



Oregon

Tina Kotek, Governor



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February 26, 2025

Michelle Slater
Obsidian Solar Center LLC
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Sent via email: mslater@obsidianrenewables.com

RE: Department Determination on Type B Review for Request for Amendment 2 of the Site Certificate for the Obsidian Solar Center

Dear Ms. Slater,

On November 20, 2024, the Oregon Department of Energy (Department) received Obsidian Solar Center LLC's preliminary Request for Amendment 2 of the Site Certificate for the Obsidian Solar Center (pRFA2), which included an Amendment Determination Request (ADR) for a written determination from the Department that RFA2 justifies review under the Type B review process. The Department has reviewed the ADR and has determined that the Type B process is justified.

Under OAR 345-027-0357(8), in determining whether a request for amendment justifies review under the Type B process, the Department and the Council may consider factors including, but not limited to:

- The complexity of the proposed change;
- The anticipated level of public interest in the proposed change;
- The anticipated level of interest by reviewing agencies;
- The likelihood of significant adverse impact; and
- The type and amount of mitigation, if any.

Each of these factors is evaluated in the sections that follow.

Evaluation of Factors

The complexity of the proposed change

In pRFA2, the certificate holder seeks Council approval to extend the construction commencement deadline specified in the site certificate by 3 years, from February 25, 2025, to

February 25, 2028. The request would also extend the completion deadline, which is established as three years from the commencement date.

The certificate holder asserts that the proposed changes lack complexity and are administrative in nature because there are no proposed changes to the approved site boundary, and as a result, there are no unevaluated areas or resources to consider, and there are no proposed changes to the physical components of the previously permitted and approved facility.

The Department agrees that the proposed deadline amendment is not complex in and of itself; however, as in previous determinations, the Department bases its evaluation of complexity on the scope of review applicable to the amendment request. Under OAR 345-027-0375(2)(b), to approve a request for amendment to extend the deadlines for beginning or completing construction, the Council must consider any changes in facts or law since the site certificate was executed, and whether those changes affect the facilities compliance with all laws and Council standards applicable to an original site certificate application.

Changes in Factual Circumstances

Potential factual circumstances within the analysis areas that could result in complexity include: physical changes at the site; the identification of state-sensitive, threatened, or endangered species at the site; the designation of new protected areas, recreational opportunities, or scenic resources; the identification of previously unevaluated historic, cultural and archeological resources; changes in the ability of the certificate holder to obtain a bond or letter of credit for facility decommissioning; and the presence of new sensitive noise receptors.

In its initial review of pRFA2, the Department identified several changes in fact that could result in complexity, including:

- The identification of a portion of the site in low-density Sage-grouse habitat in updated maps approved by the Oregon Fish and Wildlife Commission on December 15, 2023.
- The presence of several previously unevaluated noise sensitive receptors within 1-mile of the site.

In addition, the Department determined that insufficient information was included in pRFA2 on whether there had been changes in fact that could affect the Council's previous evaluation of compliance with several standards, including the Structural Standard (OAR 345-022-0020); Retirement and Financial Assurance (OAR 345-022-0050); Historic, Cultural and Archaeological Resources (OAR 345-022-0090); and Public Services (OAR 345-022-0110), as well as Oregon's Removal-Fill law (ORS 196.795-990). On December 11, 2024, the Department issued a Determination that pRFA2 was incomplete and issued a Request for Additional Information (RAI) addressing each of these areas. The certificate holder provided preliminary responses to the RAIs on January 23, 2025. During its initial review of the responses, the Department identified areas where additional evaluation and potential changes to conditions or required mitigation plans may be required but did not identify any changes in fact that would significantly alter the Council's previous findings and conclusions.

Changes in Law

Potential changes in law that could result in complexity include new or amended rules, statutes and ordinance provisions which are applicable to the facility.

The Oregon Parks and Recreation Commission adopted amendments to the rules governing how the State Historic Preservation Office (SHPO) issues archaeological permits under OAR chapter 736, division 051. While the amended rules do not appear to impose additional substantive requirements additional evaluation is needed because the Council determined that archaeological permits for the facility were included in, and governed by, the site certificate.

On May 2, 2024, the Oregon Department of Agriculture amended the State List of Threatened and Endangered Plant Species under OAR 603-073-0070 to include six additional species, one of which, Columbia yellowcress (*Rorippa columbiae*) has been identified within 15 miles of the site. The certificate holder agreed to include the species in its pre-construction botanical surveys; however, new or amended site certificate conditions or plan requirements may be required to address this representation.

On October 17, 2024, the Oregon Department of Environmental Quality amended OAR 340-035-0035 to allow solar facilities to demonstrate compliance with the State Noise Control Regulations for Industry and Commerce in a similar manner as wind facilities. This change in law was intended to reduce regulatory burden and is not likely to require any new or amended site certificate conditions.

