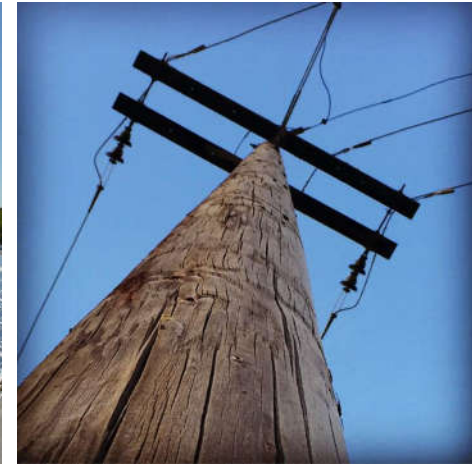


Oregon Department of **ENERGY**

Energy Facility Siting
Council Meeting

Webex Virtual Meeting

June 23, 2023



Opening Items:

- Call to Order
- Roll Call
- Announcements

Announcements:

- Reminder that this meeting is being held in its entirety via teleconference and webinar.
- Reminder to Council and to anyone addressing the Council to please remember to state your full name clearly, and do not use the speakerphone feature, as it will create feedback.
- You may sign up for email notices by clicking the link on the agenda or the Council webpage.
- You are also welcome to access the online mapping tool and any documents by visiting our website.



Announcements continued:

- Please silence your cell phones
- Please use the “Raise Your Hand” feature in Webex to speak during the public comment period, or press *3 to raise your hand if you are participating by telephone.
- Energy Facility Council meetings shall be conducted in a respectful and courteous manner where everyone is allowed to state their positions at the appropriate times consistent with Council rules and procedures. Willful accusatory, offensive, insulting, threatening, insolent, or slanderous comments which disrupt the Council meeting are not acceptable. Pursuant to Oregon Administrative Rule 345-011-0080, any person who engages in unacceptable conduct which disrupts the meeting may be expelled.



Agenda Item A (Action Item & Information Item)

Consent Calendar

- Council Secretary Report

June 23, 2023



Agenda Item B (Action Item)

Application Process Review - Phase 1 Rulemaking

June 23, 2023

Christopher Clark Senior Siting Analyst



Division 15 Better Internal Consistency

Draft Rules:

- The notice of intent
 - Subset of rules
- The project order
 - Subset of rules
- The preliminary application
 - Subset of rules



Division 15 Better Internal Consistency

Current Rules:

- OAR 345-0110 – Public Notice of a Notice of Intent
 - No corresponding rule exists for the Preliminary Application or Complete Application stages
 - Notice procedures are currently in OAR 345-021-0050 and 345-015-0190



Division 15 Better Internal Consistency

DRAFT VERSION:

- OAR 345-015-0110 – Public Notice of a Notice of Intent
- OAR 345-015-XXXX – Public Notice of a Preliminary Application
- OAR 345-015-XXXX – Public Notice of a Complete Application for Site Certificate



Clarity and Consistency

Removal of now redundant references to rules that have been combined with the rules they used to reference:

- Deleting the reference “under OAR 345-021-0055” from rule language that has been combined with OAR 345-021-0055 and would now be redundant

Clarity and Consistency

Making rules internally consistent:

- Modifying OAR 345-015-0120(3) to add the word “time” and remove the word “agenda” to match corresponding language used in OAR 015-0110(2)(f)
 - 345-015-0120(3): “State the date, time, location, ~~agenda~~ and **purpose** of any informational meeting that the Department has scheduled on the NOI and encourage the recipient to attend and participate in the informational meeting.”
 - 345-015-0110(2)(f): “**The date, time, and location, and purpose** of any informational meeting on the NOI that the Department has scheduled”



RAC Feedback Overview

- One RAC Meeting held on April 27, 2023
- Three responses to request for feedback



Comments from Jim Kreider

- Proposed
 - moving rules within Divisions 1, 11, 24, and 27
 - Proposed merging Division 25 and Division 27
 - Proposed renaming Divisions 15 and 27
- Staff is recommending no changes as they are outside the scope

