



ENERGY FACILITY SITING COUNCIL

■ Kent Howe, Chair ■ Cindy Condon, Vice-Chair ■ Marcy Grail ■ Katie Imes ■ Ann Beier ■ Richard Devlin

Energy Facility Siting Council Meeting Minutes

**Inn at Cross Keys Station
66 NW Cedar Street
Madras**

Thursday November 14, 2024 4:00 PM

- A. Consent Calendar (Action & Information Item)¹ – Approval of September 19, 2024 Meeting Minutes; Council Secretary Report; and other routine Council business.**
- B. Sunstone Solar Project Application for Site Certificate: Proposed Order Review, Possible Material Change Hearing and Public Notice of Possible Hearing to Adopt Final Order (ORS 469.370(7) (Action Item)²**
- C. Public Comment Period (Information Item)³**
- D. Madras Solar Energy Facility Amendment 1: Draft Proposed Order Public Hearing (Public Hearing)⁴**

The meeting materials presented to Council are available online at:

<https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Council-Meetings.aspx>

Call to Order: Chair Howe called the meeting to order on November 14, 2024, at 4:02 p.m.

Roll Call: Chair Kent Howe, Vice-Chair Cynthia Condon and Council Member Ann Beier were present in person. Council Members Richard Devlin and Katie Imes were present virtually.

Oregon Department of Energy representatives present were Assistant Director for Siting/Council Secretary Todd Cornett; Senior Siting Analyst Chase McVeigh- Walker; Senior

¹ Audio/Video for Agenda Item A= 00:02:40 – 2024-11-14-EFSC-Meeting-Audio/Video

² Audio/Video for Agenda Item B = 00:16:38 – 2024-11-14-EFSC-Meeting-Audio/Video

³ Audio/Video for Agenda Item C = 01:11:17 – 2024-11-14-EFSC-Meeting-Audio/Video

⁴ Audio/Video for Agenda Item D = 01:16:21 – 2024-11-14-EFSC-Meeting-Audio/Video

Siting Analyst Christopher Clark and Administrative Assistant Nancy Hatch. Oregon Department of Justice Senior Assistant Attorney General Patrick Rowe was also present.

Agenda Modification: There were no agenda modifications.

A. Consent Calendar (Action & Information Item)⁵ – Approval of September 19, 2024 Meeting Minutes; Council Secretary Report; and other routine Council business.

- Meeting Minutes

Council Member Beier motioned the Council approve the September 19, 2024 Meeting Minutes as presented.

Council Member Devlin seconded the motion.

The motion was carried unanimously.

- Council Secretary Report

Council Updates

Secretary Cornett shared a plaque for former Council Member Chocktoot in appreciation of his time on the Council.

Project Updates

- The Amendment Determination Request (ADR) for the Boardman to Hemingway Transmission Line and for Daybreak Solar Project are not completed yet. The Department anticipates they will be completed and presented to Council at the December 13, 2024 meeting.
- Wagon Trail Solar Project submitted an ADR seeking a review of a proposed change in the battery energy storage system. The request would change up to 15 mw of the battery energy storage system from lithium ion to zinc bromide electrolyte.

Vice-Chair Condon requested informational updates be provided to Council as new technologies are developed and utilized.

Secretary Cornett confirmed the request and noted that it can be added to future meeting agendas.

Upcoming Meeting Dates

- The December EFSC meeting will be held in Salem at the ODOE office on December 13, 2024.

⁵ Audio/Video for Agenda Item A = 00:02:40 – 2024-11-14-EFSC-Meeting-Audio/Video

Council Member Beier asked as the long legislative session approaches, has the Department submitted a policy option package or anything else that will influence EFSC going forward.

Secretary Cornett stated the policy option packages that have been proposed by the Siting Division are for an additional compliance officer. However, there will no doubt be bills submitted by others related to the authority and the work of the Council.

B. Sunstone Solar Project Application for Site Certificate: Proposed Order Review, Possible Material Change Hearing and Public Notice of Possible Hearing to Adopt Final Order (ORS 469.370(7) (Action Item)⁶ – Christopher Clark, Senior Siting Analyst presented Council with the Hearing Officer's Order concluding the contested case and the Department's Proposed Order for Council adoption, modification or rejection as the Final Order. The Sunstone Solar Project is a 1,200 MW solar photovoltaic power generation facility that would occupy up to 9,442 acres (14.75 sq. mi.) in Morrow County, Oregon.

