC SHPO Historic Comments

⚠ CAUTION: This email originated from an external sender. Verify the source before opening links or attachments. **⚠**

Hey Rob and Leslie,

Attached is the comment letter from the historic/above ground resource specialists at SHPO. Let me know if you have any more info about the SHPO response for archaeological resources? Thanks!

Kellen



Kellen Tardaewether
Senior Siting Analyst
550 Capitol St. NE Salem, OR 97301
C: 503-586-6551
P (In Oregon): 800-221-8035



Stay connected!



Finley Buttes Landfill

4.8MW Landfill Gas CHP System



Quick Facts

- LOCATION:** Boardman, Oregon
- MARKET SECTORS:** Municipal Solid Waste & Food Processing (thermal)
- FACILITY SIZE:** 1,800 acre landfill (second largest in the state of Oregon)
- FACILITY PEAK LOAD:** 4.8 megawatts (MW)
- EQUIPMENT:** 3- 1.6 MW Caterpillar Gen-sets
- FUEL:** Landfill gas for power and steam
- USE OF THERMAL ENERGY:** Steam sold for Industrial heating and food dehydration processing (13.5 MMBTU/hr)
- CHP TOTAL EFFICIENCY:** 80+ %
- ENVIRONMENTAL BENEFITS:** CO₂ reduction equal to more than 43,000 barrels of oil consumed and NO_x reductions
- TOTAL PROJECT COST:** \$9.7 million
- CHP IN OPERATION SINCE:** 2007
- SIMPLE PAYBACK:** 4 years – Realized 2011

Site Description

The Finley Buttes Landfill Gas to Energy facility is located ten miles south of Boardman, Oregon at the Finley Buttes Regional Landfill (FBRL). Owned and operated by Waste Connections, Inc. (WCI), the landfill began operations in 1991. It receives over 500,000 tons of municipal solid waste annually. FBRL is the second largest landfill (1,800 acres) in the state of Oregon. The landfill gas (LFG) collection and control system is made up of vertical extraction wells and a high-density polyethylene (HDPE) piping network.

Reasons for CHP

By the late 1990s, Finley Buttes Landfill was in need of expansion. Until their expansion in 2004, the landfill owners were flaring landfill gas. The expansion, however, put them in the “large” landfill category under EPA’s landfill guidelines (NSPS and Emission Guideline Fact Sheet – 40 CFR 60); requiring the landfill owners to install a gas collection system for controlling the emissions, or prove the landfill emitted less than 50 Megagrams (Mg) per year of non-methane organic compounds. A gas collection system was installed. Controlling emissions involved drilling collection wells and routing the gas to suitable energy recovery systems or combustion devices. Finley BioEnergy was formed through an agreement with WCI to manage Finley Buttes potential LFG emission liabilities by utilizing the LFG as an asset. Implementing a CHP system allowed for additional revenue streams through the sale of 25 million kWh/year to the local utility (Pacific Power) through a 15 year Power Purchase Agreement (PPA) and the sale of steam to a local food processing plant (Cascade Specialties).

Finley Bioenergy CHP System Configuration. The photo to the right captures the operational monitoring with a real-time representation of each generator's electric and thermal output.

PHOTO COURTESY Of Energy Solutions, Inc.

CHP Equipment & Operation

Main components of the CHP landfill gas system:

- Three 1.6 MW Caterpillar reciprocating engines, Model #3520C. This model was chosen because it was designed to handle dirty gas and can burn low Btu gas.
- Three Cain exhaust heat recovery units, Model # HSR-348D26SSS
- Three Ameridex flat plate heat exchangers, Model # X-55-83

Gas is collected through a series of vertical wells throughout the landfill site and transported via a 3-4 mile pipeline to the gen-set at approximately 5 psi.



Project Benefits

- Revenue from electricity sold to Pacific Power and heat sold to Cascade Specialties;
- Beneficial use of landfill gas including a 111.7 and 15.1 ton per year reduction in CO_{2e} and NO_x emissions respectively;
- Sale of Renewable Energy Credits (RECs) and carbon credits;
- Energy savings to Cascade Specialties – purchaser of the supplemental heat as steam. Cascade reduced daily natural gas usage by 25-30% during the eight-month season from 1000 MMBTUs to under 700;
- Helps meet Oregon Renewable Portfolio Standard (RPS) requirements for renewable energy and EPA's New Source Performance Standards (NSPS) requirements for greenhouse gas reductions.

Lessons To Share

- There was a longer staff learning curve for simultaneous heat recovery from jacket water and exhaust stack than anticipated, as well as automated performance reliability – work with system installers to ensure training time.
- Information about financing coordination and options and tax credits is available from Oregon Department of Energy.
- Utility barriers: Due to the need to 'wheel' power through the local electric cooperative to BPA, the project was held up over concerns about transmission line capacity – a special exemption for systems under 4MW to be allowed was required. Early planning for this would have sped up system implementation.

For More Information

U.S. DOE NORTHWEST CHP TECHNICAL ASSISTANCE PARTNERSHIP (CHP TAP)

David Van Holde, Director
(360) 956-2071

VanHoldeD@energy.wsu.edu

More CHP Project Profiles:

www.nwchptap.org

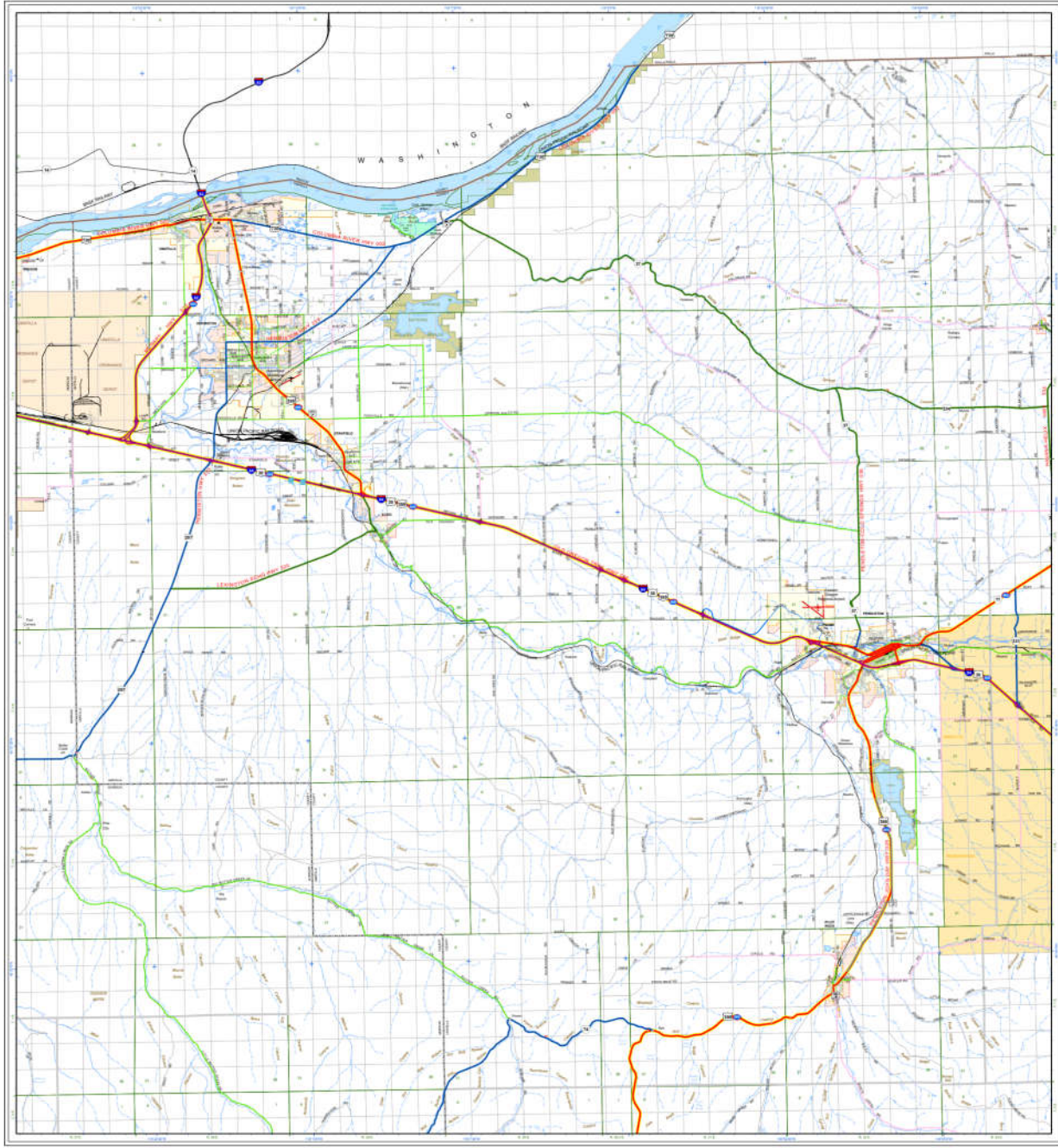
FINLEY BIOENERGY

Gerry Friesen, Partner
503-635-1233

Gerry@friesen.com

www.gfriesen.com

Date produced: 2011 rev. 2015



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Mitigation for Adverse Effects: Examples

When federal projects, adversely affect historic properties, Section 106 of the National Historic Preservation Act requires that agencies consider ways to avoid, minimize, or mitigate those impacts. If avoidance and minimization are not feasible, the federal agency, SHPO, and other consulting parties agree to preservation-minded mitigation that is captured in a Memorandum of Agreement (MOA). While mitigation cannot fully compensate for the loss of historic properties, it provides an opportunity to preserve and document the past for the public's education and appreciation.

Appropriate mitigation is project-specific, and takes into consideration project impacts and the needs of the local community. Mitigation may include documenting historic properties before they are demolished; creating websites, displays, and brochures; archaeological investigations; holding public education events; or any number of other activities. There is no formula for mitigation. Ultimately, it is what all parties agree is appropriate. Examples of mitigation products are below.

Documentation:

Documenting historic properties with reports, photos, maps, and drawings is the most common type of mitigation, and is frequently just one component of mitigation. Projects may complete [National Park Service documentation standards](#) or the Oregon SHPO documentation standards. Documentation should be shared with state and local libraries and historic repositories, and online whenever possible.

National Register Nominations:

In some cases, it may be appropriate to list a similar property in the National Register of Historic Places. The nomination document records the history of the property, and the designation allows the owner to take advantage of state and federal grant and tax programs.

Brochures, Displays, Interpretive Panels, & Websites:

A key goal of mitigation is to educate the public about historic resources. Brochures, exhibits, interpretive panels, and websites are effective ways of achieving this goal.

Management Documents & More:

Mitigation can include creating management plans for the continued use and maintenance of a historic resource. These plans allow for continued changes to the resource, but establish guidelines for ensuring that the historic appearance is maintained. In many cases, these documents can be written to streamline future consultation. Mitigation can also include digitizing archival records, including newspapers and making them publicly available through the [University of Oregon's Historic Oregon Newspaper website](#). Projects can also establish funding for future preservation projects, or host a farewell event to the historic property where the community can share oral histories and historic photographs.



National Wetland Plant List

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG.

Background: The National Wetland Plant List (NWPL) was first developed by the U.S. Fish and Wildlife Service (FWS) in 1988. The U.S. Army Corps of Engineers (USACE) assumed the lead responsibility for administering the list in December 2006.

The NWPL plays a critical role in wetland determinations under the Clean Water Act and the Wetland Conservation Provisions of the Food Security Act. Wetlands are evaluated using three factors – soils, hydrology, and vegetation in accordance with the 1987 Wetland Delineation Manual and Regional Supplements. The NWPL is used in evaluating the vegetation factor.



The NWPL is a list of wetland plants and their assigned indicator statuses. An indicator status reflects the likelihood that a particular plant occurs in a wetland or upland. The five indicator statuses are: Obligate (OBL) plants that always occur in standing water or in saturated soils; Facultative Wet (FACW) plants that nearly always occur in areas of prolonged flooding or require standing water or saturated soils but may, on rare occasions, occur in non-wetlands; Facultative (FAC) plants that occur in a variety of habitats, including wetland and mesic to xeric non-wetland habitats but commonly occur in standing water or saturated soils; Facultative Upland (FACU) plants that typically occur in xeric or mesic non-wetland habitats but may frequently occur in standing water or saturated soils; and Upland (UPL) plants that almost never occur in water or saturated soils.

Agencies involved in the process: This national effort is led by USACE in collaboration with FWS, the U.S. Environmental Protection Agency and the Natural Resources Conservation Service. Shortly after receiving the responsibility for the NWPL, USACE launched an interagency effort to update the list. This update represents the most complex and thorough evaluation of wetland plant species ratings since the inception of the 1988 list.

Interagency Process – Web-based system for scientific input and opportunity for public input: The updating process for the NWPL revolved around a Web-based system where participants could obtain information and view input made. It began with the updating of all scientific names and reorganization of plant lists using the same 10 boundaries identified in the regional wetland delineation manual supplements. Approximately 65 botanists and ecologists from the four agencies worked on National and Regional Panels for the 10 wetland regions of the U.S. and its territories.

Twelve rounds of voting and evaluation were completed on 8,200 plants typically found in wetlands. It's estimated that 442 external experts from federal, state, and tribal organizations, and the public contributed over 130,000 entries and technical comments regarding a wetland status indicator by

species during the twelve-round process. One of the rounds involved public input received through a Federal Register Notice (FRN) comment period. During the comment period, 377 individuals offered 16,432 votes on species status, 1,159 written technical comments and 35 written comment letters about the updating of the NWPL were received. Based on all the input, 18 algorithms were developed that represent either consensus on a species indicator status or weighting of input based on the evaluation of scientific evidence or information.

This national effort resulted in changes to the indicator status for 12% of the species on the 1988 list. For those species that changed, there was nearly an equal split between species that received wetter ratings and those that received drier ratings.

Implementation: The four federal agencies will use the updated NWPL on all new Jurisdictional Determinations performed after June 1, 2012. The updated NWPL can be found at http://wetland_plants.usace.army.mil. The four agencies signed an Interagency Agreement requiring use of the list by agency staff for wetland delineation purposes as required by Section 404 of the Clean Water Act and the Wetland Conservation Provisions of the Food Security Act. The Federal Register Notice announcing the updated NWPL, the Interagency Agreement, and links to the final NWPL may be found under the Latest News Section of the Headquarters Regulatory homepage at: <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx>

Attachment B-2. SPCC Plan Outline

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West End Solar Project

Proposed Outline of Spill Prevention, Control, and Countermeasure Plan

**Prepared for
EE West End Solar LLC**

Prepared by



Tetra Tech, Inc.

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Proposed Outline of Spill Prevention, Control, and Countermeasure Plan

Section 1: Plan Administration

- 1.1 Management Approval and Designated Person
- 1.2 Professional Engineer Certificate
- 1.3 Location of SPCC Plan
- 1.4 Plan Review
- 1.5 Facilities, Procedures, Methods, or Equipment Not Yet Fully Operational
- 1.6 Cross-Reference with SPCC Provisions

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- 2.1 Facility Description
 - 2.1.1 Plant Area
 - 2.1.2 Solar Array
 - 2.1.3 O&M Building and Substation
 - 2.1.4 Energy Storage Enclosures
- 2.2 Summary of Oil Containers and Equipment
- 2.3 Evaluation of Discharge Potential

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- 3.1 Compliance with Applicable Requirements
- 3.2 Inspections
- 3.3 Spill Response
- 3.4 Recordkeeping
- 3.5 Training
- 3.6 Security

Appendix A Site Map

Appendix B Container/Equipment Data Sheets

Appendix C Substantial Harm Certification Determination

Attachment I-1. Erosion Sediment Control Measures

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West End Solar Project

Erosion Sediment Control Measures

West End Solar Project
September 2022

Prepared for
EE West End Solar LLC

Prepared by



Tetra Tech, Inc.

Approved by Council March, 2023

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Erosion and Sediment Control Measures

I. Introduction

EE West End Solar LLC (Applicant), a subsidiary of Eurus Energy America Corporation, proposes to construct the West End Solar Project (Project), a solar energy generation facility and related or supporting facilities in Umatilla County, Oregon. The Project Site Boundary includes 324 acres. Land uses within the Site Boundary consists primarily of fallow agriculture land with two existing transmission lines that pass through the Site Boundary. Land within the Site Boundary is zoned Exclusive Farm Use by the Umatilla County.

Based on the Natural Resources Conservation Service Soil Data (NRCS 2019), there are two major soil types in the Project Site Boundary. The Adkins fine sandy loam makes up 73 percent of the Site Boundary and are eolian deposits, consisting of deep, well-drained soils deposited or transported by wind activity. The remainder of the Site Boundary is composed of Quincy fine sand (27 percent). The Quincy fine sand is both colluvial and alluvial deposits, consisting of very deep excessively drained soils formed in sands on dunes and terraces. Soils within the Site Boundary have a K factor (erosion factor that indicates the susceptibility of a soil to sheet and rill erosion by water) that ranges from approximately 0.1 to 0.32, which could be considered slight to moderate erodibility (NRCS 2019). However, precipitation is limited in the Project Site Boundary, as the historical average of precipitation and snow received in Umatilla, Oregon averages 8.93 inches annually, most of which occurs between October and April (Climate Data 2020). Wind erosion is moderate for the Adkins fine sandy loam and is severe for the Quincy fine sand.

The Site Boundary occupies slopes ranging from approximately zero to 15 percent, with an average slope of less than 2 percent. Elevations within the Site Boundary range from approximately 665 feet to 732 feet above mean sea level. No wetland or stream features were mapped by the National Wetlands Inventory (NWI) database and National Hydrography Dataset (NHD) within or immediately adjacent to the Site Boundary and none were documented during the Project field investigations.

II. Regulatory Background

The U.S. Environmental Protection Agency has delegated authority to the ODEQ to issue National Pollutant Discharge Elimination System (NPDES) stormwater discharge permits for construction and operations activities. A NPDES permit is required for construction activities that will disturb more than one acre of land and has the possibility of stormwater running off the site into surface waters or conveyance systems leading to surface waters of the state.

Project activities will disturb more than one acre of land; however, as there are no surface waters or ditches/conveyance systems within or adjacent to the Site Boundary and the topography of the Project site is such that rainfall or snowmelt would not leave the site or enter a waterway, the Applicant maintains that there is no possibility of stormwater running off the site into surface waters of the state or into a conveyance systems leading to surface waters of the state. Therefore, the Applicant understands that a NPDES 1200-C permit is not required.

An Erosion and Sediment Control Plan (ESCP) is required with NPDES 1200-C permit coverage. Although 1200-C permit coverage is not required, the Applicant has prepared this document to provide a description of erosion and sediment control measures and best management practices that will be implemented prior to and during construction to reduce erosion. A site-specific ESCP may be developed prior to construction in coordination with the county and any required grading permit documents.

III. Vegetation Management

- To the extent practicable, existing vegetation will be preserved. Where vegetation clearing is necessary, root systems would be conserved if possible.
- The Applicant will provide long-term soil stability by reseeding disturbed areas to reestablish vegetation. Temporarily impacted areas that are reseeded will be monitored for restoration success according to this plan, the Noxious Weed Control Plan (Final Order Attachment P-4) and the Habitat Mitigation Plan (Final Order Attachment P-5).

Applicant will provide long-term soil stability by reseeding disturbed areas to reestablish vegetation. At the completion of land-disturbing activities, the site will be revegetated with an appropriate seed mix. The seed will be applied with mulch to protect the seeds as the grass establishes. Scarifying and reseeding of affected areas will occur after construction has been completed.

- Vegetate and mulch disturbed areas.
 - Apply temporary and/or permanent soil stabilization measures immediately on all disturbed areas as grading progresses. Temporary or permanent stabilizations measures are not required for areas that are intended to be left unvegetated, such as dirt access roads or utility pole pads.
 - Exposed soil will be seeded and mulched as soon as practicable after grading is completed.

IV. Erosion and Sediment Control Measures and Best Management Practices

Erosion control best management practices will be implemented during all ground disturbing activity until permanent site ground covers are in place. A best management practice (BMP) is a physical, chemical, structural or managerial practice that prevents, reduces or treats contamination of water or which prevents or reduces soil erosion. The following BMPs protect exposed soil surfaces from rain generated splash erosion, dust erosion, and help slow flows across a site of ground disturbance.