Comments from Renewable Northwest

- Supported the idea of using tables to summarize rule requirements
 - Staff recommends moving this table to EFSC's website
- Recommended adding internal references about where language has been moved to
 - Staff recommends not adopting this change and instead providing a crosswalk as separate guidance on EFSC's website
- Recommended making it clearer whether applicants need to attend an informational meeting on a complete application
 - Staff recommends adopting this change
- Sought clarification on notice requirements being added as part of changes previously approved by Council

Comments from Oregon Solar + Solar Industries Association (OSSIA)

- States happy with changes overall
- Raised concern regarding the change to OAR 345-015-0180(2) to remove “in coordination with the applicant” as possibly outside the scope of this rulemaking
 - Staff now recommends removing the entire reference to a “distribution list,” not just the “in coordination with the applicant” part.

Overview of Changes to Draft Rule

- Reversal of the move of contested case language within Division 15
- Removal of the notice chart suggestion
- Change all references to Special Advisory Groups to reflect new rule OAR 345-015-0115, whereas before they referenced ORS 469.480, which OAR 345-015-0115 now implements.
 - 345-001-0028(q)
 - 345-015-0180(3)(b)
 - 345-022-0000(2)(b)(C)

Removal of “Distribution List” Requirement

- Changed text of 345-020-0006(2) - Submission of a Notice of Intent from “The applicant must prepare and distribute additional copies of the NOI as required by OAR 345-020-0040.” to “The applicant must prepare and distribute additional copies of the NOI as directed by the Department.”
- Changed text of 345-020-0016(1) - Amendment of Notice of Intent from “The applicant must prepare and distribute additional copies of the amended NOI as required by OAR 345-020-0040.” to “The applicant must prepare and distribute additional copies of the amended NOI as directed by the Department.”
- Changed text of 245-021-0010 – Content of an Application from “The applicant must submit additional printed copies of the preliminary application to the Department upon request. The applicant must prepare and distribute additional copies of the application as required by OAR 345-021-0050” to “as directed by the Department upon request”
- Changed text of 345-015-0120 – Agency Memorandum on a Notice of Intent to remove “The Department must compile a distribution list for this memorandum that includes, but is not limited”
- Changed text of 345-015-0180 – Agency Memorandum on a Preliminary Application to remove (2) in its entirety: “After receiving the preliminary application, the Department must determine a distribution date and compile a distribution list that includes, but is not limited to, the reviewing agencies for the proposed facility.”

Additional Minor Changes

- Changed the title for 345-015-0200 –“Distribution of a Complete Application and Notice Thereof” to “Distribution of a Complete Application”
 - Reverted prior change to original text to reduce unintended confusion that this rule title refers to a “public notice” as other rules with the term “notice” in their title are.
- Changed the title for 345-015-0220 from “Public Hearing on the Draft Proposed Order And Notice Thereof” to “Public Hearing and Notice on the Draft Proposed Order”
 - Modified for readability
- Changed text of what is now 345-015-0180(3)(b) – Agency Memorandum on a Preliminary Application to correct an internal reference to the right number (“0180” to “0115”)
 - Correction of reference error



Additional Minor Changes

- Changed text of 345-015-0198(3) - Informational Meeting on a Complete Application from “described in (1)-(2)” to “described in this rule.”
 - Change made to improve language style
- Changed the text of 345-020-0006 – Submission of a Notice of Intent to move “Notwithstanding section (1) and (2). . . .” to follow what was (3) and is now (2).
 - Change made to improve the flow of this rule.
- Changed text of 345-015-0180 – Agency Memorandum on a Preliminary Application to remove (4) in its entirety: “The applicant must provide a printed copy. . . .”
 - Removed as duplicative as relevant language already exists at 345-021-0010(4).

Recommended Council Action

Staff recommends that the Council approve the proposed rules as presented in the draft Notice of Proposed Rulemaking of Phase 1 of the Application Process Review Rulemaking and authorize staff to issue a Notice of Proposed Rulemaking.