While the Council's Wildfire Prevention and Risk Mitigation standard (OAR 345-022-0115) was adopted prior to the issuance of the First Amended Site Certificate, the limited nature of the review in that proceeding did not require a full evaluation of the, at that time, newly adopted standard, and the certificate holder continued to rely on a Fire Protection and Emergency Response Plan prepared by the Department during the evaluation of the ASC. In its initial determination that pRFA2 was incomplete, the Department requested that the certificate holder provide updated wildfire risk analysis for entire site in compliance with OAR 345-022-0115(1)(a) based on current information and provide updated draft Construction and Operation Wildfire Mitigation Plans (separate documents) that comply with all requirements of OAR 345-022-0115(1)(b), Site Certificate Condition PRE-WP-01, and requirements imposed by the Council in the Final Order on the ASC and Final Order on RFA1.

The Department notes the certificate holder provided a letter from the Lake County Planning Department in pRFA2 confirming that there had been no changes to local ordinance since the site certificate was issued. The Land Conservation and Development Commission has amended its administrative rules in OAR 660-033-0130(5) describing the farm impacts test required to approve a conditional use in an exclusive farm use. The amended rules are directly applicable to the facility under ORS 197.646. While additional evaluation may be required to ensure the new rules are satisfied, the Department notes that the intent of the adopted changes was to reflect common law standards that existed at the time of the Council's previous approval.

Overall complexity

While not extensive, the changes in fact and law above will require at least some level of evaluation and may result in new or amended conditions of approval to ensure compliance. For

these reasons, the Department determines the complexity of the proposed changes in pRFA2 to be moderate.

The anticipated level of public interest in the proposed change;

The certificate holder asserts that the proposed extension of the construction deadlines will not result in any changes to the facility that will affect the public and that the Council has already imposed conditions to address public concerns raised during the review of the ASC. The certificate holder notes that only one public comment was submitted during the review of RFA1.

While only one comment was submitted during the review of RFA1, the Department notes that over 30 public comments were submitted during the review of the ASC and that several commenters requested to participate and were granted limited party status in the contested case hearing in that proceeding. While the level of interest in the proposed deadline extension may be low, the Department believes many of the commenters and limited parties in the proceeding on the ASC continue to have an interest in the facility generally, and for that reason anticipates a moderate level of public interest in the review of RFA2.

The anticipated level of interest by reviewing agencies;

The certificate holder notes that due to the administrative nature of the deadline extension request, the anticipated level of interest by reviewing agencies is expected to be low in comparison to other proceedings. Because the proposed deadline extension would not result in new or different impacts than those previously evaluated, and because the scope of changes in laws or rules applicable to the facility that are administered by other agencies is limited, the Department agrees that the anticipated level of interest by reviewing agencies is low.

The likelihood of significant adverse impacts

The certificate holder asserts that there is little likelihood of any significant adverse impacts from RFA2 that were not previously evaluated, and that the Council had already imposed conditions and mitigation requirements to avoid, minimize, and mitigate previously evaluated impacts.

The Department agrees that, given existing conditions requiring updated surveys, compliance plans, and mitigation requirements to be provided based on final design prior to construction, the extension of the deadlines for commencement and completion of construction is not, in and of itself, likely to result in significant adverse impacts; however, as noted above, changes in fact or law since the Council's approval of the ASC will require some evaluation of impacts to previously unevaluated resources.

The type and amount of mitigation, if any.

The certificate holder asserts that there is little likelihood of any significant adverse impacts from RFA2 that were not previously evaluated, and that the Council had already imposed conditions and mitigation requirements to avoid, minimize, and mitigate previously evaluated impacts.

The Department agrees that, given existing conditions requiring updated surveys, compliance plans, and mitigation requirements to be provided based on final design prior to construction, the extension of the deadlines for commencement and completion of construction is not, in and of itself, likely to result in significant adverse impact that require additional mitigation; however, as noted above, changes in fact or law since the Council's approval of the ASC will require some evaluation of impacts to previously unevaluated resources and additional measures to avoid, minimize, or mitigate impacts may be necessary.

Determination

As described above, the Department has evaluated the factors listed under OAR 345-027-0357(8) and determined that the review of the deadline extension in RFA2 is anticipated to have a moderate level of legal complexity and public interest and a low level of reviewing agency interest. While the complexity and level of public interest in the project could justify the Type A process if there was a high likelihood of significant adverse impacts or need for extensive changes to mitigation or conditions of approval, the information provided in the preliminary Request and the certificate holder's responses to the Department's December 11, 2024, RAIs demonstrate that this is not the case. The requested extension of the deadlines for commencement and completion of construction is not, in and of itself, likely to result in significant adverse impacts, and while additional evaluation will be needed, the changes to previously imposed conditions or mitigation plans needed to address the changes in fact in law identified above are likely to be limited. As a result, the Department has determined that the Type B process is justified for the review of RFA2.

Per OAR 345-027-0357(7), at the request of the certificate holder the Department must refer its determination to the Council for concurrence, modification or rejection. Please feel free to contact me with any questions or comments.

Respectfully,



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