- Erosion Prevention Practices:
 - Grading will be minimized to the maximum extent practicable and existing vegetation preserved where practical.
 - Grading will be scheduled/phased to minimize soil exposure and prevent exposed inactive areas from becoming a source of erosion. Existing vegetation will not be removed any sooner than is necessary.
 - Applicant will implement BMPs for erosion, including perimeter controls (e.g., silt fence), soil stabilization (e.g., mulching or tackifiers), and dust control
- Fugitive Dust Abatement:

- Water, soil-binding agents, or other dust control techniques will be implemented as needed to avoid wind-blown soil. Watering will be applied without creating ponding or mists that travel beyond the site. If soil-binding agents are used, they will be applied in a way to not travel beyond the site.
- Fugitive dust from truck traffic will be minimized by applying water to access roads and by keeping paved public rights-of-way (ROW) clean or wet down. All trucks entering and leaving the Site will adhere to the posted speed limit, which shall be no more than 10 miles per hour (mph). All trucks leaving unpaved areas to paved areas of the public ROW, whether full or empty, will be visually inspected for loose material. Stabilized construction exits (e.g., 3- to 6-inch cobblestone or rip rap placed on top of a geotextile) will be used to assist with cleaning of truck tires as the vehicles leave unpaved areas. Any loose material is to be removed and placed into the truck trailer.
- Fugitive dust from grading will be minimized by implementing a phased grading approach. During grading or soil excavation a combination of the following measures may be implemented: water spray/mist, adjust grading activities, and/or suspend work under unfavorable conditions (sustained wind speed greater than 20 miles per hour).
- For areas where soils are stockpiled, a combination of the following measures may be implemented: water spray/mist, soil-binding agents, and/or other dust suppression systems such as covering stockpiles particularly if sustained wind greater than 20 miles per hour are expected.
- For soil loading, hauling, and backfilling, use airborne dust wet suppression system and water spray mist as required.
- Before land-disturbing activities begin, BMPs will be in place to prevent the tracking of sediment onto public or private roads such as using graveled (or paved) exits and parking areas, placing gravel on unpaved roads onsite, or using an exit tire wash. Haul truck traffic will be limited to improved access roads and gravel-covered haul roads, limiting deep soil compaction and disturbance. The loads of the haul trucks and heavy equipment, and the resulting induced stress, will be distributed through the gravelly surfacing material, minimizing compaction of the native soils. Mitigation efforts to reduce impacts from soil compaction will include scarifying and reseeding affected areas after construction is completed.
- Sediment retention:
 - Sediment will be kept on site by using sediment basins, traps or sediment barriers. Sediment basins and traps will be located at low points below disturbed areas. Earth dikes or swales will be implemented as needed to route drainage from disturbed areas into the basins. Sediment barriers and sediment fences will be placed below small disturbed areas on gentle to moderate slopes.

References

West End Solar Application for Site Certificate Exhibit U, K, and U,

NRCS (Natural Resources Conservation Service) 2019 Web Soil Survey Map. Electronic document, <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>. Last modified May 20, 2020

Attachment P-3: Wildlife Monitoring and Adaptive Management Plan

**Measures to Avoid, Reduce or Mitigate Impacts to State Sensitive Species –
OAR 345-021 0010(1)(p)(G)**

OAR 345-021-0010(1)(p) (G) A description of any measures proposed by the applicant to avoid, reduce, or mitigate the potential adverse impacts described in (F) in accordance with the general fish and wildlife habitat mitigation goals and standards described in OAR 635- 415-0025 and a description of any measures proposed by the applicant to avoid, minimize, and provide compensatory mitigation for the potential adverse impacts described in (F) in accordance with the sage-grouse specific habitat mitigation requirements described in the Greater Sage-Grouse Conservation Strategy for Oregon at OAR 635-140-0000 through -0025, and a discussion of how the proposed measures would achieve those goals and requirements.

This plan identifies the avoidance, minimization, and mitigation measures that will be implemented during facility design, construction and operation to avoid, minimize, and mitigate potential adverse impacts to state sensitive species with a potential to occur within the site.

Note: several measures that would minimize potential impacts to wildlife species, including noxious weed control, vegetation management and habitat mitigation, are not included in this plan because they are covered in other conditions of the site certificate.

Prior to each phase below, the certificate holder shall provide a compliance plan or similar format to the Department for how it intends to demonstrate, implement and track compliance with the measures identified.

The measures included in this plan may be amended from time to time by agreement of the certificate holder and EFSC. Such amendments may be made without an amendment of the Site Certificate. The Council authorizes ODOE to agree to amendments to this plan and to mitigation actions that may be required under this plan. ODOE shall notify EFSC of all amendments and mitigation actions, and the Council retains the authority to approve, reject or modify any amendment of this plan or mitigation action agreed to by ODOE.

1.0 Project Design

Prior to construction, the certificate holder shall ensure that facility components are designed in accordance with the following:

- The substation and associated equipment will be designed to comply with APLIC Guidelines.
- Outdoor lighting at the substation and O&M enclosure will be limited in intensity, shielded, and hooded in a manner that prevents the lighting from projecting onto adjacent properties, roadways, and waterways.
- Vertical pipes and piles will be capped or otherwise modified to prevent entrance or use by cavity dwelling and nesting birds, as well as small mammals and lizards.
- Facility perimeter fencing will include one or more gates in corners of facility site to allow deer to escape if they become trapped. Certificate holder shall consult with ODOE and ODFW on wildlife escape gates and shall demonstrate on a site plan the perimeter fencing includes wildlife escape fencing consistent with recommendations received during ODOE/ODFW consultation.

2.0 Pre-Construction

Prior to construction, the certificate holder shall complete the following:

- Develop a facility-specific worker environmental training program that all employees and contractors working in the field will be required to attend prior to working on-site. The training shall include information regarding the sensitive biological resources including potentially occurring listed and sensitive species, individual responsibilities associated with the Project, and the consequences of non-compliance.
- Contact Blue Mountain Wildlife to establish their ability to respond to the facility during construction in the event of injured wildlife.
- Schedule vegetation clearing to occur before the critical period for ground-nesting birds (April 15 – September 1) to avoid disturbing active nests. If vegetation removal is necessary during the critical period for ground nesting birds, the certificate holder shall hire a qualified biologist to conduct a clearance survey for nesting birds prior to vegetation removal. Active nests identified during the clearance survey shall be flagged for avoidance, and marked as sensitive areas on construction maps.

3.0 Construction

During construction, the certificate holder shall complete the following:

- Vegetation clearing will be scheduled to occur before the critical period for ground-nesting birds (April 15 – September 1) to avoid disturbing active nests. If vegetation removal is necessary during the critical period for ground nesting birds, the certificate holder shall hire a qualified biologist to conduct a clearance survey for nesting birds prior to vegetation removal. Active nests identified during the clearance survey shall be flagged for avoidance, and marked as sensitive areas on construction maps.
- Implement speed limit restrictions on internal access roads for all onsite vehicles, not to exceed 20 miles per hour.
- Utilize Blue Mountain Wildlife or other licensed local wildlife rehabilitator(s) to respond to the facility in the event of injured wildlife.
- Report any incidences of injured wildlife within the site boundary to ODFW and ODOE.
- Implement a facility-specific worker environmental training program that all employees and contractors working in the field will be required to attend prior to working on-site. The training shall include information regarding the sensitive biological resources including potentially occurring listed and sensitive species, individual responsibilities associated with the Project, and the consequences of non-compliance.

4.0 Operations

During operations, the certificate holder shall complete the following:

- Utilize Blue Mountain Wildlife or other licensed local wildlife rehabilitator(s) to respond to the facility in the event of injured wildlife.
- Report any incidences of injured wildlife within the site boundary to ODFW and ODOE.
- Implement speed limit restrictions on internal access roads for all onsite vehicles, not to exceed 20 miles per hour.

Attachment P-4 Draft Noxious Weed Plan

West End Solar Project

Draft Noxious Weed Control Plan

West End Solar Project
April 2022
As Approved by Council March, 2023

Prepared for
EE West End Solar LLC

Prepared by



Tetra Tech, Inc.

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1.0 Introduction

EE West End Solar LLC (Applicant), a subsidiary of Eurus Energy America Corporation, proposes to construct the West End Solar Project (Project), a solar energy generation facility and related or supporting facilities in Umatilla County, Oregon. The Project will be a photovoltaic solar energy facility with an estimated nominal and average generating capacity of 50 megawatts (MW) of alternating current. The Project may include an energy storage system with a capacity of up to 70 MW. The Project Site Boundary is 324 acres within which all Project facilities will be located.

Oregon Administrative Rule (OAR) 660-033-0130 (38)(h)(D) states, in regard to photovoltaic solar power generation facilities, that:

“Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weed species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval.”

This Draft Noxious Weed Control Plan (Plan) was prepared to comply with OAR 660-033-0130 (38)(h)(D) and describes the noxious weed control measures that will be implemented during construction and operation of the Project. Noxious weed control practices for the Project described in this plan were developed in coordination with the Umatilla County Weed Department Supervisor.

1.1 Background

The measures described in this Plan are designed to minimize the introduction of new noxious weed species and to control existing populations of target noxious weeds (See Section 1.2). In addition, new noxious weeds detected during post-construction revegetation (as described below) will be considered a result of construction activities and shall be controlled and treated accordingly. For the purposes of this Plan, treatment of target noxious weeds will focus on the entire area within the Project Site Boundary (Figure 1) to minimize noxious weed impacts to surrounding habitat and agricultural areas.

Designated noxious weeds are those invasive weed species that are of elevated economic or environmental concern to the State of Oregon or local jurisdictions and receive priority during management planning and operations. Under Oregon Revised Statutes (ORS) Chapter 569, the Oregon Department of Agriculture (ODA) and Oregon State Weed Board (OSWB) develop and maintain a State Noxious Weed List. OSWB and the ODA classify noxious weeds in Oregon in accordance with the ODA Noxious Weed Classification System (ODA 2020a). Noxious weeds, for the under this system are classified as either “A” or “B” Listed Weeds and may also be listed as “T-Designated Weeds” which are priority target weeds for control, as directed by the OSWB. The ODA also designates select weeds from either the “A” or “B” list as “T” designated weeds. “T” designated

weeds are priority noxious weeds that the ODA has targeted for prevention and control. Per ODA 2020a, the definitions for these classifications are as follows:

- **“A” Listed Weed:** A weed of known economic importance which occurs in the state/county in small enough infestations to make eradication/containment possible; or is not known to occur, but its presence in neighboring states/counties makes future occurrence in Oregon seem imminent.
Recommended action: infestations are subject to eradication or intensive control when and where found.
- **“B” Designated Weed:** A weed of known economic importance, which is regionally abundant, but which may have limited distribution in some counties.
Recommended action: limited to intensive control at state, county, or regional level as determined on a case-by-case basis. Where implementation of a fully integrated statewide management plan is feasible, biological control shall be the main control approach for species for which biological agents are available.
- **T-Designated Weed:** A designated group of weed species that are selected and will be the focus for prevention and control by the Noxious Weed Control Program. Action against these weeds will receive priority. T-designated noxious weeds are determined by the Oregon State Weed Board and directs ODA to develop and implement a statewide management plan. T-designated noxious weeds are species selected from either the A or B list.

Currently, the ODA lists 46 Class A noxious weed species and 94 Class B noxious weed species (ODA 2020a; Appendix A).

In addition to the State Noxious Weed List, Chapter 97 of the Umatilla County Code includes the Umatilla County Weed Ordinance which defines what is considered a noxious weed, identifies the responsibility of private land owners to control weeds, and outlines the authority of the weed control district and Umatilla County Board of Commissioners to enforce the ordinance. Per ORS 569.350 through 569.520, Umatilla County maintains a Umatilla County Noxious Weed Control List (Umatilla County 2017). This list, adopted by the County in 2017, includes 39 noxious weed species that have been found currently or previously growing in the County (Umatilla County 2017; see Appendix B). Of these 39 species, 19 are classified as “A” designated weeds and 20 are classified as “B” designated weeds.

1.2 Target Noxious Weed Species

For the purposes of this Plan, target noxious weeds include County-listed “A” and “B” noxious weed species and ODA-listed “A” and “T” noxious weed species (see Appendices A and B). Based on botanical surveys conducted in 2019 and 2020 (Tetra Tech 2020), six target noxious weed species were observed within the Project Site Boundary (Table 1). Three of these listed noxious weeds, yellow starthistle (*Centaurea solstitialis*), rush skeletonweed (*Chondrilla juncea*), and cereal rye (*Secale cereale*), were highly abundant through the Project area (Tetra Tech 2020). Although these six

species will specifically be targeted for control, if other ODA-listed “A” or “T” noxious weeds or County-listed “A” and “B” noxious weeds are observed in the Project Site Boundary, they will also be treated.

Table 1. Target Noxious Weeds Located Within the Project Site Boundary

Scientific Name	Common Name	ODA Status	County Status
<i>Bassia scoparia</i>	mock cypress, burning bush, kochia	B	B
<i>Centaurea solstitialis</i>	yellow starthistle	B	B
<i>Chondrilla juncea</i>	rush skeletonweed	B, T	A
<i>Onopordum acanthium</i>	Scotch thistle	B	B
<i>Secale cereale</i>	cereal rye, rye	not listed	B
<i>Tribulus terrestris</i>	puncturevine, goat’s head	B	B

2.0 Noxious Weed Control

The Applicant’s primary objective is to prevent the introduction of new noxious weed populations and control existing target noxious weed populations within the Project Site Boundary¹. Due to the pervasiveness of the noxious weeds as well as other non-native, invasive species present at the site (Tetra Tech 2020), weed control efforts will begin prior to construction. Throughout pre-construction, construction, and operational activities, the Applicant will take appropriate actions to control and prevent the spread of noxious weeds.

If, during construction or operation, occurrences of Lawrence’s milkvetch are incidentally observed within the perimeter fenceline, the certificate holder shall confer with the Oregon Department of Agriculture on the revegetation, weed treatment, and restoration of areas in proximity to these occurrences to ensure that actions are suitable to support the state-listed T&E plant species.

Initial short-term weed control will be through herbicide use (as discussed in Section 2.2.1) or mechanical methods (as discussed in Section 2.2.2). Additional spot-treatment of weeds through herbicide use may be needed for long-term weed control. As an additional form of long-term weed control within the solar array footprint, the Applicant anticipates installing and maintaining low-growing vegetation between the solar arrays and installing and maintaining either a gravel base or low-growing vegetation below the solar arrays. Revegetation will be accomplished by the seeding of site-suitable, drought-tolerant, low-stature (< 2 feet) native or non-native, non-invasive perennial grasses and forbs species known to compete well with the noxious weeds and other non-native, invasive species occurring at the site (i.e., desirable vegetation). Seeding will occur between October 1 and February 1 (the preferred seeding dates specified by the Oregon Department of Transportation for construction east of the Cascades)².

It will be important to ensure that herbicide use does not affect establishment of desirable vegetation in revegetation areas that will provide long-term control. Supplemental seeding, as well

¹ The Project fence line is located within the Site Boundary and therefore would be subject to this Plan.

² Oregon Department of Transportation. Oregon Standard Specification for Construction 2018. Section 01030.43(b)

as spot herbicide treatments may be needed on a case-by-case basis. Subsequent fertilizer application will be limited in areas treated for target noxious weeds, and the timing of the seeding will need to be coordinated with any herbicide applications.

2.1 Preventative Methods

The Applicant shall implement best management practices (BMPs) before and during Project construction and operation to help prevent the invasion and spread of noxious weeds onsite. These BMPs will include the implementation of the following measures as appropriate:

- Educating workers of the importance of noxious weed prevention and treatment measures;
- Providing information to construction crews and operational staff regarding target noxious weed species at the operations and maintenance enclosure;
- Inspecting all vehicles and equipment for evidence of noxious weeds before leaving the Project site. If a vehicle or piece of equipment shows visual signs of potential noxious weeds, the vehicle will be cleaned in a designated area onsite, including wheel washing or applying compressed air, before exiting the Project site.
- Equipment and vehicles used to move vegetation and topsoil in noxious weed-infested areas during the clearing phases of the Project will be cleaned of seeds, roots, and rhizomes prior to being allowed to proceed to other areas of the Project site. In most infestation locations, vehicles will be cleaned using compressed air.
- Inspecting for weeds in materials such as gravel or fill for roads, seed mixes used for revegetation, and/or vegetation removed from the site prior to transporting to/from the site;
- Routine, scheduled inspections of the construction area will be conducted on an ongoing basis, beginning with a survey of the site prior to commencement of construction activities and followed by periodic surveys for the duration of the construction process;
- Preventing conditions that favor noxious weed establishment by revegetating disturbed areas as soon as appropriate following construction;
- Inspecting and certifying that the seed mixes are free of weed seed and propagules.
- Monitoring areas of temporary and permanent disturbance for noxious weeds after construction, during the normal course of revegetation maintenance, and implementing control measures appropriately (as described below);
- After construction has concluded, annual monitoring of the site for the presence of noxious weeds for the operating life of the Project. If a noxious weed is detected, it will be addressed (i.e. abated, controlled or eradicated) and the detection area monitored; and
- Including noxious weed prevention and control measures, such as Project inspection and documentation, in operations plans.

2.2 Treatment Methods

Control of noxious weeds will be implemented through manual, mechanical or chemical (i.e., herbicide) control measures. Manual control methods include hand-pulling and using hand tools to remove noxious weeds. Mechanical control includes mowing or disking with machinery. Chemical

application is accomplished through use of herbicides targeted to the individual weed species. The Applicant will be responsible for hiring a qualified contractor to implement the treatment of noxious weeds. The most appropriate control method depends on the noxious weed species being treated, the size of the infestation, and the terrain and habitat needing treatment. Standard treatment methods for noxious weeds can be found in the Pacific Northwest Weed Management Handbook (Peachey 2022), ODA's Oregon Noxious Weed Profiles (ODA 2020b), and Weed Control in Natural Areas in the Western United States (UC Davis 2013). If chemical control is implemented, it will be timed and conducted during suitable climatic conditions to minimize or prevent drift. Initial weed control efforts will begin prior to construction.

2.2.1 Herbicide Treatment

The specific herbicide used and the timing of application will be chosen based on the specific noxious weed being treated, as appropriate herbicides differ between species and types of plants (i.e., dicots versus monocots). Recommended treatment methods, as well as the recommended timing of treatments for the six target noxious weeds identified within the Project Site Boundary, can be found in the Pacific Northwest Weed Management Handbook (Peachey 2022) and Weed Control in Natural Areas in the Western United States (UC Davis 2013). Only herbicides approved by the U.S. Environmental Protection Agency and ODA will be applied and appropriate best management practices will be implemented during application. Herbicides will be applied with a spreader sticker surfactant (e.g., Dynamic Green Concepts, Phase).

2.2.2 Manual and Mechanical Treatment

Manual and mechanical control methods rely on removal of plants, seed heads, and/or cutting roots with a shovel or other hand tools or mechanical equipment that can be used to remove, mow, or disc noxious weed populations. Hand removal of plants is also included under this treatment method. Manual and mechanical methods are useful for smaller, isolated populations of noxious weeds or in areas of sensitive species or habitats, or can be used in combination with chemical control methods. Additionally, hand removal of small infestations can minimize soil disturbance, allowing desirable species to remain and limiting conditions favorable for noxious weeds. Some rhizomatous plants can spread by discing or tillage; therefore, implementation of discing, where applicable, will be species specific.

If such a method is used in areas where revegetation will be implemented, subsequent seeding will be conducted to establish desirable vegetative cover that will stabilize the soils and slow the potential re-invasion of noxious weeds.

3.0 Monitoring

A pre-construction monitoring survey will be scheduled before construction to identify noxious weed species within the Project Site Boundary, with a focus on target noxious weed species observed during the on botanical surveys conducted in 2019 and 2020 (Table 1, Tetra Tech 2020).

Weed control measures (manual, mechanical, and/or chemical) will occur prior to commencement of construction activities.