Council Options

Option 1 - Recommended

Approve the proposed
rules as presented

Option 2

Approve the proposed
rules with changes

Option 3

Take no action at this
time

Council Deliberation



Agenda Item C (Information Item)

PUBLIC COMMENT

Phone Commenters: Press *3 to raise your hand to make comment, and *3 to lower your hand after you've made your comment.

Webinar Commenters: Open the Participant list, hover over your name and click on the "Raise Your Hand icon".



How to Raise Your Hand in Webex:

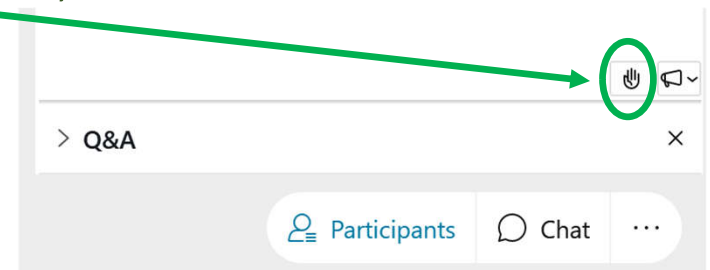
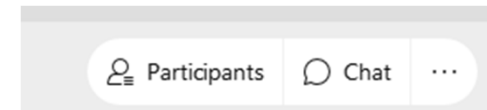
Webinar Participants

The bottom right of the main window is a set of icons:

Click on “Participants”

The bottom right of the participant window is a hand icon, click on the hand:

Clicking on it again will lower your hand.



Phone Participants

Press *3 on your telephone keypad to raise your hand.

Press *3 again on your telephone keypad to lower your hand.

Agenda Item D (Information Item)

Goal 3 Exceptions Overview

June 23, 2023

Patrick Rowe, Oregon Department of Justice Senior Assistant Attorney
General and Counsel to EFSC



LCDC rule prohibits a solar pv facility from using, occupying or covering more than 12 acres of high value farmland, unless certain criteria are satisfied, or



the County or EFSC grants an exception to the goal.

Exceptions

ORS 197.732(2): Local governments may provide an exception if:

- (a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;
- (b) The land subject to the exception is irrevocably committed as described by LCDDC rule 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:
 - (A) Reasons justify why the state policy embodied in the applicable goals should not apply;
 - (B) Areas that do not require a new exception cannot reasonably accommodate the use;
 - (C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and
 - (D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

ORS 469.504(2) EFSC may provide an exception if:

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

-
- Proposed 1150 MW natural gas energy facility in Klamath County.
 - Klamath County Land Development Code ordinance implementing Goal 3 provided that a commercial energy facility may use a maximum of 12 acres of high-value farmland or 20 acres of non-high-value farmland before a goal exception is required.
 - The proposed facility would use 50.6 acres of land zoned for Exclusive Farm Use.
 - EFSC granted a site certificate, determining that an exception to Goal 3 was warranted for the following reasons:
 - * proposed facility at the confluence of three unique and essential resources (a stable groundwater well, an existing natural gas pipeline, and an existing electric transmission line and substation);
 - * would support the existing electrical transmission system, which was “in critical need of more capacity”;
 - * it would benefit the local economy through employment opportunities and contributions to the local tax base; and
 - * it would conserve farmland over the long run by concentrating electrical generation facilities into one larger compact facility rather than several smaller facilities that would occupy more total acreage.

Save our Rural Oregon v. EFSC Oregon Supreme Court 2005



“A comparison of the two statutes makes clear that the legislature used ORS 197.132(2)(c) as the basis for the later enacted ORS 469.504(2)(c) but omitted the requirement of an alternatives analysis. We therefore conclude that the legislature did not intend to require the council to perform an alternatives analysis in making a determination under ORS 469.504(2) that an exception could be taken to a land use planning goal.”