Council Member Beier, noting her appreciation, stated the Staff's work with all of the parties involved to develop new parameters for the Goal 3 exception represents the long and hard discussions Council has had regarding what are acceptable conditions for the Goal 3 exception.

Secretary Cornett stated the Department has created a Goal Exception memo for developers to reflect the choices made by Council providing things that Council would accept or would not accept based upon past decisions.

Vice-Chair Condon asked what the advantage is of having more than 3 reasons for the reasons exception for Goal 3.

Secretary Cornett explained the language for the Goal 3 exception states reasons, meaning that there must be more than one. The exception is based on the nature of the reasons that make the argument for the goal exception and the combination of those reasons which justify the goal exception.

Chair Howe asked if the water challenged aspect of the site representing that it would not impact nearby irrigation for crops provides reason number four for the exception.

Mr. Clark confirmed that is correct, adding that the Department recommends that the Council grant that reason because even though there is a water right, it is not economically feasible to use it.

Council Member Beier reminded Council they need to be careful when considering whether or not it is economically viable to use the water right. In this case, in addition to not being economically viable, it was also not legally available to the landowners.

⁶ Audio/Video for Agenda Item B = 00:16:38 – 2024-11-14-EFSC-Meeting-Audio/Video

Mr. Clark agreed, adding that it is a complicated issue. There are challenging circumstances with using water. This water right could not be transferred somewhere else partially because of its location in the critical groundwater area and partially because of the lack of current use of the water.

Council Member Beier noted that as Council addresses issues of water rights and water use, it is complex. Each of these reasons exceptions require Council to examine the particular associated scenario.

Council Member Imes asked for elaboration on the comments received from Morrow County regarding previous Council decisions on the Goal 3 exception.

Mr. Clark stated that the County cited a then pending decision on the Wagon Trail project where the Council had granted the economic benefits reason for a similar mitigation strategy. There have been other Council decisions where the Council had granted this reason where there was similar or less demonstration of a net economic benefit.

Secretary Cornett added that Council has shifted from reliance upon those kind of economic development reasons such as strategic investment program or tax based incentives for the Goal 3 exception.

Chair Howe reminded every application is site specific.

Council Member Beier stated that the other economic benefits that are not directly related to mitigation of agricultural effects are considered in the EC analysis which is where Council weighs the economic, social, environmental and energy benefits.

Mr. Clark described that the language of the standard requires that the negative consequences have been identified and addressed. The Department is not denying the other types of economic benefits. However, they are not relevant to this Goal 3 Exception because they are either not unique to the project or directly tied to agriculture or to the resource protected by the goal.

Referring to the Wildfire Mitigation Plan, Council Member Beier noted her appreciation for the amendments to this condition requiring better signage, access marking and training. She would like to see the amendments carried forward on future projects as they address the concerns of the local emergency managers.

Mr. Clark stated the Department is currently working on template versions of wildfire plans that can be shared with applicants who are in the process of developing their applications which will include the amendments.

Vice-Chair Condon asked if there is any consultation with insurance companies regarding what they might expect or want in a wildfire mitigation plan.

Mr. Clark stated while there is no direct consultation for a wildfire mitigation plan, a lot of the insurers' concerns or desires would be incorporated into the National Electric Safety Code, the underwriter's laboratory standards, that are required for the facility components to get on the market.

Council Member Devlin suggested Staff review the Fire Prevention Association Standard 855 to see if anything is being incorporated into the building code standards that Oregon utilizes.

Mr. Clark stated that building codes are specifically outside of the Council jurisdiction.

Council Member Devlin noted there is a vast amount of public information available addressing the issue of lithium ion battery storage.

Vice-Chair Condon suggested as Council is receiving additional information regarding battery storage, information regarding alternative types of battery storage could be provided.

Mr. Clark provided there is still an inherent risk with any electrical equipment.

Council Member Devlin added that the owners of the facility would not want additional fire risks, and most would be doing everything possible to prevent fires from happening.

Vice-Chair Condon motioned the Council approve the Sunstone Solar Project Proposed Order as the Final Order and grant issuance of a site certificate.

Council Member Devlin seconded the motion.

Chair Howe stated his comments regarding the Goal 3 exception:

The Goal 3 Exception requirements set a high threshold to remove land from Oregon's finite Agricultural Inventory. The definition of farm use includes "planting, growing, harvesting, and managing crops, land, and livestock to make a profit". Council indicated our concern about lowering the threshold for an Exception that we would be held to in future applications. So, I want to specify my reasoning how the record justifies a Goal 3 Exception for this project. If you can bear with me for a couple of minutes I would like to elaborate.