During the construction phases of the Project, construction staff will conduct periodic monitoring of target noxious weeds within the Project Site Boundary. Any signs of new target noxious weed growth, or of re-growth in treated areas, will be addressed promptly with further herbicide, manual, or mechanical treatments or other best management practices.

Following construction, monitoring for target noxious weeds will be conducted annually for the first five years to assess weed growth and to inform noxious weed control measures. Noxious weed monitoring will consist of a site survey, conducted during the growing season, to identify noxious weed species that have established within the Project Site Boundary, as well as inspections of treated areas to assess the success of previous noxious weed treatments.

The initial post-construction monitoring survey will be scheduled slightly before post-construction herbicide application, as applicable, to identify noxious weed species within the Project Site Boundary, with a focus on target noxious weed species observed prior to construction (Table 1), or other populations of target noxious weeds not previously observed in these areas.

The results of the initial monitoring will be summarized in a monitoring report that details all noxious weed species observed, identifies treatment protocols for target noxious weed species, and describes the location of target noxious weed species identified. Subsequent monitoring will assess the success of noxious weed treatments and will document any new target noxious weed infestations observed. These results will be summarized in short memorandums provided to the County and ODOE that describe the treatment success or failure, make recommendations to improve treatment success (if necessary), and note any new target noxious weed species or emergence. If the Applicant contracts with the County Weed Department Supervisor to perform weed control at the Project, then no monitoring report will be provided except for a statement that the County performed the work.

The Applicant will maintain ongoing communication with individual landowners and the County regarding noxious weeds within the Project Site Boundary. Landowners may also contact the Applicant to report the presence of noxious weeds. The Applicant will control the reported noxious weeds on a case-by-case basis and will include a summary of actions taken for that incident in the memorandum.

4.0 Weed Department Supervisor Review

Teddy Orr, Weed Department Supervisor, was provided with a copy of this Plan for review in April 2022 and his comments were addressed in this plan.

Teddy Orr, Weed Department Supervisor
Umatilla County Road Department
3920 Westgate Street
Pendleton, OR 97801-3920
(541) 278-5462; theodore.orr@umatillacounty.gov

The Applicant shall coordinate with the Umatilla County Weed Department Supervisor on any proposed amendments of the plan.

5.0 Plan Amendment

This Plan may be amended from time to time by agreement of the Applicant and the Energy Facility Siting Council (Council). Such amendments may be made without an amendment of the Site Certificate. The Council authorizes ODOE to agree to amendments to this plan. ODOE shall notify the Council of all amendments, and the Council retains the authority to approve, reject, or modify any amendments of this plan agreed to by ODOE.

6.0 References

- ODA (Oregon Department of Agriculture). 2020a. Noxious Weed Policy and Classification System. Noxious Weed Control Program. Salem, OR. Available online at: <https://www.oregon.gov/ODA/shared/Documents/Publications/Weeds/NoxiousWeedPolicyClassification.pdf>. Accessed March 2022.
- ODA. 2020b. Oregon Noxious Weed Profiles. Available online at: <https://www.oregon.gov/oda/programs/Weeds/OregonNoxiousWeeds/Pages/AboutOregonWeeds.aspx>
- Peachey, E. (Editor). 2022. Pacific Northwest Weed Management Handbook. Corvallis, OR: Oregon State University. Available online at: <https://pnwhandbooks.org/weed> (accessed March 2022).
- Tetra Tech. 2020. 2019-2020 Botanical and Wetland Survey Report, West End Solar Project. Prepared for Eurus Energy, Eurus Energy America, LLC. September 2020.
- Umatilla County. 2017. Weed Control Board. Umatilla County Noxious Weed List. Available online at: <https://www.co.umatilla.or.us/road/departments/road/weed/noxious-weed-control-list> (accessed March 2022).
- University of California at Davis (UC Davis). 2013. Weed control in natural areas in the Western United States. University of California Weed Research and Information Center. 544 pages.

7.0 Figures

West End Solar Project

Figure 1 Site Boundary (Micrositing Corridor)

UMATILLA COUNTY, OR

-  Proposed Site Boundary
-  Existing Transmission Line
-  Hermiston Municipal Airport
-  City/Town
-  US Highway
-  County Highway
-  Local Roads
-  County Boundary

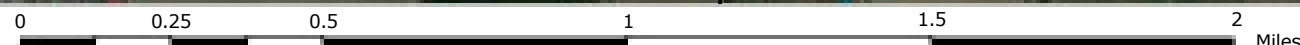


Reference Map



1:20,000

WGS 1984 UTM Zone 11N



NOT FOR CONSTRUCTION

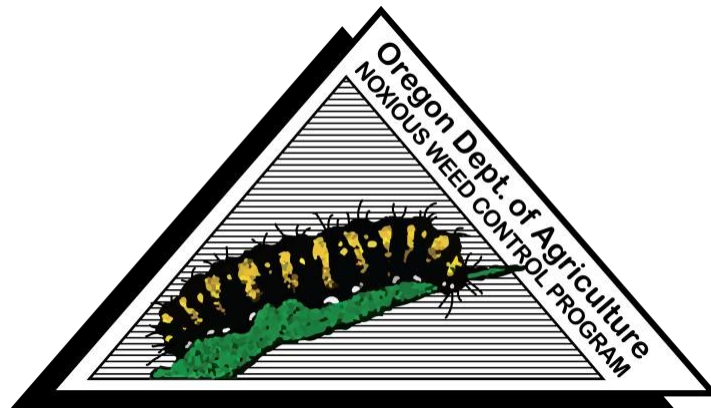
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8.0 Appendices

Appendix A. ODA Noxious Weed Policy and Classification System 2020

Oregon Department of Agriculture

**Noxious Weed Policy
and Classification System
2020**



Noxious Weed Control Program

Address: 635 Capitol Street NE, Salem, Oregon 97301

Phone: (503) 986-4621 **Fax:** (503) 986-4786

www.oregon.gov/ODA/programs/Weeds/Pages/AboutWeeds.aspx

Mission Statement

To protect Oregon's natural resources and agricultural economy from the invasion and proliferation of invasive noxious weeds.

Program Overview

The Oregon Department of Agriculture (ODA) Noxious Weed Control Program provides statewide leadership for coordination and management of state listed noxious weeds. The state program focuses on noxious weed control efforts by implementing early detection and rapid response projects for new invasive noxious weeds, implementing biological control, implementing statewide inventory and survey, assisting the public and cooperators through technology transfer and noxious weed education, maintaining noxious weed data and maps for priority listed noxious weeds, and assisting land managers and cooperators with integrated weed management projects. The Noxious Weed Control Program also supports the Oregon State Weed Board (OSWB) with administration of the OSWB Grant Program, developing statewide management objectives, developing weed risk assessments, and maintaining the state noxious weed list.

Tim Butler
Program Manager
tbutler@oda.state.or.us
(503) 986-4621

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Classification Definitions.....	4
Weed Biological Control	4
A Listed Weeds.....	5
B Listed Weeds.....	7

Noxious Weed Control Policy and Classification System

Definition

“Noxious weed” means a terrestrial, aquatic or marine plant designated by the Oregon State Weed Board under ORS 569.615 as among those representing the greatest public menace and as a top priority for action by weed control programs.

Noxious weeds have become so thoroughly established and are spreading so rapidly on private, state, county, and federally owned lands, that they have been declared by ORS 569.350 to be a menace to public welfare. Steps leading to eradication, where possible, and intensive control are necessary. It is further recognized that the responsibility for eradication and intensive control rests not only on the private landowner and operator, but also on the county, state, and federal governments.

Weed Control Policy

Therefore, it shall be the policy of ODA to:

1. Assess non-native plants through risk assessment processes and make recommendations to the Oregon State Weed Board for potential listing.
2. Rate and classify weeds at the state level.
3. Prevent the establishment and spread of listed noxious weeds.
4. Encourage and implement the control or containment of infestations of listed noxious weed species and, if possible, eradicate them.
5. Develop and manage a biological weed control program.
6. Increase awareness of potential economic losses and other undesirable effects of existing and newly invading noxious weeds, and to act as a resource center for the dissemination of information.
7. Encourage and assist in the organization and operation of noxious weed control programs with government agencies and other weed management entities.
8. Develop partnerships with county weed control districts, universities, and other cooperators in the development of control methods.
9. Conduct statewide noxious weed surveys and weed control efficacy studies.

Weed Classification System

1

The purpose of this Classification System is to:

1. Act as the ODA's official guideline for prioritizing and implementing noxious weed control projects.
2. Assist the ODA in the distribution of available funds through the Oregon State Weed Board to assist county weed programs, cooperative weed management groups, private landowners, and other weed management entities.
3. Serve as a model for private and public sectors in developing noxious weed classification systems that aid in setting effective noxious weed control strategies.

Criteria for Determining Economic and Environmental Significance

2

Detrimental Effects

1. A plant species that causes or has the potential to cause severe negative impacts to Oregon's agricultural economy and natural resources.
2. A plant species that has the potential to or does endanger native flora and fauna by its encroachment into forest, range, aquatic and conservation areas.
3. A plant species that has the potential or does hamper the full utilization and enjoyment of recreational areas.
4. A plant species that is poisonous, injurious, or otherwise harmful to humans and/or animals.

Plant Reproduction

1. A plant that reproduces by seed capable of being dispersed over wide areas or that is long-lived, or produced in large numbers.
2. A plant species that reproduces and spreads by tubers, creeping roots, stolons, rhizomes, or other natural vegetative means.

Distribution

1. A weed of known economic importance which occurs in Oregon in small enough infestations to make eradication/containment possible; or not known to occur, but its presence in neighboring states makes future occurrence seem imminent.
2. A weed of economic or ecological importance and of limited distribution in Oregon.
3. A weed that has not infested the full extent of its potential habitat in Oregon.

Difficulty of Control

A plant species that is not easily controlled with current management practices such as chemical, cultural, biological, and physical methods.

Noxious Weed Control Classification Definitions

3

Noxious weeds, for the purpose of this system, shall be listed as either A or B, and may also be designated as T, which are priority targets for control, as directed by the Oregon State Weed Board.

- **A Listed Weed:**

A weed of known economic importance which occurs in the state in small enough infestations to make eradication or containment possible; or is not known to occur, but its presence in neighboring states make future occurrence in Oregon seem imminent (Table I).

Recommended action: Infestations are subject to eradication or intensive control when and where found.

- **B Listed Weed:**

A weed of economic importance which is regionally abundant, but which may have limited distribution in some counties (Table II).

Recommended action: Limited to intensive control at the state, county or regional level as determined on a site specific, case-by-case basis. Where implementation of a fully integrated statewide management plan is not feasible, biological control (when available) shall be the primary control method.

- **T-Designated Weed (T):**

A designated group of weed species that are selected and will be the focus for prevention and control by the Noxious Weed Control Program. Action against these weeds will receive priority. T-designated noxious weeds are determined by the Oregon State Weed Board and directs ODA to develop and implement a statewide management plan. T-designated noxious weeds are species selected from either the A or B list.

Weed Biological Control

Oregon implements biological control, or “biocontrol” as part of its integrated pest management approach to managing noxious weeds. This is the practice of using host-specific natural enemies such as insects or pathogens to control noxious weeds. The Oregon Department of Agriculture Noxious Weed Program has adopted the International Code of Best Practices for biological control of weeds. Only safe, effective, and federally-approved natural enemies will be used for biocontrol.

Table I: A Listed Weeds

Common Name	Scientific Name
African rue (T)	<i>Peganum harmala</i>
Camelthorn A	<i>Alhagi pseudalhagi</i>
Cape-ivy (T)	<i>Delairea odorata</i>
Coltsfoot	<i>Tussilago farfara</i>
Common frogbit	<i>Hydrocharis morsus-ranae</i>
Cordgrass	
Common	<i>Spartina anglica</i>
Dense-flowered (T)	<i>Spartina densiflora</i>
Saltmeadow (T)	<i>Spartina patens</i>
Smooth (T)	<i>Spartina alterniflora</i>

Delta arrowhead (T)	<i>Sagittaria platyphyla</i>
European water chestnut	<i>Trapa natans</i>
Flowering rush (T)	<i>Butomus umbellatus</i>
Garden yellow loosestrife (T)	<i>Lysimachia vulgaris</i>
Giant hogweed (T)	<i>Heracleum mantegazzianum</i>
Goatgrass Barbed (T) Ovate	<i>Aegilops triuncialis</i> <i>Aegilops ovata</i>
Goatsrue (T)	<i>Galega officinalis</i>
Hawkweed King-devil Mouse-ear (T) Orange (T) Yellow (T)	<i>Hieracium piloselloides</i> <i>Hieracium pilosella</i> <i>Hieracium aurantiacum</i> <i>Hieracium floribundum</i>
Hoary alyssum (T)	<i>Berteroa incana</i>
Hydrilla	<i>Hydrilla verticillata</i>
Japanese dodder	<i>Cuscuta japonica</i>
Kudzu (T)	<i>Pueraria lobata</i>
Matgrass (T)	<i>Nardus stricta</i>
Oblong spurge (T)	<i>Euphorbia oblongata</i>
Paterson's curse (T)	<i>Echium plantagineum</i>
Purple nutsedge	<i>Cyperus rotundus</i>
Ravennagrass (T)	<i>Saccharum ravennae</i>
Silverleaf nightshade	<i>Solanum elaeagnifolium</i>
Squarrose knapweed (T)	<i>Centaurea virgata</i>

(T) T-Designated Weed (See page 4)

(Continued)

Table I: A Listed Weeds

5

Common Name	Scientific Name
Starthistle Iberian (T) Purple (T)	<i>Centaurea iberica</i> <i>Centaurea calcitrapa</i>
Syrian bean-caper	<i>Zygophyllum fabago</i>
Thistle Plumeless (T) Smooth distaff Taurian (T) Turkish (T) Wetted (curly plumeless) (T) Woolly distaff (T)	<i>Carduus acanthoides</i> <i>Carthamus baeticus</i> <i>Onopordum tauricum</i> <i>Carduus cinereus</i> <i>Carduus crispus</i> <i>Carthamus lanatus</i>
Water soldiers	<i>Stratiotes aloides</i>
West Indian spongeplant	<i>Limnobium laevigatum</i>
White bryonia	<i>Bryonia alba</i>
Yellow floating heart (T)	<i>Nymphoides peltata</i>
Yellowtuft (T)	<i>Alyssum murale</i> , <i>A. corsicum</i>

(T) T-Designated Weed (See page 4)

Table II: B Listed Weeds

Common Name	Scientific Name
Armenian (Himalayan) blackberry	<i>Rubus armeniacus</i> (<i>R. procerus</i> , <i>R. discolor</i>)
Biddy-biddy	<i>Acaena novae-zelandiae</i>
Broom French* Portuguese (T) Scotch* Spanish	<i>Genista monspessulana</i> <i>Cytisus striatus</i> <i>Cytisus scoparius</i> <i>Spartium junceum</i>
Buffalobur	<i>Solanum rostratum</i>
Butterfly bush	<i>Buddleja davidii</i> (<i>B. variabilis</i>)
Common bugloss (T)	<i>Anchusa officinalis</i>
Common crupina	<i>Crupina vulgaris</i>
Common reed	<i>Phragmites australis</i> ssp. <i>australis</i>
Creeping yellow cress	<i>Rorippa sylvestris</i>
Cutleaf teasel	<i>Dipsacus laciniatus</i>
Dodder Smoothseed alfalfa Five-angled Bigseed	<i>Cuscuta approximata</i> <i>Cuscuta pentagona</i> <i>Cuscuta indecora</i>
Dyer's woad	<i>Isatis tinctoria</i>
English hawthorn	<i>Crataegus monogyna</i>
Eurasian watermilfoil	<i>Myriophyllum spicatum</i>
False brome	<i>Brachypodium sylvaticum</i>
Field bindweed*	<i>Convolvulus arvensis</i>
Garlic mustard (T)	<i>Alliaria petiolata</i>
Geranium Herb Robert Shiny leaf	<i>Geranium robertianum</i> <i>Geranium lucidum</i>
Giant reed (T)	<i>Arundo donax</i>
Gorse* (T)	<i>Ulex europaeus</i>

Halogeton	<i>Halogeton glomeratus</i>
Houndstongue	<i>Cynoglossum officinale</i>
Indigo bush	<i>Amorpha fruticosa</i>

* Biocontrol (See page 4)

(T) T-Designated Weed (See page 4)

(Continued) Table II: B Listed Weeds

Common Name	Scientific Name
Ivy Atlantic English	<i>Hedera hibernica</i> <i>Hedera helix</i>
Johnsongrass	<i>Sorghum halepense</i>
Jointed goatgrass	<i>Aegilops cylindrica</i>
Jubata grass	<i>Cortaderia jubata</i>
Knapweed Diffuse* Meadow* Russian* Spotted* (T)	<i>Centaurea diffusa</i> <i>Centaurea pratensis</i> <i>Acroptilon repens</i> <i>Centaurea stoebe</i> (<i>C. maculosa</i>)
Knotweed Bohemian Giant Himalayan Japanese	<i>Fallopia x bohemica</i> <i>Fallopia sachalinensis</i> (<i>Polygonum</i>) <i>Polygonum polystachyum</i> <i>Fallopia japonica</i> (<i>Polygonum</i>)
Kochia	<i>Kochia scoparia</i>
Lesser celandine	<i>Ranunculus ficaria</i>
Meadow hawkweed (T)	<i>Pilosella caespitosum</i> (<i>Hieracium</i>)
Mediterranean sage*	<i>Salvia aethiopsis</i>
Medusahead rye	<i>Taeniatherum caput-medusae</i>
Old man's beard	<i>Clematis vitalba</i>
Parrot feather	<i>Myriophyllum aquaticum</i>
Perennial peavine	<i>Lathyrus latifolius</i>
Perennial pepperweed (T)	<i>Lepidium latifolium</i>
Pheasant's eye	<i>Adonis aestivalis</i>
Poison hemlock*	<i>Conium maculatum</i>
Policeman's helmet	<i>Impatiens glandulifera</i>
Puncturevine*	<i>Tribulus terrestris</i>
Purple loosestrife*	<i>Lythrum salicaria</i>
Ragweed	<i>Ambrosia artemisiifolia</i>
Ribbongrass (T)	<i>Phalaris arundinacea</i> var. <i>Picta</i>
Rush skeletonweed* (T)	<i>Chondrilla juncea</i>
Saltcedar* (T)	<i>Tamarix ramosissima</i>

*Biocontrol (See page 4)

(T) T-Designated Weed (See page 4)

(Continued) Table II: B Listed Weeds

Common Name	Scientific Name
Small broomrape	<i>Orabanche minor</i>
South American waterweed	<i>Egeria densa</i> (<i>Elodea</i>)
Spanish heath	<i>Erica lusitanica</i>
Spikeweed	<i>Hemizonia pungens</i>
Spiny cocklebur	<i>Xanthium spinosum</i>
Spurge laurel	<i>Daphne laureola</i>

Spurge Leafy* (T) Myrtle	<i>Euphorbia esula</i> <i>Euphorbia myrsinites</i>
St. Johnswort*	<i>Hypericum perforatum</i>
Sulfur cinquefoil	<i>Potentilla recta</i>
Swainsonpea	<i>Sphaerophysa salsula</i>
Tansy ragwort* (T)	<i>Senecio jacobaea (Jacobaea vulgaris)</i>
Thistle Bull* Canada* Italian Milk* Musk* Scotch Slender-flowered*	<i>Cirsium vulgare</i> <i>Cirsium arvense</i> <i>Carduus pycnocephalus</i> <i>Silybum marianum</i> <i>Carduus nutans</i> <i>Onopordum acanthium</i> <i>Carduus tenuiflorus</i>
Toadflax Dalmatian* (T) Yellow*	<i>Linaria dalmatica</i> <i>Linaria vulgaris</i>
Tree of heaven	<i>Ailanthus altissima</i>
Velvetleaf	<i>Abutilon theophrasti</i>
Ventenata grass	<i>Ventenata dubia</i>
Primrose Willow Large-flower (T) Water primrose (T) Floating (T)	<i>Ludwigia grandiflora</i> <i>Ludwigia hexapetala</i> <i>Ludwigia peploides</i>
Whitetop	
Hairy	<i>Lepidium pubescens</i>
Lens-podded	<i>Lepidium chalepensis</i>
Whitetop (hoary cress)	<i>Lepidium draba</i>

*Biocontrol (See page 4)

(T) T-Designated Weed (See page 4)

Yellow archangel	<i>Lamium galeobdolon</i>
Yellow flag iris	<i>Iris pseudacorus</i>
Yellow nutsedge	<i>Cyperus esculentus</i>
Yellow starthistle*	<i>Centaurea solstitialis</i>

*Biocontrol (See page 4)

(T) T-Designated Weed (See page 4)

4/2020



Oregon

Department
of Agriculture

Appendix B. Umatilla County Noxious Weed Control List



[Home](#) / [Departments](#) / [Public Works/Road](#) / [Weed Control](#)
/ [Noxious Weed Control List](#)

Introduction

INTRODUCTION: The Umatilla County Weed Control Board and Board of County Commissioners believes that the prevention and eradication of newly invading weed species yields the greatest return for the resource investment. This is best achieved through an intensive survey and inventory program allowing for early detection and early action. Education and awareness is an integral part of prevention and early detection. Being familiar with what is growing around us is the best way to assure that when a new invader arrives, it will be noticed and dealt with at the most effective stage of development.