“The evidence also showed that the proximity of the site to an existing natural gas pipeline and to the major north-south electricity transmission line on the West Coast (as well as a substation on that line) *made the site particularly suited* for a gas-powered electricity generation facility. Other evidence showed that the facility needed a site of 50.6 acres. *Each of the council's findings regarding the Goal 3 exceptions is supported by substantial evidence in the record.*”



-
- Addressed the LCDC rule that prohibits a solar pv facility from using, occupying or covering more than 12 acres of high value farmland, unless certain criteria are satisfied or an exception granted.
 - Developer proposed a solar p.v. facility on 80 acres of high-value farmland – 68 acres more than the 12 acres allowed.
 - Jackson County Board of Commissioners approved the application, based on a “reasons” exception to Goal 3, including:
 - a demonstrated need for the facility and locational necessity (OAR 660-004-0022(1)(a)).

County Board found demonstrated need based on the requirements of Statewide Planning Goal 13 – Energy Conservation:

“Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles.”

County Board finding:

“Goal 13, in the context of the policies set forth in the State's energy policy, as well as federal and state statutes, establish a general requirement to utilize renewable resources, including the in-State siting of renewable energy production facilities such as the proposed project, and therefore establishes a ‘demonstrated need’ as required under OAR 660-004-0022(1)(a).”



“We disagree with the county and [Or Solar] that implicit in the Goal 13 requirement to ‘conserve’ energy is an affirmative obligation for counties to promote the development of renewable energy. While development of renewable energy is certainly consistent with the Goal 13 requirement to ‘conserve’ energy, the goal includes no express mandates regarding the development of renewable energy sources. The express requirement that ‘[l]and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy’ falls far short of including a requirement for cities and counties to promote the development of renewable energy.”



*Neither the text of the goal [13] nor its guidelines “require” the county to develop or facilitate the development of any particular land use, much less large solar power generation facilities. 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.*

** * **

The exception was to justify an energy facility of a particular size, and Goal 13 has no bearing on that justification.



The power to
question is the basis
of all human
progress.

Indira Gandhi

 Wonderful Quote



BREAK



Agenda Item E (Action Item)

Summit Ridge Wind Farm Financial Institution List Request

June 23, 2023

Todd Cornett, Assistant Director for Siting/Council Secretary



Requested for Consideration

A “**Stable**” outlook indicates a **low likelihood** of rating change in the next two years. A “**Positive**” outlook indicates a **higher likelihood** of an upward rating revision in the next two years. A “**Negative**” outlook indicates a **higher chance** of a downward rating revision in the next two years.

Banco Santander, NA (Recommended for Addition)

Rating Agency	Rating	Long Term Outlook
Fitch	A-1 (5/23)	Stable
Moody's	A-2 (1/23)	Stable
Standard & Poor	A+ (7/22)	Stable
DBRS Morning Star	A (10/22)	Stable

Key Bank, NA (Not Recommended for Addition)

Rating Agency	Rating	Long Term Outlook
Standard & Poor's	A- (5.15.23)	Negative
Moody's	A3 (4.21.23)	Negative
Fitch	A- (10.14.22)	Stable

Proposed Financial Institution List

2023 Financial Institutions

Previously Approved by EFSC on June 1, 2023	
Letter of Credit	Bond
<i>Banco Santander, NA (Proposed June, 23 2023)</i>	Arch Insurance Company
Bank of America N.A.	Federal Insurance Co
Bank of Nova Scotia (NY Agency)	Fidelity & Deposit Co of MD
Bank of the West	Hanover Insurance Group
Barclay's Bank, PLC (NY Branch)	Liberty Mutual Insurance Company
Citibank, N.A.	SAFECO Insurance Co of America
CoBank	Travelers Casualty & Surety Co of America
Helaba (NY Branch of Landesbank Hessen-Thuringen GZ)	Westchester Fire Insurance Co
JP Morgan/Chase Bank, N.A.	
MUFG Bank, N.A.	
Natixis (NY Branch)	
Royal Bank of Canada (NY Branch)	
Royal Bank of Scotland Connecticut Branch	
US Bank	
Wells Fargo Bank, N.A.	
Sumitomo Mitsui Banking Corporation (SMBC, NY Branch)	