There are 3 categories of agricultural land: high value, arable, and non-arable. The LCDC solar rules were designed to incentivize development on non-arable lands so the threshold for a successful application on non-arable land was lowered. I feel EFSC is likely to see more applications on arable lands and Council needs to be clear that we must have sound reasons for taking arable lands out of agricultural production. A Goal 3 Exception is required if more than 12 acres of the project will be sited on high value farmland soils or more than 20 acres of the project will be sited on arable soils.

The Sunstone Solar Project exceeds both of these limitations occupying 9,442 acres of land zoned for Exclusive Farm Use in dryland wheat farming, all of which is interspersed with arable soils and high-value farmland throughout the site boundary. If the property is not already physically developed or irrevocably committed because of surrounding development, then the Goal 3 Rule allows the Council to consider reasons to justify an exception to the statewide policy embodied in Goal 3, and in this case, on the basis of 1) locational dependency, 2) agricultural related economic benefits, and 3) minimal impacts to other resources protected by Council standards.

- 1) Locational dependency - The proposed site is locationally dependent because it would be located on existing transmission and transportation infrastructure and is collocated with other nearby energy facilities in a manner that allows for efficient use of existing infrastructure. Therefore, I find that locational dependency is one of the four reasons justifying a Goal 3 Exception.
- 2) The site is on water-challenged land and would not impact irrigated crops. Therefore, I find that the water-challenged site is one of the four reasons justifying a Goal 3 Exception.
- 3) Agricultural related economic benefits - As an economic benefit to support the local agricultural economy for the loss of up to 9,400 acres of dryland winter wheat farmland, the applicant has proposed an Agricultural Mitigation Plan based on an Economic Impact Analysis which estimates the annual economic value of winter wheat production at the site. To compensate for the loss of winter wheat production, the applicant proposes to make a one-time payment of \$1,179 per acre of farmland occupied by the facility to an agricultural mitigation fund, up to approximately \$11.08 million for the anticipated 9,400-acre energy facility footprint. Based on the modeling provided in the analysis, the investments proposed in the Agricultural Mitigation Plan would more than offset the negative adverse impacts that would result from the conversion of cultivated land for use by the proposed facility. I, therefore, find that the applicant used reasonable methods to estimate both the proposed adverse impacts of the proposed facility and the potential benefits of the proposed Agricultural Mitigation Plan, and that the preponderance of evidence in the record supports a finding that the proposed Agricultural Mitigation Plan will not only mitigate impacts, but are reasonably likely to generate a net economic benefit to the local agricultural economy that justifies why the state policy in Goal 3 should not apply.
- 4) Minimal impacts to other resources - Construction and operation of the proposed facility will be sited to avoid any sensitive environmental features, and the facility is not anticipated to have any significant adverse impacts to soils, wetlands, protected areas, water resources, fish and wildlife habitat and species, threatened and endangered species, scenic and aesthetic resources, and historic, cultural, and archaeological resources. The lack of sensitive resources within the proposed energy facility footprint is unique for a site of its size. The construction and operation of the facility would result in some impacts to cultural resources of significance to the Confederated Tribes of the Umatilla Indian Reservation; however, the applicant has worked with the Tribes to identify appropriate mitigation and

the Tribes have indicated that their concerns have been addressed. I, therefore, find that impacts to other resources would be minimal.

Therefore, I believe the Council can find that: 1) locational dependency, 2) the site is water-challenged land, 3) the agricultural economic benefits, and 4) minimal impacts to other resources protected by Council standards are four reasons that cumulatively justify taking an exception to the statewide policy embodied in Goal 3.

Counselor Rowe sought clarification regarding Chair Howe's statement relative to the Proposed Order. Chair Howe confirmed he agrees with the Goal 3 exceptions analysis in the Proposed Order and that his statement was intended only as supplementation of that analysis.

The motion was carried unanimously.

Agenda Modification

Mr. Rowe provided Council an update on the appeal of the denial of a contested case filed for Boardman to Hemingway Transmission Line Amendment 1. Ms. Gilbert withdrew her appeal and the case was dismissed.

Ms. Gilbert has filed an appeal to Council's denial of her request for a contested case on Amendment 2 for the Boardman to Hemingway project to the Supreme Court.