ORS.569.350-569.520

Per ORS.569.350-569.520 the following lists is 2017 adopted Umatilla County Noxious Weed Control List. The weeds listed here are those on the 2017 Umatilla County list (this list was recommended by the Umatilla County Weed Board and approved by the Umatilla County Board of Commissors) CURRENTLY FOUND GROWING OR KNOWN TO HAVE GROWN PREVIOUSLY in Umatilla Co. They are divided according to control requirements categories "A" and "B"

"A" designated weed-a weed of known economic importance which occurs in the state/county in small enough infestations to make eradication/containment possible; or is not known to occur, but its presence in neighboring states/county make future occurrence in Oregon seem imminent.

"B" Designated weed-a weed of known economic importance which is regionally abundant, but which may have limited distribution in some counties. Where implementation of a fully integrated statewide management plan is feasible, biological control shall be the main control approach for species which biological agents are available; noted by asterisk.

"A" Designated Weed List

These Class "A" weeds have been found as single plants or in very limited populations in the county. Prevention, early detection, and eradication is high priority. Cost share may be available at the Weed Board discretion

- Camelthorn (*Alhagi pseudalhagi*)
- Common Bugloss (*Anchusa officinalis*)
- Common Crupina (*Cupina vulgaris*)
- Creeping Yellow Cress (*Roripa sylvestris*)
- Flowering Rush (*Botomus umbellatus*)
- Garlic Mustard (*Alliaria petiolata*)

- Japanese Knotweeds [fleece flower] (*Polygonum cuspidatum* [*Fallopia japonica*])
- Leafy Spurge (*Euphorbia esula*)
- Marijuana (*Cannabis sativa*)
- Meadow Knapweed (*Centaurea jacea* XC. *Nigra*)
- Myrtle Spurge (*Euphorbia myrsinites*)
- Purple Loosestrife (*Lythrum salicaria*)
- Purple Starthistle (*Centaurea calcitrapa*)
- Rush Skeletonweed (*Chondrilla juncea*)
- Spike Weed (*Hemizonia pungens*)
- Spotted Knapweed (*Centaurea maculosa*)
- Tansy ragwort (*Senecio jacobaea*)
- Viper's bugloss (*Echium vulgare*)
- Yellow flag iris (*Iris pseudacorus*)

RECOMMENDED ACTION: Infestations are subject to intensive control when and where found.

"B" Designated Weed List

RECOMMENDED ACTION: Limited to intensive control at state or county level as determined on a case-by case basis.

- Austrian Peaweed (*Sphaerophysa salsula*)
- Canada Thistle (*Cirsium arvense*)
- Cereal Rye (*Secale cereale*)
- Dalmation Toadflax (*Linaria dalmatica*)
- Dodder (*Cuscuta pentagona*)
- Diffuse Knapweed (*Cuscuta pentagona*)
- Hoary Cress (*Cardaria draba*)
- Johnsongrass (*Sorghum halepense*)
- Jointed Goatgrass (*Aegilops cylindrica*)
- Kochia (*Kochia scoparia*)
- Mediterranean Sage (*Salvia aethiopsis*)
- Musk Thistle (*Carduus nutans*)
- Puncturevine (*Tribulus terrestris*)
- Poison hemlock (*Coium maculatum*)
- Quackgrass (*Agropyron repens*)
- Ragweed (*Ambrosia artemisiifolia*)
- Russian Knapweed (*Acroptilon repens*)
- Scotch Thistle (*Onopordum acanthium*)
- St. Johswort (*Hypericum perforatum*)
- Yellow Starthistle (*Centaurea solstitialis*)

Enforcement emphasis groups; these groups of invasive plants have been targeted for additional enforcement throughout the County according to the land types and corresponding agricultural uses associated. Three land uses types have been identified and weed lists developed for each they are:

- Dry Land Annual Cropping Areas: Emphasis Weeds, Canada Thistle, Scotch Thistle, Yellow Starthistle, Goatgrass, and Kochia.
- Irrigated Crops and Pastures: Emphasis Weeds, Canada Thistle, Scotch Thistle, Bull Thistle, Musk Thistle, Yellow Starthistle, Diffuse Knapweed.

- Dryland Range/Pasture/Timber: Scotch Thistle, Bull Thistle, Canada Thistle Spotted Knapweed, Diffuse Knapweed, Russian Knapweed.

Other Links

[ODOT Region 5 ODA](#)

[Most Wanted Weed](#)

[Road Department](#)

Contact Information

Umatilla County Road Department

3920 Westgate Street

Pendleton, Or 97801

Info:541-278-5462

The Weed Department is open 6:30 am. to 5 pm. Mon. through Thr.

Pendleton Office

3920 Westgate

Pendleton, OR 97801

Phone: 541-278-5424

Hours: Mon-Thr, 6:30AM-5PM

Hours: Fri, 8AM-5PM

[Disclaimer](#)

West End Solar Project Draft Habitat Mitigation Plan

**West End Solar Project
October 2021
Updated October 2022**

**Prepared for
EE West End Solar LLC**

Prepared by



Tetra Tech, Inc.

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Figure 2. Example Weed Treatment and Seeding Areas, North Habitat Mitigation Area

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1.0 Introduction

This draft Habitat Mitigation Plan (HMP) describes how EE West End Solar LLC (Applicant) will mitigate for the unavoidable wildlife habitat impacts of the West End Solar Project (Project). Specifically, this HMP¹ outlines how the Applicant will construct and operate the Project consistent with the Oregon Department of Fish and Wildlife (ODFW) Habitat Mitigation Policy. This plan addresses mitigation for permanent impacts of Project components (permanent impacts); there are no anticipated temporary impacts associated with the Project. The Applicant proposes the acquisition of conservation land or a conservation easement to protect and enhance a compensatory habitat mitigation area (HMA). In addition, the Applicant reserves the right to pursue alternative mitigation pathways if available in the future by pursuing an amendment to this HMP, as provided under Section 8.0 below. The proposed mitigation is an Applicant-developed mitigation site; this plan specifies potential habitat enhancement actions and monitoring procedures to evaluate the success of those actions, as applicable.

2.0 Description of the Impacts Addressed by the HMP

Construction of the Project will result in approximately 324 acres of permanent impacts, contained within the Project’s perimeter fence line and located within the Project’s Site Boundary (Table 1).

Table 1. Acres of Preliminary Impact to Habitat Categories and Types

Habitat Category	Habitat Type	Habitat Subtype	Permanent Impact (acres)
3	Upland Grassland, Shrub-steppe and Shrubland	Shrub-steppe	20
4	Upland Grassland, Shrub-steppe and Shrubland	Eastside grassland	139
5	Upland Grassland, Shrub-steppe and Shrubland	Eastside grassland	161
6	Agriculture, Pasture, and Mixed Environs	Orchards, Vineyards, Wheat Fields, Other Row Crops	4
Total			324
Note: Totals in this table may not appear to sum correctly due to rounding.			

The areas proposed to be impacted are primarily composed of Eastside Grassland (Category 4 and 5; 93 percent of the Site Boundary), but also include Shrub-steppe (Category 3; 6 percent of the Site Boundary) as well as cultivated cropland (i.e., Orchards, Vineyards, Wheat Fields, Other Row Crops;

¹ This HMP will be incorporated by reference in the site certificate for the West End Solar Project and must be understood in that context. It is not a “stand-alone” document.

Category 6; 1 percent of the Site Boundary). The Project will not have any impacts on Category 1 or 2 habitat. No mitigation is required for impacts to Category 6 areas.

3.0 Methods for Calculating the Size of the Mitigation Area

The mitigation area for the Project will be determined based on the final design and actual habitat impacts. Before beginning construction, the Applicant may re-evaluate the habitat categorization within the site boundary, consistent with the findings in the Final Order on the ASC, in consultation with ODFW and Department. Applicant will provide the Oregon Department of Energy (ODOE) with a map showing the final design configuration of the Project, and a table showing the estimated acres of permanent impacts by habitat category (Table 1), if changed from the anticipated impacts presented in this HMP.

A mitigation ratio of 1 acre for every 1 acre of Category 3 and 4 habitat permanently impacted will be used to ensure that the mitigation area is large enough to achieve “no net loss” of habitat quantity; site specific enhancement actions will be identified to achieve a “no net loss” of habitat quality. A mitigation ratio of 0.5 acres for every acre of Category 5 habitat impacted and site specific enhancement actions will be used to ensure a “net benefit” in habitat quantity or quality. No mitigation will be implemented for impacts on Category 6 habitat. Table 2 identifies the anticipated mitigation requirement based on the anticipated habitat permanently impacted .

Table 2. Mitigation Calculation

Impact Type and Habitat Category	Anticipated Permanent Impact (Acres)		Mitigation Acres per Acre Impacted		Estimated Mitigation (Acres)
3	19.9		1		19.9
4	139.5		1		139.5
5	160.7		0.5		80.4
Total					239.8
Note: Totals in this table may not appear to sum correctly due to rounding.					

4.0 Mitigation

As described above, the Applicant has identified an option for addressing the mitigation obligation. The final mitigation approach will offer enough suitable habitat to achieve the ODFW habitat mitigation goals of no net loss of habitat quantity or quality for impacts to Category 3 and 4 habitat, and a net benefit in habitat quality or quantity for impacts to Category 5 habitat. Prior to operation, the Applicant will acquire the legal right to create, maintain, and protect the HMA for the life of the Project by means of an outright land purchase, easement, or similar conveyance with a covenant

restricting use for HMA conservation purposes, and will provide a copy of the documentation to ODOE.

4.1 Habitat Mitigation Area

Under this option, the Applicant will establish a conservation easement or purchase conservation lands in the Columbia Plateau ecoregion. The Applicant has preliminarily identified an area that could be used for a mitigation site, where habitat enhancements could benefit raptors and grassland birds and contains sufficient habitat of the appropriate type and quality (i.e., vegetatively Category 3 through 5 grasslands and shrub-steppe) to meet the ODFW Habitat Mitigation Policy goals and habitat mitigation requirements for the Project. The potential HMA is located within the 2100-acre Olex Ranch owned by Karen Kronner and Bob Gritski (i.e., BioDiversity, LLC) and is located in Gilliam County, Oregon. The Applicant has executed an option agreement with the landowners of the potential HMA for a 240 acre conservation easement; a copy of this option agreement has been provided to ODOE.

Habitat within the potential Olex HMA includes planted grassland, native grassland, annual grassland, and shrub-steppe (Table 3, Figure 1), as determined based on aerial imagery and landowner interviews. The quality of the habitat at the potential Olex HMA ranges from Category 2 to 5 based primarily on its vegetative characteristics (e.g., level of disturbance, seral stage, and presence of non-native species). However, the site is also located entirely within ODFW-designated mule deer winter range (ODFW 2013), which is considered Category 2 habitat (Table 3, Figure 1).

Table 3. Mitigation Area Habitat

Location	Habitat Subtype	Habitat Category ¹	Area (Acres)
Northern HMA	Native Perennial Grassland	2	31.4
	Revegetated or Other Planted Grassland	2	12.0
	Annual Grassland	2	9.5
	Shrub-steppe	2	11.7
<i>Northern HMA Subtotal</i>			<i>64.7</i>
Southern HMA	Native Perennial Grassland and Shrub-steppe Mosaic	2	74.1
	Revegetated or Other Planted Grassland	2	89.6
	Shrub-steppe	2	12.3
<i>Southern HMA Subtotal</i>			<i>176.0</i>
Grand Total			240.7
Note: Totals in this table may not appear to sum correctly due to rounding.			
1. All habitat within the HMA is considered Category 2 due to overlap with ODFW-designated Mule Deer Winter Range.			

Vegetation within the potential Olex HMA includes rabbitbrush (e.g., *Ericameria nauseosum*), buckwheat species (i.e., *Eriogonum* sp.), and sagebrush (*Artemisia tridentata*) shrubs, as well as

areas with diverse native forbs (e.g., lupines [*Lupinus* sp.] and yarrow [*Achillea millefolium*]) and non-native grasses (e.g., cheatgrass [*Bromus tectorum*]). The potential Olex HMA is not currently grazed, although livestock grazing is an allowable use of the property. The Applicant will conduct a pre-construction Habitat Assessment of the HMA, using methods similar to those used for the Project's pre-construction surveys, to inform the selection of habitat enhancement actions (see Section 4.1.1) and develop appropriate monitoring procedures (see Section 4.1.2) and quantitative success criteria (see Section 5.0) in consultation with ODFW and ODOE.

4.1.1 Habitat Enhancement Actions

Prior to construction, the Applicant will update this HMP with details on habitat enhancement actions (i.e., implementation schedule, protection measures, etc.) to improve the habitat conditions of the mitigation site. The objectives of habitat enhancement are to protect habitat within the HMA from degradation and to improve the habitat quality of the HMA. By achieving these objectives, the Applicant can address the permanent habitat impacts of the Project and meet the ODFW habitat mitigation goals. Based on consultation with ODOE and ODFW, the Applicant shall choose one or more of the following enhancement actions to be included in the conservation easement or performed on the conservation lands, based on the needs of the HMA, to improve habitat conditions and demonstrate a "no net loss" in habitat quantity or quality and "net benefit" in habitat quantity or quality, as applicable:

- 1. Shrub Planting.** The Applicant will plant sagebrush or other native shrubs in locations within approximately 20 acres within the HMA where existing native shrubs are in poor condition. The final location and density of shrub planting will be determined prior to construction, taking into consideration the condition of the HMA at the time of construction. The Applicant will complete the initial shrub planting within 1-2 years after the beginning of construction of the Project. Supplementing existing, but disturbed, sagebrush areas with sagebrush seedlings, scattering locally collected sagebrush seeds, or transplanting young plants will assist the restoration of this valuable shrub-steppe component. However, if, at the time of construction and habitat enhancement implementation, the condition of the areas with existing shrubs within the HMA is such that shrub planting is not warranted, the Applicant will plant shrubs over a 20 acre area of the HMA that does not currently support shrubs but is capable of supporting shrubs (e.g., within revegetated or other planted grasslands). The Applicant will obtain shrubs from a qualified nursery, located in the same ecoregion as the mitigation area if possible. The Applicant will identify the optimal time of year to plant (e.g., late winter-early spring) and area to be planted with sagebrush or other native shrubs after consultation with ODFW, subject to final approval by ODOE. If shrubs are planted in the same areas as seeding occurs (see enhancement action #3 below), shrub planting will occur following seeding. The Applicant will mark the planted shrub clusters at the time of planting for later monitoring purposes, and will keep a record of the number of shrubs planted.
- 2. Weed Control.** The Applicant will implement a weed control program within the HMA. Under the weed control program, the Applicant will conduct a pre-management weed

assessment to identify the type and percentage of non-native species within the HMA. The Applicant will then monitor the HMA to locate weed infestations. The Applicant will continue weed control monitoring, as needed, for the life of the Project. As needed, the Applicant will use appropriate methods to control weeds. Appropriate weed control methods shall include identification of noxious weeds within the HMA, timing, herbicides, and application mechanism and be based on consultation with the Gilliam County Weed Department. Weed control on the HMA will reduce the spread of noxious weeds within the HMA and on any nearby land. Weed control will promote the growth of desirable native vegetation and planted sagebrush. The Applicant may consider weeds to be successfully controlled when weed clusters have been eradicated or reduced to a non-competing level. Weeds may be controlled with herbicides or hand-pulling. The Applicant will notify the landowners of the specific chemicals to be used on the site and when spraying will occur. To protect locations where young desirable forbs may be growing, spot-spraying may be used instead of total area spraying. Weed control may also include control of annual grasses, followed by shrub-planting (see enhancement action #1 above) and/or seeding (see enhancement action #3 below) in areas with high annual grass cover and low native grass, forb, and shrub diversity (e.g., see example annual grass treatment and seeding areas across approximately 5 acres within the northern HMA in Figure 2).

3. **Seeding.** The Applicant will plant an ODFW-approved seed mix within the HMA in areas that would benefit from increased forb and grass diversity, such as areas of planted grassland and annual grassland. The method for seed application will be determined primarily based on the size of the area to be seeded. The Applicant will seed a minimum of 5 acres. Figure 2 depicts potential areas of seeding across approximately 5 acres within the northern HMA. Controlling weeds and seeding to increase forb and grass diversity in these areas will provide uplift to habitat within the larger HMA by removing weed seed sources and providing a larger contiguous area of higher quality habitat. The final size of the seeded area will depend on the area that would benefit from seeding within the HMA at the time of construction. The Applicant will complete the initial seeding within 1-2 years after the beginning of construction of the Project. The Applicant will record and mark the seeded areas at the time of seeding for later monitoring purposes. The Applicant will develop success criteria for seeding, including the use of paired monitoring and reference sites.
4. **Fire Control.** The Applicant will implement a fire control plan for wildfire minimization. The Applicant will provide a copy of the fire control plan to ODOE before starting habitat enhancement actions. The Applicant will include in the plan appropriate fire prevention measures, methods to detect fires that may occur, and a protocol for fire response if a fire were to occur when Project personnel were present. If any part of the HMA is damaged by future wildfire, the Applicant will assess the extent of the damage and implement appropriate actions to restore habitat quality in the damaged area.
5. **Restricted Grazing.** The Applicant will restrict grazing within the HMA for conservation of vegetation communities and habitat values, and as a permitted use compatible with conservation goals. Grazing will be restricted to December 1 through mid-March, unless

other dates are agreed to prior to the initiation of grazing and/or as winter/spring conditions allow (i.e., with the potential to start later and end earlier). Grazing will be restricted to the following number of animals per 100 acres:

- Cattle: four pairings of a mother and calf per month or an equivalent amount of yearlings, assuming a yearling to mother and calf pairing ratio of 0.6.
- Other domestic livestock (may include horses or sheep): number of horses shall be equivalent to the number of cows stated above and the number of sheep shall be at three times the number of cows stated above.

Success criteria will be developed to ensure grazing is not impacting the health and vigor of shrubs, and is not causing irreversible damage to native perennial grasses.

The landowners have indicated these enhancement actions are appropriate and feasible at the potential HMA (e.g., see Figure 2 provided by the landowner). The final enhancements will be approved by ODOE in consultation with ODFW prior to construction and based on the site-specific conditions of the HMA at the time of construction.

4.1.2 Monitoring

The Applicant will hire a qualified investigator (botanist, wildlife biologist, or revegetation specialist) to conduct a monitoring program for the HMA. The final HMP will describe monitoring and, at a minimum, include sampling design (i.e., paired monitoring and reference sites, with the number of sites based on diversity of habitat subtypes and enhancement action locations) and vegetation maps with monitoring locations identified; description of data collection methods and monitoring procedures; monitoring schedule; agency consultation schedule and methods for data analysis. The purpose of the monitoring program is to evaluate on an ongoing basis the protection of the habitat quality and the results of enhancement actions, especially during the wildlife breeding seasons.