Council Options

Option 1 - Recommended

Add Banco Santander
but not Key Bank

Option 2

Add Banco Santander
and Key Bank

Option 3

Do not add Banco
Santander or Key Bank

Council Deliberation



Agenda Item F (Information Item)

Muddy Creek Energy Project Appointment of Special Advisory Group

June 23, 2023

Todd Cornett, Assistant Director for Siting/Council Secretary



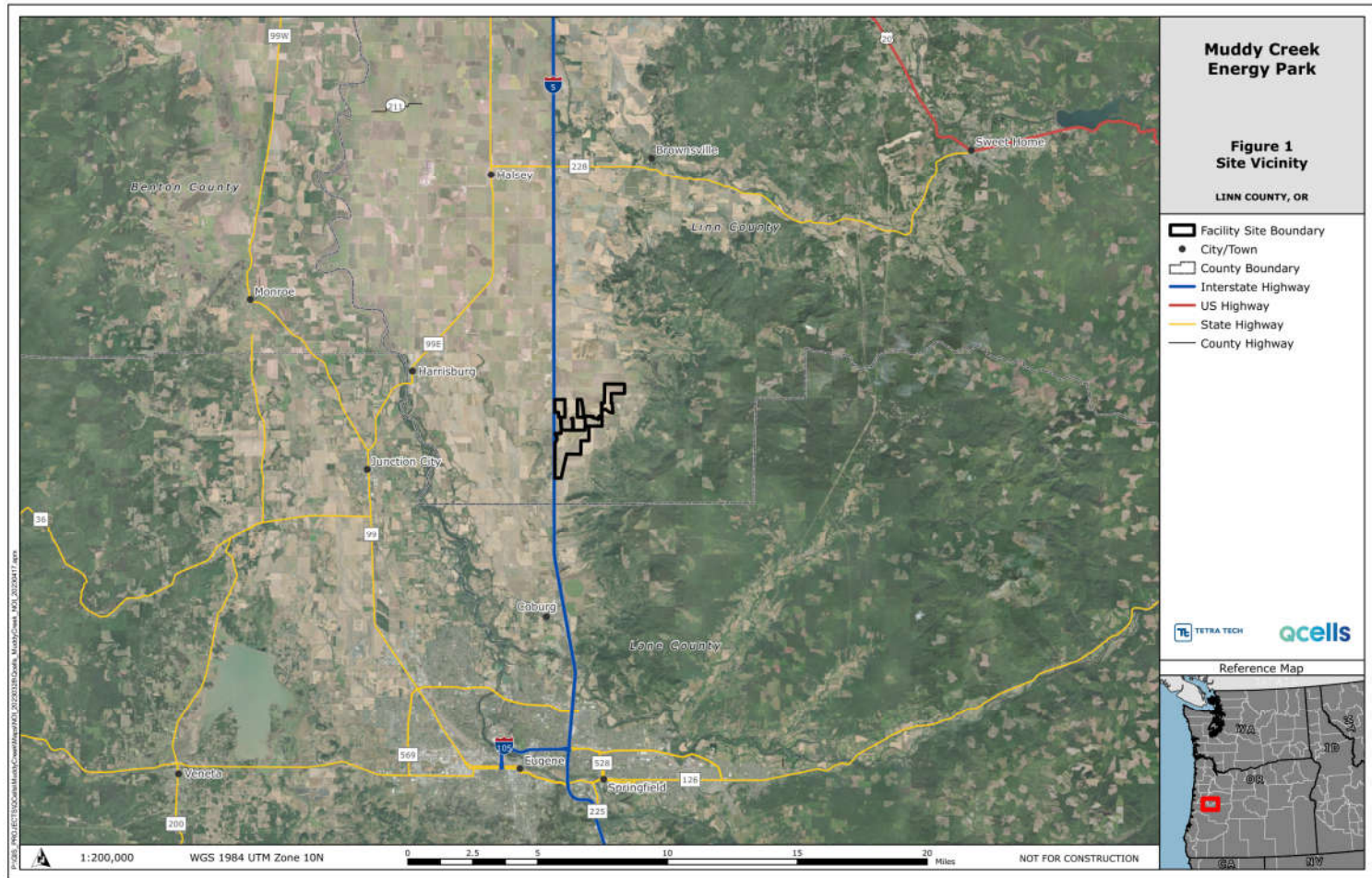
Introduction

- On May 19, 2023, the Oregon Department of Energy received a Notice of Intent to File an Application for a Site Certificate for the Muddy Creek Energy Project.
- The applicant is Muddy Creek Energy Park, LLC, a wholly owned subsidiary of Hanwha Q CELLS USE Corp.
- Due to the acreage, the proposed facility is an “energy facility” subject to siting review by the Energy Facility Siting Council (EFSC).