C. Public Comment Period (Information Item)⁷ – This time was reserved for the public to address the Council regarding any item within Council jurisdiction that is not otherwise closed for comment. Items closed for comment are the Mist Underground Natural Gas Storage Facility Amendment 13 and the Sunstone Solar Project Draft Proposed Order/Proposed Order.

There were no public comments received. Chair Howe closed the Public Comment Period.

D. Madras Solar Energy Facility Amendment 1: Draft Proposed Order Public Hearing (Public Hearing)⁸ – Chase McVeigh Walker, Senior Siting Analyst, provided an overview of the facility, the Amendment 1 request and the siting process. The Madras Solar Energy Facility is an approved but not yet constructed 63 megawatt solar energy generation facility located in Jefferson County. Amendment 1 proposes to extend the construction commencement deadline by 3 years and extend the construction completion deadline to 18 months after construction commences.

Chair Howe opened the Public Hearing at 5:54 p.m.

Chair Howe, acting as the Presiding Officer, explained the legal requirements for providing comments on the record and facilitated the hearing.

⁷ Audio/Video for Agenda Item C = 01:11:17 – 2024-11-14-EFSC-Meeting-Audio/Video

⁸ Audio/Video for Agenda Item D = 01:16:21 – 2024-11-14-EFSC-Meeting-Audio/Video

Certificate Holder comments

Mr. Paul Szewczykowski, Senior Director for Ecoplexus, representing the certificate holder Madras PV1 LLC, which is subsidiary of Ecoplexus, stated Madras PV1 intends to meet all the conditions of the wildfire mitigation that have been proposed. They also plan to finalize a contract with Deschutes Valley Water District. He later noted his agreement with the request for additional time for comments from the Confederated Tribes of the Warm Springs.

Vice-Chair Condon asked for background information related to the timeline from initial application approval to construction, the time necessary and the relationship between the Confederated Tribes of the Warm Springs (CTWS) and Portland General Electric (PGE) and how that affects timing.

Mr. Szewczykowski stated it is complicated and a process. The ongoing negotiations between PGE, CTWS and Ecoplexus have been complicated. The 230-KV line that is the interconnect is under Federal jurisdiction, which also adds another level of complexity and is the main reason for the amendment request. The negotiations are moving forward. He noted that he can respond in writing for more specificity.

Vice-Chair Condon asked for an explanation of the structure of the Ecoplexus company and its subsidiaries in regard to liability terms.

Mr. Szewczykowski noted he would respond in writing to the question. He stated it is normal to have a holding company, and they have a certificate holder. There is a liability protection issue that is part of that. All the expertise is from the parent company, Ecoplexus, as well as all the staff, the engineering team and the operations and maintenance teams.

Vice-Chair Condon questioned if Ecoplexus' decisions regarding what projects should develop at certain times is part of the timing delay.

Mr. Szewczykowski stated most decisions about timing have to do with interconnection.

Vice-Chair Condon asked if there is an anticipated time for the interconnection issue to be resolved.

Mr. Szewczykowski stated that is part of the negotiations currently taking place.

Secretary Cornett asked Mr. Szewczykowski regarding the site certificate holder's position on the public comment time extension request by CTWS.

Mr. Szewczykowski stated the certificate holder did not oppose the 21-day public comment time extension request by CTWS.

Public Comments

Mr. Alan Clark, a landowner in the area, stated his support for the facility noting that it is a good location for the facility and will continue to preserve the land for the future.

The Council received a 21-day extension request for the public comment period from the CTWS. After discussion and clarification, the following motion was made.

Council Member Devlin motioned the Council approve the request by the Confederated Tribes of the Warm Springs Reservation of Oregon for 21-day extension of the public comment timeframe to December 5, 2024 at 5:00 PM based on consent by the certificate holder.

Council Member Beier seconded the motion.

The motion was carried unanimously.

The certificate holder requested additional time to respond to the forthcoming comments from CTWS. After discussion, January 2, 2025 at 5:00 p.m. was set as the responding comment deadline. However, if the certificate holder responded earlier the record would close when their comment was received and The Department would move to the next phase in the amendment process.

Chair Howe closed the Public Hearing at 6:19 p.m.

The November EFSC meeting was adjourned at 6:21 pm

Future Energy Facility Siting Council Meeting:

- **December 13, 2024**
- **January 16-17, 2025**