The investigator will monitor the HMA for the life of the Project beginning in the year following the initial treatment. Monitoring will occur annually during the first 5 years following initial treatment, then will occur every 3 years thereafter, unless increased frequency is recommended by ODOE, in consultation with ODFW. As part of finalizing the HMP, the Applicant will submit a description of the monitoring program for review and comment by ODOE, in consultation with ODFW. ODOE, in consultation with ODFW, may recommend or require one or more of those actions and/or additional monitoring actions for the HMA and the habitat enhancement actions. Based upon specific enhancement actions completed, the final HMP will include procedures or description of data collection methods for the following monitoring actions:

1. Assess vegetation cover (species, structural stage, etc.) and progress toward meeting the success criteria;
2. Record environmental factors (such as precipitation at the time of surveys and precipitation levels for the year);

3. Record any wildfire that occurs within the HMA and any remedial actions taken to restore habitat quality in the damaged area;
4. Assess the success of the weed control program and recommend remedial action, if needed; and
5. Assess the survival rate and growth of planted species.

4.1.3 Reporting

Prior to construction of the Project, the Applicant shall provide a draft report template (e.g., table of contents) for review and comment by ODOE, in consultation with ODFW. Based on the agency-reviewed report template, Applicant will provide ODOE and ODFW a report following each monitoring period (within 60 days) detailing the observations and results, including the details of implemented enhancement actions.

The monitoring reports will document enhancement actions implemented to date and additional remedial actions planned for areas that are not apparently trending toward success, and the anticipated dates of completion of each of these actions. The investigator will report on the timing and extent of any livestock grazing that has occurred within the HMA since the previous monitoring visit.

5.0 Success Criteria

The success will be based on improvement of habitat quality based on evidence of indicators such as survival of planted shrubs, natural recruitment of sagebrush, and/or successful weed control. Enhancement actions and habitat quality at the HMA will be compared against the following success criteria to evaluate compliance with the Council's Fish and Wildlife Habitat standard (i.e., consistency with the habitat mitigation goals for Category 3-Category 5 habitat impacts):

- Shrub plantings will generally be considered successful if a 30 percent survival rate is achieved after 4 years.
- Successful weed control (weed monitoring and treatment) within the HMA for the life of the Project. Percentage of noxious weed cover reduced to at or below level found in baseline assessment. Prevention of noxious weed species not present in HMA as of baseline assessment.
- Vegetation density in seeded areas is equal to or greater than that of reference sites.
- Species diversity of desirable vegetation in seeded areas is equal to or greater than that of reference sites.
- Provide a copy of the fire control plan to the rural fire district and ODOE.

The Applicant is obligated to demonstrate that the HMAs meets or that it is demonstrating a trend towards meeting the success criteria for the life of the Project. If the Applicant cannot demonstrate that the HMA is trending toward the habitat quality goals described above within 5 years after the

initial enhancement actions, the Applicant will propose remedial action. ODOE may require supplemental planting or other corrective measures such as additional acreage or new habitat mitigation area throughout the life of the Project depending on ongoing reported trends.

6.0 Agency Consultation

6.1 Pre-construction Requirements

Prior to construction of the Project, the Applicant will complete the following steps as part of finalizing the draft HMP:

- 1. HMA Habitat Assessment and Agency Site Visit:** The Applicant will conduct a desktop or field survey, as determined appropriate by ODOE, in consultation with ODFW, of the HMA. Applicant will submit a report or memo, including maps and tables, identifying the habitat subtypes and categories present within the HMA. The Applicant will coordinate with ODOE and ODFW to determine whether a site visit is necessary to further evaluate site specific conditions and inform the final enhancement actions.
- 2. Finalize Enhancement Actions:** Following review of the HMA Habitat Assessment, Applicant will seek input from ODOE and ODFW on enhancement action opportunities at the HMA. Enhancement actions will, at a minimum, consider those listed in Section 4.1.1 and further defined based on review of the HMA Habitat Assessment or HMA site visit conducted by the Applicant and ODOE and/or ODFW. The final HMP will include a detailed description of final enhancement actions to be implemented and monitored at the HMA.
- 3. Finalize Success Criteria:** Following identification of final list of enhancement actions, the Applicant will finalize, for ODOE and ODFW review and approval, success criteria appropriate for tracking the success of enhancement actions to be implemented and monitored at the HMA. The success criteria will be substantially similar as those identified in Section 5 of this HMP, unless other enhancement actions are selected or Applicant seeks approval of an amendment to the HMP.
- 4. Finalize Monitoring Requirements:** The Applicant will identify paired monitoring and reference sites within the HMA. Reference sites will be identified, in consultation with ODFW, near the enhancement areas to represent pre-enhancement conditions. One or more reference sites will be identified that closely resembles the pre-enhancement characteristics of the identified enhancement areas. The Applicant will consider land use patterns, soil type, local terrain, and noxious weed densities in selecting reference sites. Once reference sites are selected by the Applicant and approved by ODOE in consultation with ODFW, the reference site will remain in the same location unless approval for use of a differing reference site is obtained by ODOE in consultation with ODFW. Prior to construction of the Project, the Applicant will provide to ODOE and ODFW a map and table presenting pre-enhancement habitat category and habitat types and location of the reference sites, enhancement areas, and designated monitoring sites within enhancement areas in proximity to the reference sites.

5. **Legal Instrument:** Prior to construction of the Project, the Applicant shall acquire the legal right to create, maintain, and protect the HMA for the life of the Project by means of an outright purchase, conservation easement, or similar conveyance and will provide a copy of the documentation to ODFW and ODOE. The legal instrument shall, at a minimum, adhere to the requirements outlined in Section 7.

6.2 Operational Requirements

During HMP implementation, the Applicant will establish a consultation schedule based on enhancements, monitoring, and reporting schedule. At a minimum, the Applicant will consult with the ODOE and ODFW 30 days prior to the initial enhancements and monitoring, and within 30 days of monitoring report submission, to discuss details of report observations and recommendations.

The consultation frequency may be amended, based upon agreement between the Applicant, ODOE, and ODFW, but is intended to provide agencies the opportunity and ability to efficiently assess information; maintain current understanding of the mitigation implementation, effectiveness and issues; and provide relevant recommendations based on timing of any issues identified during HMP implementation.

During HMP implementation, the Applicant will coordinate with the Department and ODFW to offer an annual site visit to the HMA each of the first 5 years following initial treatment and then every 3 years thereafter, unless increased frequency is recommended by ODOE, in consultation with ODFW. The timing of the site visit will be based on optimal seasonal conditions for observation of seeding and shrub planting success and/or weed infestations, and is intended to provide agencies an opportunity to review compliance with the terms of the legal instrument and HMP requirements and to provide any onsite recommendations based on site review.

7.0 Legal Instrument

The Applicant will enter into an enforceable and recordable legal instrument, such as a conservation easement or other similar conveyance, that demonstrates reliability and durability of the habitat mitigation for the life of the Project. Prior to construction, the Applicant will provide a draft of the legal instrument to ODOE for review and approval, in consultation with ODFW. ODOE and ODFW review will ensure, at a minimum, that the legal instrument demonstrates or includes the following:

- References and is consistent with the HMP;
- A map and description of all existing structures, impervious surfaces, and access road networks within the HMA;
- Identification of and restrictions on conflicting uses within the HMA, including, but not limited to new roads and associated infrastructure, transmission lines and energy development, land division, and establishment of a feedlot;

- Identification of allowable uses that demonstrate consistency with the HMP wildlife habitat goals; and
- Specifies that ODOE has authority to conduct inspections pursuant to Oregon Administrative Rules 345-026-0050 to ensure that HMAs are being managed consistent with the HMP, with reasonable written notice to the property owner and Applicant.

8.0 Amendment of the HMP

This HMP may be amended from time to time by agreement of the Applicant and the Council. Such amendments may be made without amendment of the site certificate. The Council authorizes ODOE to agree to amendments to this HMP. ODOE shall notify the Council of all amendments, and the Council retains the authority to approve, reject, or modify any amendment of this HMP agreed to by ODOE.

9.0 References

ODFW (Oregon Department of Fish and Wildlife). 2013. ODFW Winter Range for Eastern Oregon. GIS dataset available online at:
<https://nrimp.dfw.state.or.us/DataClearinghouse/default.aspx?p=202&XMLname=885.xml>

West End Solar Project

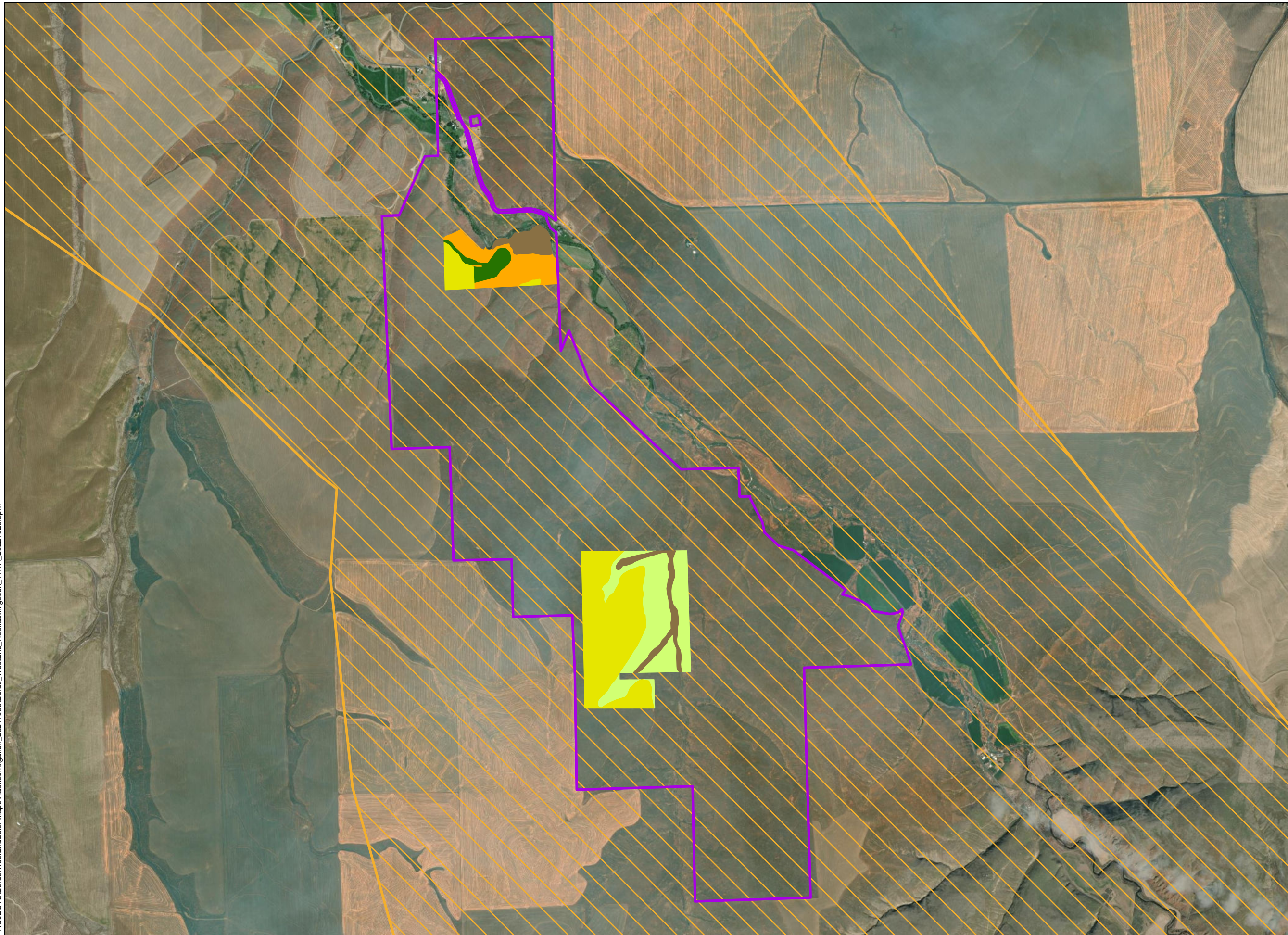
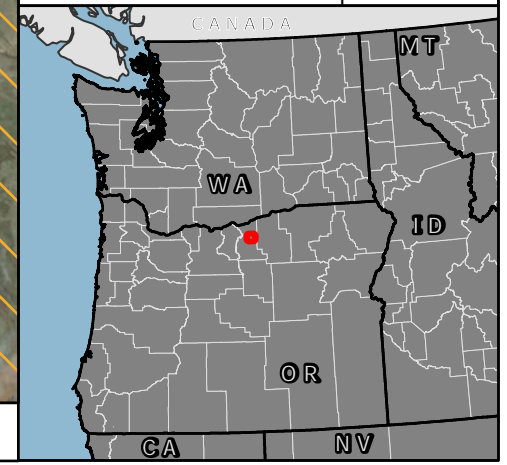
Figure 1 Mitigation Area Habitat Types

GILLIAM COUNTY, OR

-  Olex Property Boundary
-  Mule Deer Winter Range
- Habitat Subtype**
-  Native Perennial Grassland
-  Native Perennial Grassland and Shrub-steppe Mosaic
-  Revegetated or Other Planted Grassland
-  Shrub-steppe
-  Annual Grassland



Reference Map

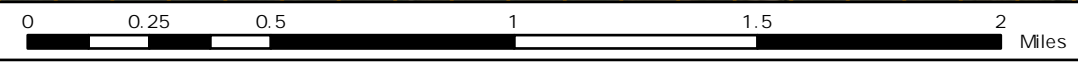


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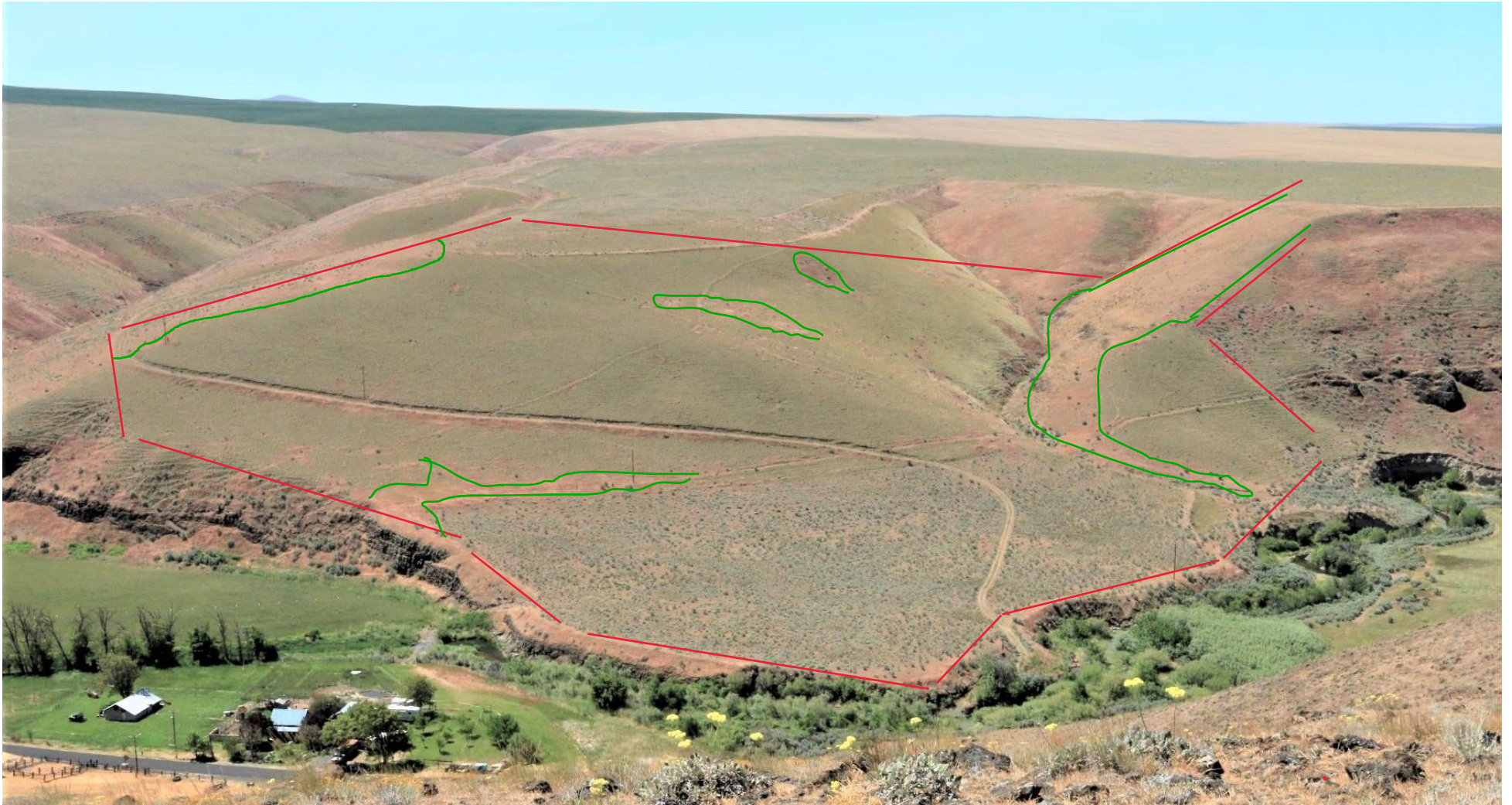
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WGS 1984 UTM Zone 10N



NOT FOR CONSTRUCTION

Figure 2. Example Weed Treatment and Seeding Areas, North Habitat Mitigation Area



— West End Solar Project Potential Habitat Mitigation Area, approximate boundary. Looking southwest from Baseline Road

— Approximate Boundary of Annual Grassland – cheatgrass and annual ryegrass control areas, follow with native perennial grasses as needed

RECORDING REQUESTED BY and
WHEN RECORDED RETURN TO:

EE West End Solar LLC
c/o Eurus Energy America
9255 Towne Centre Drive, Suite 840
San Diego, CA 92121
Attention: General Counsel

GILLIAM COUNTY, OREGON 2022-000155
D-E
Cnt=1 Pgs=4 DAWNP 04/21/2022 11:05:16 AM
\$20.00 \$11.00 \$60.00 \$10.00 Total:\$101.00



00009658202200001550040043

I, Ellen Wagenaar, County Clerk for Gilliam County,
Oregon certify that the instrument identified herein was
recorded in the Clerk records.

Ellen Wagenaar - County Clerk



(Space above this line for Recorder's use only)

MEMORANDUM OF OPTION FOR CONSERVATION EASEMENT

This Memorandum of Option of Conservation Easement ("Memorandum") is made and entered into effective as of April 13, 2022 ("Effective Date"), by and between Robert Gritski and Karen Kronner ("Owners") and EE West End Solar LLC, a Delaware limited liability company ("Optionee").

1. On the 13th day of April, 2022, Owners and Optionee entered into an Option for Conservation Easement (the "Option Agreement"), under which Option Owners granted Optionee an option to acquire one or more easements for land conservation purposes over approximately two hundred forty (240) acres located on certain real property (the "Property") in Gilliam County, Oregon, subject to consideration and other terms and conditions as set forth in the Option Agreement.
2. The term of the option under the Option Agreement will expire not earlier than three (3) years following the Effective Date of this Memorandum.
3. Owners and Optionee desire to memorialize the Option Agreement by recording this Memorandum.
4. The Property description is set forth in Exhibit A, attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, the Parties have executed this Memorandum as of the date set forth above.

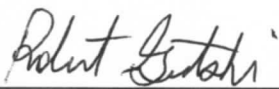
Optionee:

EE West End Solar LLC,
a Delaware limited liability company

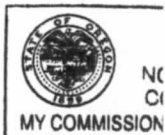
By: 

Title: Hidenari Mitsuhata
President

Owners:


Robert Gritski


Karen Kronner



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

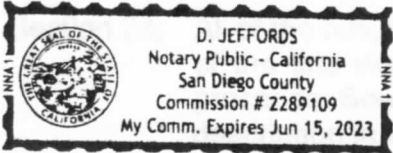
STATE OF CALIFORNIA)
) §
County of San Diego)

On April 13, 2022, before me, D. Jeffords, Notary Public
a Notary Public, personally appeared Hidenori Mitsuoka who proved
to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to
the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct

WITNESS my hand and official seal.