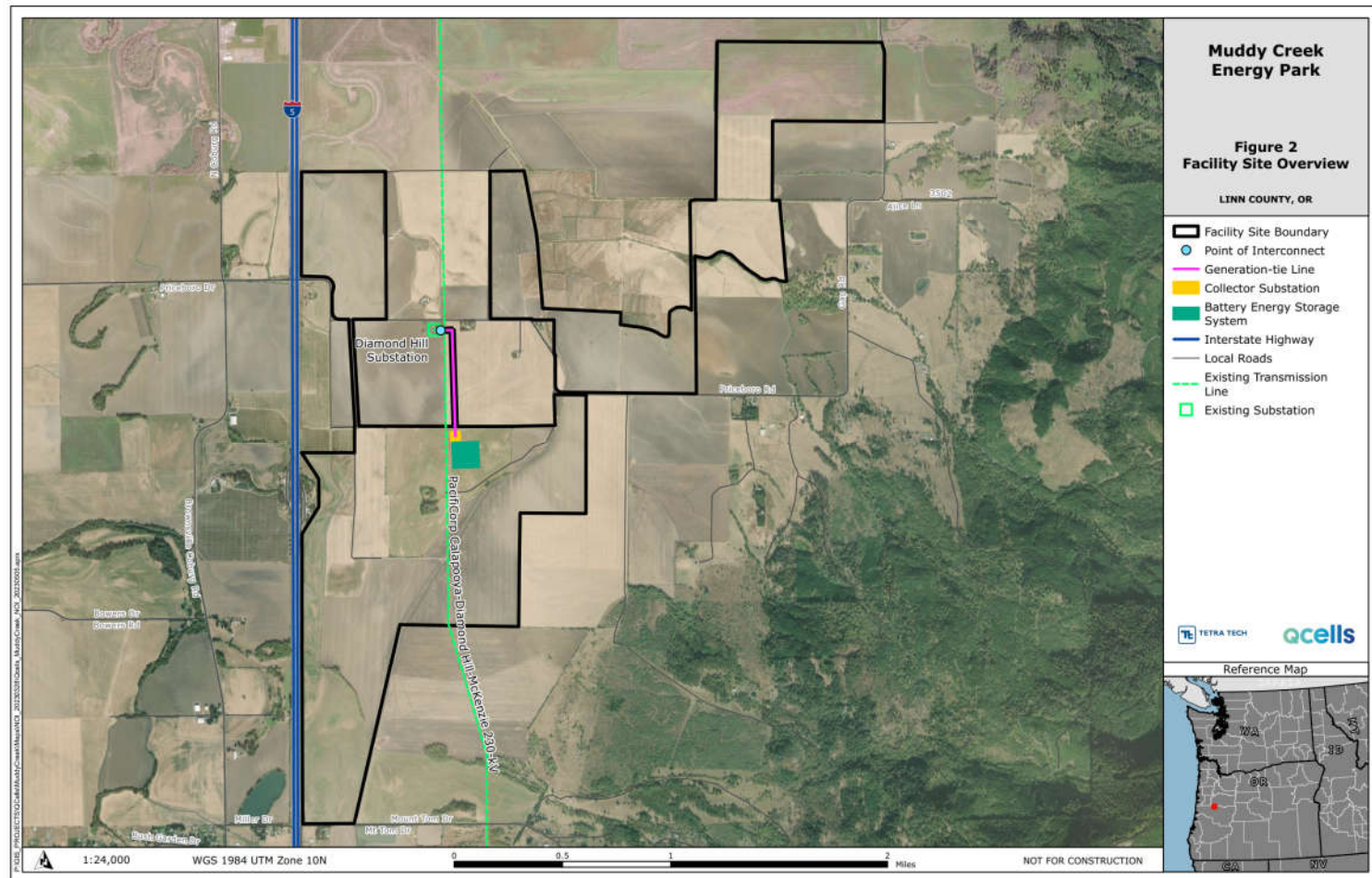
Muddy Creek Energy Park Proposal

- 199 MW solar photovoltaic energy generation facility
 - 1,588 acres (approx. 2.5 square miles)
 - Unincorporated Linn County
 - Exclusive Farm Use zoning – high-value farmland
- Related and Supporting Facilities
 - 199 MW battery energy storage system (12 feet wide by 36 feet long by 10 feet tall enclosures)
 - 230 kV gen-tie line
 - Inverters and transformers
 - Collector substation
 - 34.5 kV collector lines
 - 7 foot tall perimeter fence
 - Service roads

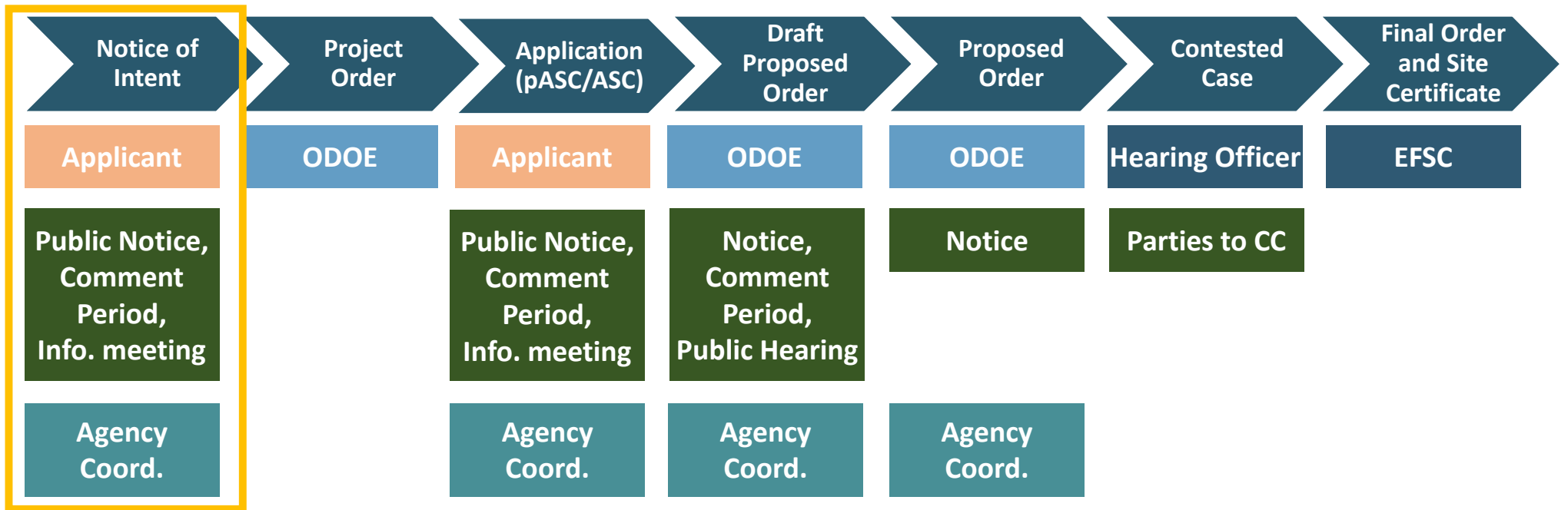
Muddy Creek Energy Park



Muddy Creek Energy Park



Energy Facility Siting Process



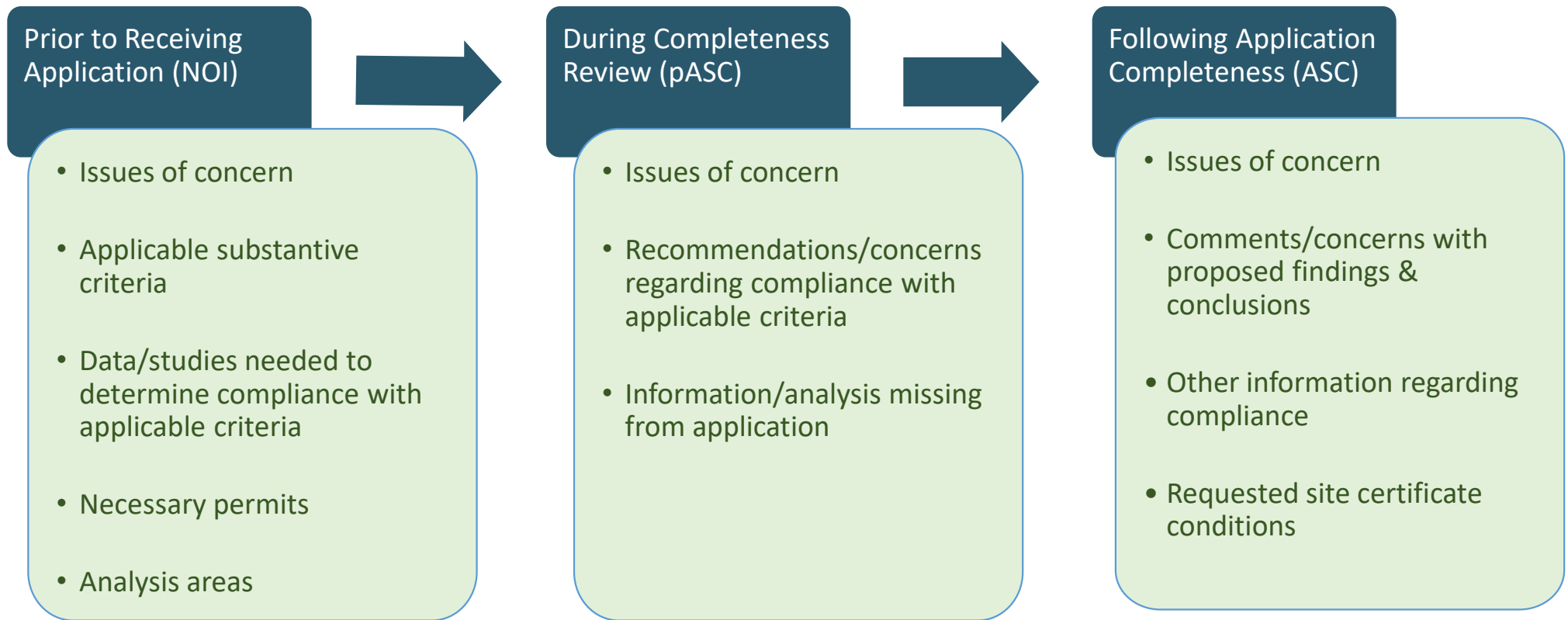
Energy Facility Siting Process

Land Use Review

- EFSC must designate the governing body of any local government within whose jurisdiction the facility is proposed to be located as a “special advisory group.”
- The applicant may choose to obtain land use approval from EFSC or from the affected local governments. NOI indicates applicant intends to seek approval from EFSC.
- EFSC’s land use decision is binding on affected local governments. Any necessary permits or approval addressed in the Site Certificate must be issued upon receipt of proper form and fee.



Special Advisory Group Input Requested



Staff Recommendation

Appoint the Linn County Board of Commissioners as the Special Advisory Group for any proceedings before the Council related to the proposed Muddy Creek Energy Park



Council Deliberation



Adjourn