(Affix seal here)



[Handwritten Signature]
Signature of Notary

EXHIBIT A

A 240-acre portion of that certain real property consisting of greater than 240 acres situated in Gilliam County, Oregon with Assessor's Parcel Number 1S21E 2901, described as follows:

Section 14: NW¼, EXCEPT: Deed Book W, page 346, beginning at a point 4 chains West and 1.93 chains South of the Northeast corner of the NW¼ at a stone 8x8x15 inches marked with "X" on top, running thence South 78° 28' East, 2 chains to iron pin in ground; thence South 73° East, 1 chain to iron pin, thence South 57° East 50 links to iron pin, thence South 47° East 40 links to Rock Creek; thence South 47° East 3.40 chains to Rock Creek Bluff to rock marked "C" (which rock is witnessed by rock in bluff marked "X" 18.5 links below); thence in a Southeasterly direction along Rock Creek Bluff to where said bluff intersects the North and South center line of Section 14; thence North on said line to intersection of county road; thence West along South line of said county road a distance of 4 chains from the Northeast corner of NW¼; thence South to the place of beginning.

Excepting the existing 8-foot wide ingress and egress trail for landowner, originating at the public road, Upper Rock Creek located outside of the 240 acres for the conservation easement.

And: Existing overhead utility easement including the terms and provisions thereof, dated October 3, 1973, recorded October 31, 1973, in Gilliam County Deed Book 54, page 42. Grantor: W.N. and Inez J. Noakes. Grantee: Columbia Basin Electric Cooperative, Inc.

Section 23: All of the N½, EXCEPT the parcel in the NE¼NE¼ which is North and East of the line which begins at the Northwest corner of S½NW¼SW¼ and proceeds Southeasterly as described in the second paragraph of the description in Section 14, ALSO, the NE¼SW¼; SE¼.

Section 26: NE¼.

Attachment S-3. Inadvertent Discovery Plan

(As Approved by Council, March 2023)

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Draft Inadvertent Discovery Plan for Cultural Resources

West End Solar Project, Umatilla County, Oregon

SHPO CASE # TBD

The West End Solar Project (Project) is located entirely on private lands near Hermiston, in Umatilla County, Oregon. The Project Area is bound by Canal Road on the west, South Edwards Road on the east, and agricultural fields to the north and south. Eurus Energy America, LLC (Eurus) will develop the solar Project on 324 acres (Project Area) covering Tax Lots 4N29C00000500 and 4N29C00000200. The Project Area is located on fallow agricultural land zoned as Exclusive Farm Use (EFU) by Umatilla County. The Project’s regulatory compliance is limited to Oregon Department of Energy (ODOE) and Energy Facility Siting Council (EFSC) oversight.

This Inadvertent Discovery Plan (IDP) should be followed if cultural materials including human remains are encountered during construction.

Protocol for Coordination in the Event of Inadvertent Discovery

1. In the event of an inadvertent discovery of possible cultural materials, including human remains, all work will stop immediately in the vicinity of the find. For archaeological sites, a 30-meter buffer should be placed around the discovery; a 5-meter buffer around isolated finds; and a 60-meter buffer around human remains. Buffers may be marked with pin flags, wooden stakes with flagging tape, or other available markers. Work may proceed outside of this buffered area unless additional cultural materials are encountered.
2. The area will be secured and protected.
3. The Applicant's project manager or consultant for the Applicant will be notified. The project manager will notify the State Historic Preservation Office (SHPO) and Oregon Department of Energy (ODOE). If possible human remains are encountered, the Oregon State Police, the Oregon Legislative Commission on Indian Services (LCIS), SHPO, and, if determined to be Native American, appropriate Tribes will also be notified.

Role	Name	Contact Information
Construction Manager	TBD	TBD
Project Archaeologist	TBD, Eurus	TBD
	TBD, Contractor	TBD
Project Managers	TBD, Eurus	TBD
	TBD, Contractor	TBD
	TBD, Other	TBD

Role	Name	Contact Information
Confederated Tribes of the Umatilla Indian Reservation (CTUIR), Cultural Resources Protection Program (CRPP)	Teara Farrow Ferman, CRPP Manager Ashley Morton, Archaeologist II	Office Phone: (541) 429-7230 Cell (541) 377-2959 Email: TearaFarrowFerman@ctuir.org Phone: (541)-429-7214 Email: AshleyMorton@ctuir.org
Confederated Tribes of the Warm Springs Reservation of Oregon (CTWSRO)	Roberta Kirk, Assistant THPO Christian Nauer, Archaeologist	Phone: (541) 553-3555 Email: Roberta.kirk@ctwsbnr.org Phone: (541) 553-2026 Email: christian.nauer@ctwsbnr.org
Oregon State Police Contact	Craig Heuberger, Lieutenant	Phone: (503) 508-0779 Email: Craig.Heuberger@osp.oregon.gov Dispatch: (503) 731-3030
Oregon Legislative Commission on Indian Services	Patrick Flanagan, Executive Director Dr. Elissa Bullion, Physical Anthropologist	Phone: (503) 986-1067 Email: Patrick.Flanagan@oregonlegislature.gov Office Phone: (503) 986-1066 Cell: (508) 498-8013 Email: Elissa.Bullion@oregonlegislature.com
SHPO	John Pouley, State Archaeologist	Phone: (503) 480-9164 Email: john.pouley@opr.oregon.gov
ODOE	TBD	TBD

4. No work may resume until consultation with the SHPO, ODOE, and, for Native American-related resources, Tribes has occurred and a professional archaeologist is able to assess the discovery.
5. If human remains are encountered, do not disturb them in any way. Do not call 911. Do not speak with the media. Secure the location. Do not take photos. The location should be secured, and work will not resume in the area of discovery until all parties involved agree upon a course of action.
6. A professional archaeologist may be needed to assess the discovery and, for archaeological sites, they will consult with SHPO, ODOE, and, for Native American-related resources, appropriate Tribal Governments to determine an appropriate course of action.
7. Archaeological excavations may be required. This is handled on a case by case basis by the professional archaeologist and project manager, in consultation with SHPO, ODOE, and, for Native American-related sites, appropriate Tribes.

When to Stop Work

Construction work may uncover previously unidentified Native American or Euro-American artifacts. This may occur for a variety of reasons, but may be associated with deeply buried cultural
West End Solar

material, access restrictions during project development, or if the area contains impervious

surfaces throughout most of the project area which would have prevented standard archaeological site discovery methods.

Work must stop when the following types of artifacts and/or features are encountered:

- ***Native American artifacts may include (but are not limited to):***
 - Flaked stone tools (arrowheads, knives scrapers etc.);
 - Waste flakes that resulted from the construction of flaked stone tools;
 - Ground stone tools like mortars and pestles;
 - Layers (strata) of discolored earth resulting from fire hearths. May be black, red or mottled brown and often contain discolored cracked rocks or dark soil with broken shell;
 - Human remains;
 - Structural remains – wooden beams, post holes, fish weirs.
- ***Euro-American artifacts may include (but are not limited to):***
 - Glass (from bottles, vessels, windows etc.);
 - Ceramic (from dinnerware, vessels etc.);
 - Metal (nails, drink/food cans, tobacco tins, industrial parts etc.);
 - Building materials (bricks, shingles etc.);
 - Building remains (foundations, architectural components etc.);
 - Old Wooden Posts, pilings, or planks (these may be encountered above or below water);
 - Remains of ships or sea-going vessels, marine hardware etc.;
 - Old farm equipment may indicate historic resources in the area;
 - Even what looks to be old garbage could very well be an important archaeological resource.

When in doubt, call it in!

Proceeding with Construction

- Construction can proceed only after the proper archaeological inspections have occurred and environmental clearances are obtained. This requires close coordination with SHPO, ODOE, and, for Native American-related sites, Tribes.
 - When confirmed isolated finds are discovered and there is no potential for additional archaeological materials to be present, as determined by the professional archaeologist, construction may recommence once SHPO and ODOE have been

notified *and* the find is documented on an isolate form and submitted to SHPO. Isolated finds are defined as 9 artifacts or fewer with no more than 30 meters between each artifact.

- When archaeological sites are discovered, as determined by the professional archaeologist, construction may only recommence following consultations under Step 6 above with SHPO, ODOE, and, for Native American-related sites, Tribes, and any treatments have been completed. Archaeological sites are defined as 10 artifacts or more with no more than 30 meters between each artifact, or a single feature.
- After an inadvertent discovery, some areas may be specified for close monitoring or 'no work zones. Any such areas will be identified by the professional archaeologist to the Project Manager, and appropriate Contractor personnel.
- In coordination with the consulted agencies and Tribes, as appropriate, the Project Manager will verify these identified areas and be sure that the areas are clearly demarcated in the field, as needed.

Attachment U-1: Draft Traffic Management Plan

Attachment U-1: Draft Traffic Management Plan

Draft Traffic Management Plan

I. Introduction

The applicant will finalize a traffic management plan prior to construction and in coordination with Umatilla County. The traffic management plan, at a minimum will include and address the measures identified in this Draft Traffic Management Plan.

Peak construction periods would result in a maximum of approximately 500 workers onsite. Most workers would drive alone; vehicle trips per day are based on an assumed 1.25 occupancy rate. Estimated maximum worker daily trip rate would be 400 round trips and 800 one-way trips. Estimated maximum haul and delivery trip rate would be 45 round trips and 90 one-way trips per day. Total maximum daily construction-related traffic would be approximately 890 one-way trips and 445 round trips.

Throughout construction the 90 one-way truck trip and deliveries would include the following activities:

- Delivery of civil construction and materials (sand, aggregate, and cement) for new roads, laydown areas, and equipment pads/foundations for substation and inverters.
- Heavy duty trucks to deliver solar modules and related equipment delivery, including racking system structure, electrical wiring/cabling and equipment, steel posts, inverters, and transformers;
- Substation component delivery, including the main power transformer, circuit-breakers, electrical buses and insulators, disconnect switches, control enclosure, metering and control equipment, grounding, and associated control wiring, and all related equipment based on the final design;
- Energy Storage System (ESS) delivery, including containers, battery modules, and related equipment;
- Delivery of on-site construction equipment such as cranes, dozers, graders, compactors, forklifts, etc.; and
- Light-duty delivery trucks would deliver water and would be used to apply water for dust suppression as well as delivering electrical equipment and materials required for solar panel construction and power transmission.
- Heavy-duty trucks carry gravel and other materials required for site grading and to construct the new site access road segments.

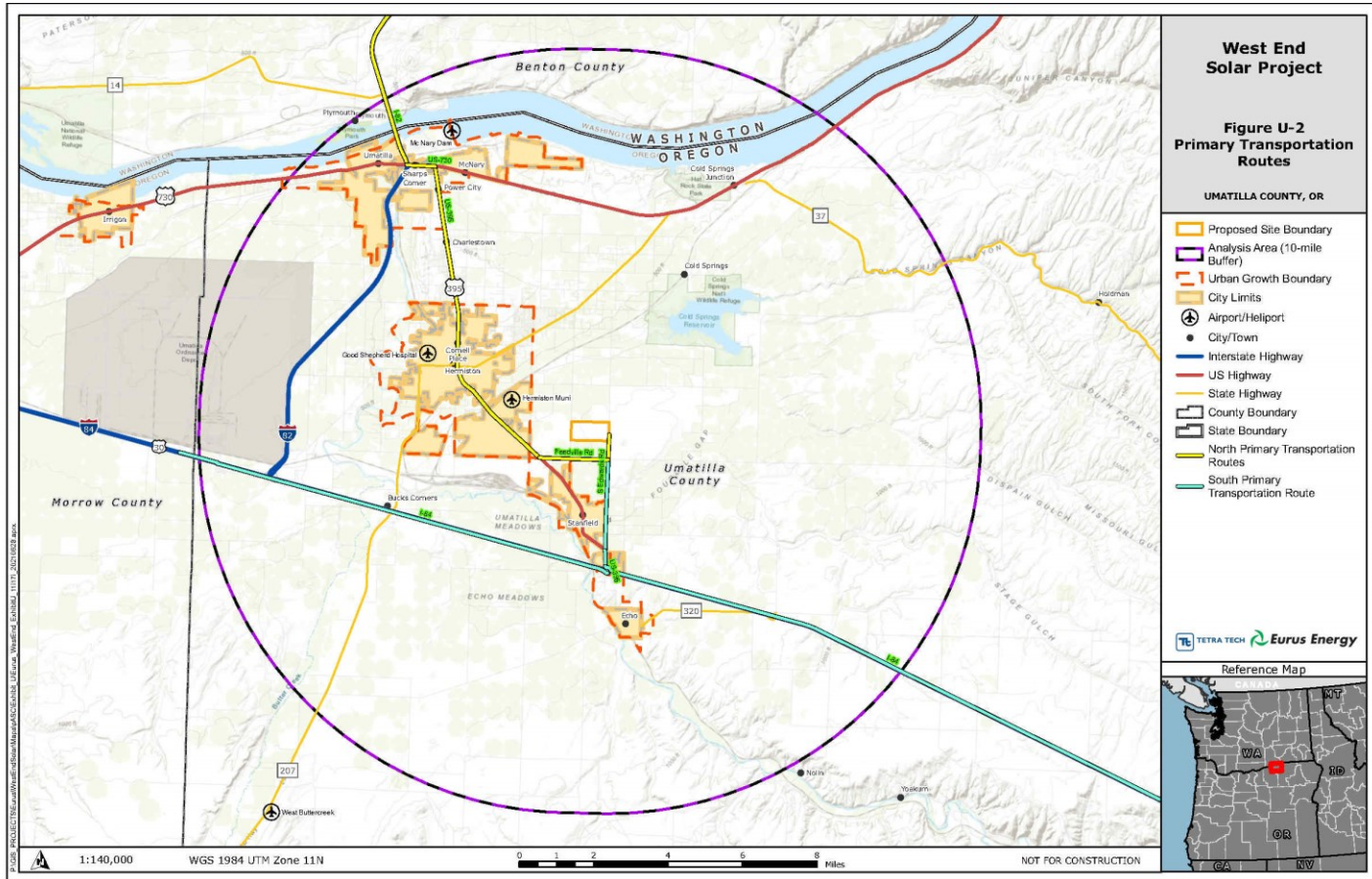
1.a. Construction Access Roads

The primary transportation highway corridors that would be used are I-82, I-84, and US-395. For deliveries and workers arriving from the northern transportation route via I-82, the route would use a short section of US-730 to access US-395 and from there would take Country Road (CR) 1000 east (Feedville Road) from US-395, to S. Edwards Road north. For deliveries and workers arriving from the southern transportation route via I-84 (east or west), access would be anticipated to be from I-84 exit 188 to US-395, and then to S. Edwards Road. The main access

Draft Traffic Management Plan

point to the facility site is anticipated to be located off of S. Edwards Road near the proposed substation. A new driveway off of S. Edwards Road would be required at the access point and will be constructed to Umatilla County standards.

Figure 1: Preliminary Construction Transportation Routes



II. Construction Best Management Practices to Minimize Traffic Service Provider Impacts

Traffic Safety Best Management Practices (BMPs):

- A construction traffic management plan will be completed and submitted to the County prior to construction along with the County road use agreement. More detailed information on the timing of construction and anticipated daily vehicle trips will be available after the Project design is refined which will better inform the construction traffic management plan. The Applicant anticipates including the following traffic management plan measures:
 - During the peak construction period, equipment deliveries will be staggered to minimize impacts within the site and on the local road network.

Draft Traffic Management Plan

- Construction worker carpooling will be encouraged.
- Construction manager will provide construction schedules to adjacent landowners prior to start of construction and will work with adjacent landowners on mitigating any traffic impacts to harvest time activities.
- Movements of normal heavy trucks (dump trucks, concrete trucks, standard size tractor-trailers or flatbeds, etc.) will be minimized (essential deliveries only), to the extent practicable, during peak traffic times.
- Movements of oversize trucks will be prohibited during peak times (rush-hour traffic periods), to the extent practicable. If possible, and considering worker safety, such oversize deliveries will occur during other parts of the day, when background traffic tends to be lower, such as late morning and early afternoon.
- Coordinating the timing and locations of road closures or oversize load movements in advance with emergency services such as fire, paramedics, and essential services such as mail delivery and school buses.
- Maintaining emergency vehicle access to private property.
- Developing plans as required by county or state permit to accommodate traffic where construction would require closures of state- or county-maintained roads for longer periods.
- Posting signs on county- and state-maintained roads, where appropriate, to alert motorists of construction and warn them of slow, merging, or oversize traffic.
- Using traffic control measures such as traffic control flaggers, warning signs, lights, and barriers during construction to ensure safety and to minimize localized traffic congestion. These measures will be required at locations and during times when trucks will be entering or exiting highways frequently.
- Using chase vehicles as required (or police vehicles, if required by ODOT) to give drivers additional warning.
- Notifying landowners prior to the start of construction near residences.
- Restoring residential areas as soon as possible, and fencing construction areas near residences at the end of the construction day. Gates will be installed on access roads to reduce unauthorized access when requested by property owners.

II.a. Permits - ODOT and Umatilla County

The applicant will coordinate with ODOT and Umatilla County road officials as needed on road improvements, road closures, and permits needed for construction or movement of oversized loads of construction equipment or materials. One permit from ODOT and County permit(s) may be required (see also Exhibit E):

- ODOT - Oversize Load Movement Permit/Load Registration. This permit is required for the movement of oversize or overweight loads on state highways, such as construction cranes, substation transformers, or other large equipment.
- Umatilla County - Approach Permit. This permit may be needed if construction of a road approaches onto a county or public road, and private road crossings of county and public roads.

Draft Traffic Management Plan

II.b. Agency Coordination – Umatilla County

Applicant will coordinate with Umatilla County road officials as needed to address necessary road turning radius improvements, temporary road closures, oversize load movements, and monitoring of impacts to county roads. Pursuant to ORS 374.305, all affected counties require permitting for any work to be done within a county right-of-way, including making improvements to roads or intersections, or crossing a county road with the collector lines. The specific permit requirements and the names of those permits vary from county to county, as indicated in Exhibit E, Third Party State or Local Permits; the applicant would verify and comply with all local permit requirements prior to beginning construction on the proposed facility.

The applicant would cooperate with the Public Works Department in Umatilla County with respect to obtaining permits to improve the roads and also to make repairs to roads that might result from construction traffic. In addition, the applicant expects to enter into road use agreements with Umatilla County, to ensure that public roads impacted by construction would be left in 'as good or better' condition than that which existed prior to the start of construction. A component of road use agreements would be a traffic management plan. The traffic management plan will include, at a minimum, the measures in this Draft Plan and measures that address such issues as flagging, signage, and traffic flow around work sites on public roads; timing of oversize/overweight truck loads to avoid impacts to school bus schedules or during peak travel hours; and other mitigation measures if deemed necessary. These measures would help to prevent any construction-related traffic safety issues and would facilitate the free movement of traffic through the proposed facility vicinity. While the movement of heavy or oversized loads of construction materials or equipment may cause some localized traffic delays, these disruptions would be intermittent and temporary.

Attachment V-1: Draft Emergency Management and Wildfire Mitigation Plan

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1.0 General Information

1.1 Introduction

EE West End Solar LLC (Applicant) proposes to construct the West End Solar Project (Project or Facility), a solar energy generation facility and related or supporting facilities in Umatilla County, Oregon. The Project will be a photovoltaic solar energy facility with an estimated nominal and average generating capacity of 50 megawatts (MW) of alternating current (AC). The Project may include an energy storage system with a capacity of up to 70 MW. The Project Site Boundary is 324 acres within which all Project facilities will be located.

This document provides an annotated outline of the Emergency Management Plan and the Projects' Wildfire Mitigation Plan (Emergency Management and Wildfire Mitigation Plan or EMWMP) that would be implemented at the Project during construction and operation of the Project. The information in this outline is subject to change and the full WMWMP will be prepared prior to construction by the Applicant and construction contractor and will contain policies and procedures for preparing for and responding to a range of potential emergencies, including fires.

The plan will list project emergency contact information for the contractor, Applicant, sub-contractors, and local emergency services. The plan will also establish a communication plan for the Project's operational period that will provide annual communications with emergency providers to discuss emergency planning and response should an onsite emergency occur such as a fire. At the beginning of Project operations, a copy of the site plan indicating the arrangement of the Project structures and access points will be provided to the local fire district.

1.1.1 Plan Purpose and Updates

This EMWMP sets forth the Applicant's plan to effectively respond to and address all types of emergency and hazardous situations that may affect facility generation and operations. It will be finalized prior to construction and will comply with all Federal, State, Original Equipment Manufacture's standard operation procedures and utility industry requirements and or best practices.

This EMWMP specifies communication channels the Applicant intends to pursue with local fire protection agency personnel, for example, annual meetings to discuss emergency planning, and invitations to observe any emergency drill conducted at the Project. At the beginning of Project operations, a copy of the site plan indicating the arrangement of the Project structures and access points will also be provided to the local fire district as well as ODOE. Implementation of the EMWMP will ensure risks to public health and safety and risks to emergency responders are minimized.

As discussed in this EMWMP, the Applicant will minimize risk of facility components causing wildfire through Project design, through operations and maintenance activities including the regular maintenance and inspection of Project components and the Project's vegetation

management program, and through the Project's emergency response plan. These measures and activities will minimize potential for wildfire damage to resources evaluated by Council standards such as the potentially eligible historic utility lines located within the Site Boundary.

The Applicant will conduct a review and update (if necessary) this EMWMP every five years during the operational period of the Project. The review of the EMWMP will include an evaluation of wildfire risks following the outline in Section 1.3.4. Updates to the EMWMP wildfire risk assessment outlined in Section 1.3.3 and wildfire risk minimization and management measures as outlined in Section 4.2, will be made if needed and applicable to the facility based on the review of the wildfire risk. Best practices and emerging technologies to minimize and mitigate wildfire risk will be reviewed and incorporated into the plan as appropriate. Best practices and emerging technologies could be related to vegetation management, equipment updates, or updates in remote monitoring devices. If the EMWMP is updated after each five-year review, a copy of the updated plan will be provided to the Oregon Department of Energy (ODOE) with the annual compliance report required under OAR 345-026-008(2). If after the 5-year review of the EMWMP, a determination is made that no updates are required, an explanation of this determination will be provided in the annual compliance report.

The Applicant will incorporate a summary of the results of the quarterly facility inspections (see Section 1.2.3.1) and the annual vegetation survey assessment (see Section 4.2.2) into each of the annual compliance reports required under OAR 345-026-008(2). A summary of the vegetation management conducted within the fence line will also be included in the annual report. The EMWMP will be periodically updated to account for changes in local fire protection agency personnel and changes in best practices for minimizing and mitigating fire risk. A copy of the updated EMWMP will be provided to ODOE

A revision control summary is set forth at the very end of this document.

Implementation of the EMWMP shall be coordinated with reliability measures and policies implemented by EMWMP personnel pursuant to the standards and regulations of all applicable Federal and State agencies including, but not limited to, the Federal Emergency Management Agency (FEMA), North American Energy Reliability Corporation ("NERC") and the Western Electric Reliability Council (WECC), Occupational Health and Safety Administration etc.

1.1.2 Activation Trigger/EMP Situation

The EMP shall be activated whenever a Regulatory Agency announces, or it becomes evident to Facility personnel, that an emergency, threat or hazard has occurred or is about to occur. Any such set of circumstances shall be treated as an "EMP Situation".

It shall be the responsibility of the Facility Site Manager, in consultation with management of the Applicant to identify and declare such an EMP Situation, activate the EMP, and initiate all relevant and applicable steps towards mitigating potential damage to Facility operations. Emergency conditions necessitating activation of this EMP shall also be communicated to the Facility 24/7 Remote Operations Control Center (ROCC), Qualified Scheduling Entity (QSE) and power

purchaser and any required Regulatory Agency. However, in the absence of an alert from an outside party, the Facility Manager shall monitor potential emergencies or threats of any kind as they occur and be prepared to respond accordingly.

1.2 Project Description

The major components of the Project are the solar arrays (composed of solar modules), collector line system, battery energy storage system (BESS), Project collector substation, switchyard substation, operations and maintenance (O&M) enclosure, and access roads. All components will be within the approximately 324-acre Site Boundary. The layout of the Project has not been finalized and may vary depending on project size, technology, and other constraints. Prior to finalization of this plan, the final site plan will be incorporated into Section 1.3.2.

Detailed description of facility design features that reduce the risk of fires are described in Section 1.2.1 and details about vegetation management practices that reduce the risk of wildfire are discussed in Section 4.2.2.

1.2.1 Project Design Features that Minimize Fire Risk

- Maintain a noncombustible, defensible space clearance along the fenced perimeter of the Site Boundary. Any potential fires inside the solar array will be controlled by trained Facility staff who will be able to access the Facility around the clock. These measures will help keep external fires out or internal fires in.
- Smoke/fire detectors will be placed around the site that will be tied to the supervisory control and data acquisition (SCADA) system and will contact local firefighting services. The SCADA system allows each component of the Project to be monitored for activity in present time. If an issue arises with a solar string, it alerts the O&M staff so that the component can be shut down to minimize consequences of failure and potential safety risks. In the event an anomaly is observed by the SCADA system or during an inspection, original equipment manufacturer (i.e., OEM) engineering is advised, and further inspection may be carried out by subject matter experts to determine root cause and resulting action required to rectify the issue.
- Roads and Vehicles:
 - Project access roads would be sufficiently sized for emergency vehicle access. Specifically, roads would be 12 to 20 feet wide with an internal turning radius of 28 feet and less than 10 percent grade to provide access to emergency vehicles. Vegetation will be cleared and maintained along perimeter roads to provide a vegetation clearance for fire safety. All newly constructed roads will be graded and graveled to meet load requirements for all equipment.
 - Maintenance vehicles would drive and park on maintained gravel roads and areas cleared of vegetation, avoiding hazards associated with driving or parking in tall dry grass.
- Solar Panel and BESS Design:

- Proper installation and maintenance of electrical equipment to prevent short-circuits and consequent sparking, and reduction in fuel to reduce the chance of fire spreading.
- Electrical equipment would meet National Electrical Code and Institute of Electrical and Electronics Engineers standards and would not pose a significant fire risk.
- Solar array would have shielded electrical cabling, as required by applicable code, to prevent electrical fire.
- The collector system and substation/switchyard will have redundant surge arrestors to deactivate the Project during unusual operational events that could start fires.
- The substation and switchyard will also include a lightning protection system.
- The areas immediately around the Project substation, BESS, and switchyard would be graveled, with no vegetation present. The collector substation, switchyard, and battery storage will have also sufficient spacing between equipment to prevent the spread of fire.
- The lithium-ion ESS will have the following fire prevention features and controls:
 - Each energy storage system unit will have a thermal management system designed and sized so heat generated can be removed ensuring the batteries operate in an environment that does not exceed the operational temperature range defined by the battery manufacturer.
 - Each unit will have temperature, current, voltage, and humidity sensors which provide a real time information of the conditions inside the enclosures.
 - There will be a Fire Safety System that monitors heat, and smoke, and provides dedicated annunciation/alarms in the event a fire condition is detected, automatically returns the system to a standby mode and if necessary automatically deploys an appropriate suppression agent. The fire alarm functions are handled by a common fire alarm control panel (FACP) in the auxiliary control cabinet. The FACP monitors the status of the detectors and initiates an alarm if a fire is detected. The panel is set up with fire detection zones for the detectors in the battery enclosures. The FACP is connected to the local strobe and siren unit for alarm annunciation. Internal batteries in the FACP provide backup power if the main power supply is temporarily lost.
 - The structure of the enclosure will be designed so that if an internal fire occurs, it can impede flames from moving to adjacent enclosures or the environment.
 - The energy storage system enclosures will be equipped with proper safety labels and signages for the safety of site personnel. The enclosure will be electrically touch safe and grounded.
 - On-site personnel will be able to activate an emergency stop via an emergency stop button on the external wall of the energy storage system enclosures.
 - Adherence to the requirements and regulations, personnel training, safe interim storage, and segregation from other potential waste streams will minimize any public hazard related to transport, use, or disposal of batteries.
- Vegetation within the fence line will be managed as needed to reduce fuels for fire (see Section 4.2.2).

1.2.2 Construction Activities and Sequencing/Schedule

To be determined (TBD)

1.2.3 Operations and Maintenance Activities and Schedule

1.2.3.1 Facility Inspections

In general, the Project will be monitored and operated remotely using the Supervisory Control and Data Acquisition (SCADA) System which will be installed to collect operating and performance data from the solar arrays. Smoke/fire detectors will be placed around the site that will be tied to the SCADA System and will contact local firefighting services as needed.

Additionally, the BESS will have an integrated fire safety system that monitors heat, and smoke, and provides dedicated annunciation/alarming in the event a fire condition is detected, automatically returns the system to a standby mode and if necessary, automatically deploys an appropriate suppression agent. The fire alarm functions are handled by a common fire alarm control panel (FACP) in the auxiliary control cabinet. The FACP monitors the status of the detectors and initiates an alarm if a fire is detected. The panel is set up with fire detection zones for the detectors in the battery enclosures. The FACP is connected to the local strobe and siren unit for alarm annunciation. Internal batteries in the FACP provide backup power if the main power supply is temporarily lost.

The SCADA system will allow the Applicant to monitor the Project components, such as the substation, solar arrays, and BESS, 24 hours a day, 7 days a week. The SCADA system will have functionality that will allow the applicant to start and stop any aspect of the facility. These facility components would be inspected quarterly.

These operational monitoring and maintenance measures are also discussed in Section 1.2.1, under Project Design Features that Minimize Fire Risk.

In addition to the remote monitoring, onsite inspections of Project equipment will occur quarterly. Onsite inspections will include check lists provided by the Original Equipment Manufacturer and the use of utility industry best practices.

1.2.3.2 Heightened Wildfire Risk Preventive Action

The Applicant will minimize risk of facility components causing wildfire through Project design (see Section 1.2.1), through operations and maintenance activities including the regular maintenance and inspection of Project components (see Section 1.2.3.1) and the Project's vegetation management program (see Section 4.2.2), and through the emergency response procedures described in this EMWMP.

Additionally, The Northwest Interagency Coordination Center (NWCC) Predictive Services group provides fire weather advisories (such as Red Flag Warnings) and fuel and fire behavior advisories (including fuel status reports and fuel moisture content predictions) for each predictive service area (PSA) in the northwest. The Project Site Boundary is located within PSA NW10. Fire danger

forecasts for the Project area will be monitored, and Project activities and mitigation measures will be adjusted based on their annual variations.

1.3 Site Description

1.3.1 Site Access

Site access will be limited to authorized personnel only and based on Federal and State legislation in addition to utility industry best practices. Ingress and egress points will be identified in Facility specific construction drawings.

1.3.2 Site Plan

TBD

1.3.3 Areas Subject to Heightened Fire Risk

Based on data provided in Exhibit V of the 2022 ASC and in the Final Order on the ASC, the area within the Project Site Boundary has a moderate wildfire risk mainly due to the existing vegetation and the relatively dry climate in this region.

However, the lands immediately north, west, and south of the Site Boundary have a low wildfire risk as these lands are mostly irrigated agriculture. Lands immediately east of the site boundary share similar characteristics as the land within the Site Boundary and therefore has a moderate wildfire risk. However, the moderate risk lands east of the Site Boundary are separated from the Site Boundary by S. Edwards Road, a paved county road that would serve as a fire break were a wildfire to occur east of the Site Boundary. Therefore, there is low risk of a wildfire entering into the Site Boundary from surrounding lands.

Within the Site Boundary, the only existing structures are the existing transmission lines. If a wildfire were ignited onsite, the areas subject to heightened risk would be the areas associated with the existing transmission line poles. The transmission line towers may be considered areas of high fire consequence as there is the potential for high fire hazard for these structures.

During Project operations, the areas within the Site Boundary that are subject to a heightened risk of wildfire include the solar array areas. This is because the solar array areas will have low-growing vegetation maintained below them during the operational period of the Project. Measures for reducing the risk of fire ignition and reducing the risk of equipment damage were a wildfire to occur will include regular maintenance and inspection of Project components (see Section 1.2.3.1), the Project's vegetation management program (see Section 4.2.2), and through the emergency response procedures described in this EMWMP. The substation and switchyard areas as well as the distributed inverter/transformer pads will have reduced risk for fire due to the fact that these areas will have a gravel base with no vegetation to reduce fire risk.

1.3.4 Updated Review of Wildfire Risk

Every five years, the Applicant will review wildfire risk at the Project site. Evaluation of wildfire risk will be consistent with the requirements of OAR 345-022-0115(1) and will include an evaluation of Baseline and Seasonal wildfire risk using current data from reputable sources and will update as applicable:

- Baseline wildfire risk, based on factors that are expected to remain fixed for multiple years, which may include topography, vegetation, Fire Hazards to Infrastructure, Fire History, Active Fires, and Burn Probability 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, weather advisories, and fuel moisture content;

During the 5-year review of wildfire risk at the Project site, the Applicant will also include the evaluation and identification of:

- Areas subject to a heightened risk of wildfire, based on the information provided above.
- 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.

2.0 Personnel Responsibilities and Communication

2.1 Project Emergency Information

Preliminary list below – TBD.

Table 1. Project Emergency Contact Information

Title	Name	Phone	Email	Physical Address
Local Emergency Services				
Oregon 811		811 800.332.2344		
Emergency Services	EMS	911		
Local Law Enforcement	Umatilla County Sheriff	541-966-3600 541-966-3651		915 SE Columbia Ave., Hermiston, Oregon 97838
Local Fire Department	Umatilla County Fire District #1 Station 24	541-667-5130	fire.district@ucfd1.com	280 W Coe Ave., Stanfield, Oregon 97875
Local Occupational Clinic	Health One	541-567-2600		645 West Orchard, Hermiston, OR 97838
Local Health Care Facility (Level III Trauma Center)	Good Shepherd Health Care Services	541-667-3400		610 NW 11 th Street, Hermiston, Oregon 97838
Local Hospital (Level I Trauma Center)	Oregon Health & Science University Hospital and Legacy Emmanuel Medical Center	503-413-2200		2801 N. Gantenbein Ave. Portland, OR 97227
EE West End Solar LLC				
Facility Manager	Jerod Cole	214-437-6818	jcole@eurusenergy.com	84670 Ringer Road Milton-Freewater, OR 97862
Engineering Manager	Lee Peacock	858-444-7704	lpeacock@eurusenergy.com	9255 Towne Centre Drive Suite 840, San Diego, CA 92121
<Contractor>				
TBD; Operations Manager				
<Subcontractors>				
TBD				
Local Utility Services				
TBD				

2.2 Personnel Roles and Responsibilities

- TBD
- *Jerod Cole is currently anticipated to be the Facility Manager with overall responsibility for Facility operations.*
- *Lee Peacock is currently anticipated to be Engineering Manager supporting overall performance of the Facility.*
- *A contracted Operations Manager has yet to be determined.*
- *Personnel will be identified and added to this section prior to finalization of this plan.*

2.2.1 Project Safety Manager

- TBD
- *Jerod Cole is currently anticipated to be the Facility Manager with overall responsibility for operations of the Facility.*

2.2.2 Site Personnel / Subcontractors

- TBD
- *A Facility Operations Manager and subcontractors are to be determined.*

2.3 Communication

2.3.1 Communication Plan

Upon the recognition of an EMP Situation, the Facility Manager shall communicate immediately to all Facility personal, EEA and all necessary outside parties: what type of emergency is taking place as well as all short- and medium-term actions will be taken.

2.4 Training

Training to be based on Federal, State and local legislation, Original Equipment Manufacturer's manuals and utility industry best practices.

3.0 Pre-Emergency Planning

3.1 Pre-Emergency Planning

All Facility personnel and relevant support personal involved with managing the operations shall participate in an annual drill to test the procedures outlined in this EMP. It is important that all types of emergencies (physical, meteorological and cyber, etc.) all considered when conducting a drill, because often the response to different kinds of emergencies will be substantially the same. Following any drill, Facility staff and support personal will assess the effectiveness of the drill and modify the EMWMP Plan as needed.

3.2 Notices and Signage

To be based on Federal, State and local legislation, Original Equipment Manufacturer's manuals and utility industry best practices.

3.3 PPE and Emergency Equipment

To be based on Federal, State and local legislation, Original Equipment Manufacturer's manual and utility industry best practices.

4.0 Emergency Response Procedures

To be based on Federal, State and local legislation, Original Equipment Manufacturer's manual and utility industry best practices.

4.1 Emergency Medical Treatment

In the event of a medical emergency facility personal or designated representative will call Emergency Services at 911.

4.2 Fire Prevention and Protection and Emergency Responsibilities and Procedures

To be in accordance with Federal, State and local legislation, Original Equipment Manufacturer's manuals and utility industry best practices and in accordance with construction drawings.

4.2.1 Fire Prevention and Protection

4.2.1.1 Understanding Conditions Associated with Photovoltaic Solar Arrays

TBD

4.2.1.2 Construction Avoidance, Reduction, and Mitigation Measures to Reduce Fire Hazard

Preliminary list of Construction Avoidance, Reduction, and Mitigation Measures to Reduce Fire Hazard provided below. Subject to revision prior to finalizing plan.

- The Facility will be deenergized for most of the construction period, only during the final commissioning stage it's expected to be connected to grid.
- During construction, contractor will follow all relevant Occupational Safety and Health Administration and NFPA requirements related to fire hazards including: no smoking policy, fire permit requirement, hazardous material and combustible storage areas, pre task planning to assess fire risks, relevant fire awareness training, lockout-tagout requirement, hazardous materials documentation, appropriate management, and disposal.

- Fire Prevention, Suppression and Emergency Preparedness:
 - During periods of high fire danger potential sources of fire ignition (vehicle exhaust systems, cigarettes, matches, propane torches, sparks from various hot work operations, etc.) must be used with extra precaution.
 - During construction, a water truck would be on-site to keep the ground and vegetation moist during extreme fire conditions.
 - Prior to start of construction work activities, contact the local fire department(s) and advise them of work type, location, and probable duration. Maintain open communication with local fire district personnel to identify and address fire hazards
 - Keep emergency firefighting equipment on-site when potentially hazardous operations are taking place.
 - Prior to performing hot work (anything that creates a spark or an open flame is considered hot work), fire suppression equipment must be immediately available, hot work must only be done on road or surfaces cleared of vegetation, and the on-site Safety Supervisor must be notified (see also Section 4.2.4.1).
- Vehicles:
 - Plan and manage the work and the movement of vehicles. No off-road driving is to be done while working alone.
 - Prohibit construction workers from parking vehicles in areas of tall dry vegetation, to prevent fires caused by contact with hot mufflers or catalytic converters
 - Each vehicle used on-site shall have a shovel and fire extinguisher of sufficient type and capacity to suppress small fires around vehicles. Vehicle occupants shall be familiar with the location of these fire extinguishers. All employees who may have a need to use a fire extinguisher shall be current in their training on the general principles of fire extinguisher use and the hazards involved with incipient stage firefighting.
 - The general contractor would be responsible for identifying and marking the path for all off-road vehicle travel.
 - All off-road vehicle travel is to stay on the identified path.
 - In the event a vehicle gets stuck, shut the engine off. Periodically inspect the area adjacent to the exhaust system for evidence of ignition of vegetation. Do not "rock" the vehicle to free it; rather, pull it out. Inspect the area after the vehicle has been moved.
 - In tall grass (i.e., tall or taller than the exhaust system of the vehicle[s]), pre-wet the area with water prior to driving on it with vehicles.
- Fueling
 - The general contractor would designate a location for field fueling operations at each construction yard. Any fueling of generators, pumps, etc., shall take place at this location only.
 - Fuel containers, if used, shall remain in a vehicle or equipment trailer, parked at a designated location alongside county rights-of-way. No fuel containers shall be in the

vehicles that exit the right-of-way except for one 5-gallon container that is required for the water truck pump

- Smoking
 - Smoking shall only be allowed in the designated smoking areas of the Proposed facility.

4.2.1.3 Operations Avoidance, Reduction, and Mitigation Measures to Reduce Fire Hazard

The Applicant will minimize risk of facility components causing wildfire through Project design (see description of design features that minimize fire risk in Section 1.2.1), through operations and maintenance activities including the regular maintenance and inspection of Project components (see Section 1.2.3.1) and the Project's vegetation management program (see Section 4.2.2 below), and through emergency response procedures described in this EMWMP.

4.2.2 Vegetation Management Fire Risk Reduction Procedures

- Vegetation within the fence line and below the solar arrays will be maintained to a height of 18- inches and provide a minimum of 24-inch clear distance to any exposed electrical cables. Exposed electrical wires should be running under the solar panels at the midpoint or higher than the center of the panel.
- Vegetation will be removed within 10-foot perimeter of the inverter/transformer/battery unit pads. Gravel or similar noncombustible base will be located within the 10-foot perimeter of these pads. Vegetation will be removed from inside the Project collector substation fence line. Gravel or similar noncombustible base shall be used.
- Vegetation maintenance during operation of the Project will ensure that vegetation does not grow in a manner that blocks or reduces solar radiation reaching the solar panels and reduce the risk of starting a fire. Vegetation control will employ Best Management Practices (BMPs) and techniques that are most appropriate for the local environment. BMPs may include physical vegetation control such as mowing or introduction of a non-invasive species that is low growing. In rare circumstances where it is necessary to use herbicides, an effort will be made to minimize use and only apply bio-degradable, Environmental Protection Agency -registered, organic solutions that are non-toxic to wildlife. Any herbicides used for vegetation management the site will be selected and used in a manner that fully complies with all applicable laws and regulations.
- To minimize vegetation maintenance, an agency-approved seed mix for low-growing vegetation will be applied post construction, following preparation of the soil. The seed mix is anticipated to encourage low-growing vegetation that does not require mowing. However, periodic vegetation maintenance through various means such as mechanical/grazing/hand pulling may be needed in the spring in combination with the noxious weed control plan. (*Reference to be made to separate Noxious Weed Control Plan. The final version of this plan will identify the selected seed mix for revegetation.*)

Vegetation Management Procedures and Timing

- The Applicant will conduct periodic vegetation maintenance within the Project’s fenced area to maintain vegetation within the fence line and to maintain a 5-foot noncombustible, defensible space clearance along the fenced perimeter of the Site Boundary. Defensible space will be free of combustible vegetation or other materials. Roads and parking areas will be maintained to be free of vegetation tall enough to contact the undercarriage of the vehicle. The timing and frequency of the periodic vegetation maintenance (e.g., mechanical/grazing/hand pulling, etc.) will depend on the conditions on site (weather, vegetation growth, season, etc) but is anticipated to be conducted weekly or monthly during the vegetation growing season (spring/early summer) and will be less frequent during the dry season where vegetation is anticipated to go dormant.
- A physical vegetation survey assessment of the fenced area will be completed at least once annually to monitor for vegetation clearances, maintenance of fire breaks, and monitor for wildfire hazards. The vegetation survey assessment will occur in May or June, prior to the start of the dry season, a time when wildfire risk is heightened. The survey will be conducted by the Site Operations Manager and will be used to assess the frequency of the periodic vegetation maintenance (e.g., mechanical/grazing/hand pulling, etc.) and identify areas that may need additional attention. Observations in the vegetation survey will include:
 - Location
 - Species
 - Estimated growth rate
 - Abundance
 - Clearance / Setbacks
 - Risk of fire hazard

4.2.3 Fire Department Access

(See also Section 1.3.1)

4.2.3.1 Site Access

To be defined in construction drawings.

4.2.3.2 Internal Site Access Roads

To be defined in construction drawings.

4.2.3.3 Access Aisles

To be defined in construction drawings.

4.2.4 Controlling Hazards & Prevention Practices

4.2.4.1 Welding and Open Flame / Hot Work

*To be in accordance with Occupational Health and Safety Code of Federal Regulation 1917.153
Welding, cutting and heating (hot work)*

4.2.4.2 Combustibles

To be in accordance with National Fire Protection Association (NFPA) and Occupational Health and Safety Codes of Federal Legislation.

4.2.4.3 Electric Fire Hazards

To be in accordance with National Fire Protection Association (NFPA) and Occupational Health and Safety Codes of Federal Legislation

4.2.5 Equipment Fire Safety

To be based on Federal, State and local legislation, Original Equipment Manufacturer's manuals and utility industry best practices.

4.2.6 Emergency Response

- Emergency Notification and Follow Up
 - The following course of action should be taken if an emergency situation develops:
 - Evacuate as necessary. Maintain site security and control if possible. If crews are working at different areas of the site, a designated meeting location would be created for all people to gather.
 - Notify proper emergency services (fire, ambulance, etc.) for assistance.
 - Notify site management of any possible fires.
 - Prepare a summary report of the incident as soon as possible after the incident.

4.3 Spill Prevention and Response

Reference to be made to separate Spill Prevention, Control, and Countermeasures (SPCC Plan)

4.4 Severe Weather

4.4.1 Severe Thunderstorm and Tornado Warnings

4.4.2 Floods

4.4.3 Extreme Temperatures and Red Flag Warnings

The Northwest Interagency Coordination Center (NWCC) Predictive Services group provides fire

weather advisories (such as Red Flag Warnings) and fuel and fire behavior advisories (including fuel status reports and fuel moisture content predictions) for each predictive service area (PSA) in the northwest. The Project Site Boundary is located within PSA NW10.

Fire danger forecasts for the Project area for PSA NW10 will be monitored by the Site Operations Manager or designee. Project activities and mitigation measures will be adjusted as needed to address fire risks.

5.0 Post-Emergency Procedures

5.1 Accident / Incident Reporting

To be based on Federal, State and local legislation, Original Equipment Manufacturer’s manuals and utility industry best practices.

5.2 Restoration and Salvage

To be based on Federal, State and local legislation, Original Equipment Manufacturer’s manuals and utility industry best practices.

6.0 Attachments and Forms

Revision Control Summary

Date of change	Sections Amended	Approval Signature(s)

The last update to this EMP was approved effective _____, and supersedes and replaces all previous EMPs or amendments adopted, including the last comprehensive update on October __, 2022.

7.0 References

References will be added based on final sources used to finalize plan and when plan is reviewed and updated.

**Attachment X-1: EFSC Approved Bond Template (2022-04-22) and EFSC Approved LOC Template
(2022-01-28)**

SITE CERTIFICATE BOND

Bond No. TEMPLATE

KNOW ALL PERSONS BY THIS INSTRUMENT, THAT WE

SITE CERTIFICATE HOLDER (Hereinafter called Principal), as Principal and **INSURANCE COMPANY**, a corporation duly organized and existing under and by virtue of the laws of the State of Oregon (hereinafter called "Surety") as Surety, are held and firmly bound unto the STATE OF OREGON, acting by and through the ENERGY FACILITY SITING COUNCIL, (Hereinafter called "Obligee"), as Obligee, in the penal sum of **WRITE OUT AMOUNT** Dollars, **(\$X,XXX,XXX)** good and lawful money of the United States of America, to be paid to the Obligee, for the payment of which, well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal has been granted a Site Certificate for the **Project Name** dated **Month day, Year** ("Site Certificate"), and

WHEREAS, the Principal is required to provide and maintain financial security to the Obligee in the amount of **\$X,XXX,XXX (X Quarter, 20--dollars)** under Condition **Number** of the Site Certificate; and

WHEREAS, the Principal is required to retire the facility and restore the site according to a final retirement plan approved by the Council under Condition **Number** of the Site Certificate.

THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if the said Principal complies with the conditions of the Site Certificate referenced above, OR, if the Principal obtains and provides alternate financial assurance approved by the Council then this obligation shall be void, otherwise this obligation will remain in full force and effect.

The Surety shall become liable on this bond obligation if the Principal fails to fulfill its obligations to comply with the conditions of the Site Certificate referenced above. Upon notification by the Obligee that the Principal has failed to perform as guaranteed by this bond, the Surety will be obligated to pay monies to the Obligee, limited to the penal sum of this bond, within 90 days.

PROVIDED, HOWEVER, THAT THIS BOND IS EXECUTED BY THE PRINCIPAL AND SURETY AND ACCEPTED BY THE OBLIGEE SUBJECT TO THE FOLLOWING EXPRESS CONDITIONS:

1. It is understood by all parties that the terms of this bond shall become effective on **Month Day, Year**.
2. The liability of the Surety shall in no event exceed the penal sum of the bond.
3. The Surety has no obligation to perform any restoration work and no responsibility to contract with any other party for restoration work at the site. The Surety's obligation under this bond consists solely of the payment of sums due the Obligee and no other obligation.
4. No right of action shall accrue under this bond to or for the use or benefit of anyone other than the named Obligee or its successors or assigns. No assignment by the Principal shall

be effective without the written consent of the Surety.

5. The Surety may cancel this bond at any time by giving the Principal and Obligees one hundred twenty (120) days written notice of the Surety's intent to cancel this bond. Notice to the Obligees must be sent to:

Oregon Energy Facility Siting Council
c/o Oregon Department of Energy
550 Capitol St. NE
Salem, OR 97301

6. If the Surety provides notice of intent to cancel this bond prior to the Principal fulfilling its obligation to retire the facility and restore the site, but Principal does not provide alternate financial assurance approved by the Council within 90 (ninety) days after the date the notice of intent to cancel is received by the Obligees from the Surety, the Surety will be obligated to pay monies to the Obligees, limited to the penal sum of this bond, upon demand by the Obligees prior to the effective date of the cancellation.

7. If any conflict or inconsistency exists between the Surety's obligations as described in the bond and as described in the underlying Site Certificate, then the terms of the bond shall prevail.

8. No modification of the Site Certificate guaranteed by this bond shall be binding on the Surety or covered by this bond without the written consent of the Surety.

9. The Surety may issue a rider or riders annually to adjust the penal sum of the bond for inflation as consistent with Condition **Number** of the Site Certificate based on the U.S. Gross Domestic Product Implicit Price Deflator, chain weighted, as published in the Oregon Department of Administration Services' "Oregon Economic and Revenue Forecast," or by any successor agency ("the Index"). Any rider adjustment will be subject to normal underwriting procedures and approval by the Surety, and if approved by the Surety, will adjust the penal sum of the bond based on the percentage increase in the noted index. If at any time the index is no longer published, the Obligees shall select comparable calculation to adjust **#** Quarter **YEAR** dollars to present value under Condition **Number** of the Site Certificate.

10. The Surety agrees that it is liable for additional costs and expenses including reasonable attorneys' fees, awarded by a court to Obligees in successfully enforcing the obligation against the Surety in the event Surety wrongfully fails to pay sums owed as required under the bond.

11. This bond shall not bind the Surety unless the bond is accepted by the Obligees. The acknowledgment and acceptance of such bond is demonstrated by signing where indicated below. If this obligation is not accepted by way of signature of the Obligees below, this bond shall be deemed null and void.

IN WITNESS WHEREOF, said Principal and Surety have caused this instrument to be executed in their names and by their seals to be hereunder affixed on this **XX** day of **Month 20XX**.

Site Certificate Holder

ATTEST _____ BY _____

Principal

INSURANCE COMPANY

ATTEST _____ BY _____

Name

Witness as to Surety

Name, Attorney-in-Fact

The above terms and conditions of this bond have been reviewed and accepted by

_____, the Obligee

Acknowledged and Accepted:

By: _____

Printed Name: _____

Title: _____

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER [REDACTED]

Date

STATE OF OREGON
Acting by and through
The Energy Facility Siting Council
c/o Energy Siting Division Administrator
Oregon Department of Energy
550 Capitol St NE – 1st floor
Salem, Oregon 97301-3737

Ladies and Gentlemen:

At the request and for the account of [Site Certificate Holder, address], and on behalf of the [Project Name], we, [Financial Institution] hereby establish effective immediately, in favor of you, the STATE OF OREGON, acting by and through The Energy Facility Siting Council ("Beneficiary") this Irrevocable Standby Letter of Credit Number [REDACTED] (the "Letter of Credit") in the amount of USD \$x,xxx,xxx (write out number) (as such amount may be reduced from time to time by partial draws hereunder, the "Stated Amount").

We are informed that this Letter of Credit is being issued in connection with the Site Certificate for the [Project Name] with the STATE OF OREGON dated [month day, year], as may be amended from time to time.

This Letter of Credit is issued, presentable, and payable at our offices at [Financial Institution, address] Attention: Standby Letter of Credit Department and expires with our close of business on [date] (the "Expiration Date").

It is a condition of this Letter of Credit that it shall be automatically extended without amendment for successive one (1) year periods from the present or any future Expiration Date hereof, unless we provide you with written notice by overnight courier or registered mail of our election not to extend this Letter of Credit at least one hundred twenty (120) days prior to any such Expiration Date (the present or any future expiration date as aforesaid is referred to herein as the "Expiration Date"). For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York.

Subject to the terms and conditions herein, funds under this Letter of Credit are available at sight against your draft drawn on us bearing upon its face the clause "Drawn under [Financial Institution] Letter of Credit Number [REDACTED] dated [REDACTED], 20[REDACTED]" and accompanied by the following documents:

1. The original of this Letter of Credit and all subsequent amendments, if any; and
2. Your sight draft drawn on us; and
3. A dated draw certificate signed by an authorized officer of the Beneficiary and on Beneficiary's letterhead in the form of attached Exhibit(s) A, B or C to this Letter of Credit (incorporated

herein by reference and made an integral part hereof).

Partial drawing and multiple presentations are permitted under this Letter of Credit, provided that the Stated Amount of this Letter of Credit shall be permanently reduced by the amount of each such draw paid by us.

This Letter of Credit may not be transferred or any of the rights hereunder assigned. Any purported transfer or assignment shall be void and of no force or effect.

The **Financial Institution** agrees that a draft drawn and presented in conformity with the terms of this Letter of Credit will be duly honored upon presentation. If a draft made by Beneficiary does not conform to the terms and conditions of this Letter of Credit, we will give Beneficiary notice within three business days that the demand for payment will not be affected. Such notice will include a statement of reasons for the denial. Upon being notified that the demand for payment was not affected in conformity with this Letter of Credit, Beneficiary may attempt to correct the nonconforming demand; provided, however, that any draft or document prescribed to correct such nonconforming demand must be provided on or prior to the Expiration Date.

This Letter of Credit sets forth in full our undertaking and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the exhibits referred to hereby and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such exhibits.

Except as otherwise expressly stated herein, this Letter of Credit is issued subject to the International Standby Practices ("ISP98"), International Chamber of Commerce Publication No. 590. As to matters not covered by the ISP98, this Letter of Credit shall be governed by the laws of the State of Oregon without regard to the principles of conflicts of laws thereunder.

Authorized Signature

Authorized Signature

[EFSC LETTERHEAD]

DRAW CERTIFICATE

[DATE]

Financial Institution

Address

City, State Zip

Attention: Standby Letter of Credit Department

Drawn under Irrevocable Standby Letter of Credit Number _____ dated __, 20__

Ladies and Gentlemen:

Any capitalized term used herein shall have the meaning defined for that term by the Letter of Credit.

The undersigned, the duly elected and acting _____ of the Beneficiary, hereby certifies as follows:

1. **Site Certificate Holder** has permanently ceased commercial operation of the energy facility described in the Site Certificate for the **Project Name**, as amended from time to time (the "Site Certificate").

2. Either [Select Applicable Provision]:

[] **Site Certificate Holder** has failed to submit to Beneficiary a retirement plan for the **Project Name** as required by OAR 345-027-0110.

Or

[] Beneficiary has issued a final order disapproving the final retirement plan proposed by **Site Certificate Holder** for the **Project Name**.

Or

[] **Site Certificate Holder** has failed to comply with the terms and conditions of the approved final retirement plan for the **Project Name** and Beneficiary's order authorizing retirement of the **Project Name**.

3. As a result of said breach of the Site Certificate, the Beneficiary is entitled pursuant to the provisions of the Site Certificate to make demand under the Letter of Credit in the amount of \$_____.

4. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 3 above, which amount does not exceed the lesser of (a) the amount the Beneficiary is entitled to draw pursuant to the provisions of the Site Certificate, and (b) the Stated Amount as of the date hereof. The date of the sight draft is the date of this Certificate, which is not later than the Expiration Date.

5. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this certificate as of the ___ day of _____, 20_.

STATE OF OREGON, acting by and through the Energy Facility Siting Council, as Beneficiary

By: _____

Title: _____

[EFSC LETTERHEAD]

DRAW CERTIFICATE

[DATE]

Financial Institution

Address

City, State Zip

Drawn under Irrevocable Standby Letter of Credit Number _____ dated __, 20__

Ladies and Gentlemen:

Any capitalized term used herein shall have the meaning defined for that term by the Letter of Credit.

The undersigned, the duly elected and acting _____ of the Beneficiary, hereby certifies as follows:

1. Financial Institution has heretofore provided written notice to the Beneficiary of the Financial Institution's intent not to renew the Letter of Credit following the present Expiration Date thereof.
2. Site Certificate Holder is required to deliver to the Beneficiary and keep in effect, a bond or letter of credit that satisfies the requirements of Condition number of the Site Certificate for the Project Name, as amended from time to time (the "Site Certificate").
3. Neither Site Certificate Holder nor any person acting on its behalf has, at least thirty (30) days prior to the present Expiration Date of the Letter of Credit, delivered to Beneficiary a bond or letter of credit that satisfies the requirements of Condition number of the Site Certificate.
4. As a result of said breach of the Site Certificate, the Beneficiary is entitled pursuant to the provisions of the Site Certificate to make demand under the Letter of Credit in the amount of \$ _____.
5. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 4 above, which amount does not exceed the lesser of (a) the amount the Beneficiary is entitled to draw pursuant to the provisions of the Site Certificate, and (b) the Stated Amount as of the date hereof. The date of the sight draft is the date of this Certificate, which is not later than the Expiration Date.
6. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this certificate as of the _____ day of _____, 20_.

STATE OF OREGON, acting by and through the Energy Facility Siting Council, as Beneficiary

By: _____

Title: _____

[EFSC LETTERHEAD]

DRAW CERTIFICATE

[DATE]

Financial Institution

Address

City, State Zip

Attention: Standby Letter of Credit Department

Drawn under Irrevocable Standby Letter of Credit Number ___ dated __, 20____

Ladies and Gentlemen:

Any capitalized term used herein shall have the meaning defined for that term by the Letter of Credit.

The undersigned, the duly elected and acting _____ of the Beneficiary, hereby certifies as follows:

1. **Site Certificate Holder** has begun construction of the project described in the Site Certificate for the Project Name, as amended from time to time (the "Site Certificate") but has not completed construction by the deadline specified in Condition **Number** of the Site Certificate.
2. Neither **Site Certificate Holder** nor any successor has requested an amendment of the Site Certificate extending the construction completion deadline in compliance with applicable rules.
3. As a result of said breach of the Site Certificate, the Beneficiary is entitled pursuant to the provisions of the Site Certificate to make demand under the Letter of Credit in the amount of \$ _____.
4. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 4 above, which amount does not exceed the lesser of (a) the amount the Beneficiary is entitled to draw pursuant to the provisions of the Site Certificate, and (b) the Stated Amount as of the date hereof. The date of the sight draft is the date of this Certificate, which is not later than the Expiration Date.
5. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this certificate as of the _____ day of _____, 20____.

STATE OF OREGON, acting by and through the Energy Facility Siting Council, as Beneficiary

By: _____

Title: _____

WESAPP Final Order on ASC







2023-03-24_Combined w Attachments

Final Audit Report

2023-03-30

Created:	2023-03-30
By:	Energy Siting (Energy.Siting@Oregon.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA0t2Rv9IgEyGFhAHQ290fWPJcs06pk2K6

"WESAPP Final Order on ASC 2023-03-24_Combined w Attachments" History

-  Document created by Energy Siting (Energy.Siting@Oregon.gov)
2023-03-30 - 6:34:58 PM GMT- IP address: 159.121.113.162
-  Document emailed to marcy@ibew125.com for signature
2023-03-30 - 6:39:18 PM GMT
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2023-03-30 - 7:30:51 PM GMT- IP address: 104.28.111.132
-  Signer marcy@ibew125.com entered name at signing as Marcia L Grail
2023-03-30 - 7:31:31 PM GMT- IP address: 166.216.158.203
-  Document e-signed by Marcia L Grail (marcy@ibew125.com)
Signature Date: 2023-03-30 - 7:31:33 PM GMT - Time Source: server- IP address: 166.216.158.203
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