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VIA EMAIL: casaria.taylor@dlcd.oregon.com

Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301

Dear Chair Lazo, Director Bateman, and Members of the Commission:

NewSun Energy LLC (“NewSun”) submits this letter in support of its Petition for Rulemaking to Amend OAR 660-023-0195, OAR 660-033-0130, and OAR 660-033-0140. NewSun is a specialized Oregon energy developer focused on interconnection, transmission, generation, and storage, with extensive experience originating, permitting, financing, constructing, and operating utility-scale facilities across Oregon, particularly Eastern Oregon. As a participant in the 2025 Rulemaking Advisory Committee (“RAC”) for the Eastern Oregon Solar Rulemaking (“2025 Rulemaking”) that developed the permit duration and extension framework at issue in this petition, NewSun directly understands the policy considerations, consensus agreements, and drafting history of this standard.

The rulemaking requested in the application would reduce regulatory complexity and restores coherence to solar permitting under Division 33 by: (1) allowing projects to complete engineering, procurement, financing, interconnection, and construction with certainty that the underlying permit remains valid; (2) freeing developers to focus on productive project execution; (3) providing certainty to planning departments and community members as to project status and permit validity; and (4) supporting Oregon’s HB 2021 Clean Energy Target framework and implementing Executing Orders like EO 25-29.

During the RAC meetings that led to the adoption of the 2025 Rulemaking, the RAC developed a modernized standard under which locally approved solar permits remain valid either until construction begins or six years have passed, whichever occurs first, with up to two additional two-year extensions, allowing a permit to remain valid for a maximum of ten years. The framework was intended as a uniform statewide standard for all solar projects approved under OAR Chapter 660, Division 33. However, an apparent administrative error placed these new permit-duration provisions in OAR 660-033-0130(44), a new permitting pathway adopted by the 2025 Rulemaking, which was subject to a county opt-out mechanism. Many counties with critical interconnection and transmission infrastructure, meaning locations where solar facilities are viable, opted out of Section -0130(44), meaning that the permit validity period provision is inapplicable where it is most needed. **This application simply requests that DLCD correct the administrative error and make the standardized permit validity period applicable to all solar permits, regardless of which regulatory pathway is used.**

The new permitting pathway adopted by the 2025 Rulemaking in OAR 660-033-0130(44) has not been proven workable in practice and, from our perspective, is an onerous, structurally defective mechanism that local jurisdictions have rejected. Eight Eastern Oregon counties formally opted

out of the direct-review rules entirely; four counties took no action; and Crook County opted to complete a Goal 5 inventory. The 2025 Rulemaking failed to create “streamlined” siting pathways as required by its originating legislation, HB 3409, 2023.

Nevertheless, the modernized standard permit duration period was one of the few practical, consensus-driven provisions to emerge. RAC meeting transcripts provided in Exhibit A show clear support from planning officials, agricultural organizations, industry groups, and renewable energy developers. RAC members recognized that outdated expiration timelines created needless friction and uncertainty, and that the new standard was “good policy” intended to apply statewide.

Currently, permit validity periods are regulated through local government ordinance in relation to conditional use permits, which varies county-to-county, but is generally for a period of a few years, with sometimes unclear or subjective extension standards. This creates two issues. First, that timeframe does not correlate with the realities of grid interconnection. Growing demand for clean power has strained regional transmission queues and lengthened cluster studies. High-voltage equipment now has procurement lead times of three to four years. In NewSun’s direct experience, the timeline from the submittal of an interconnection request to energization is a decade or more. Because these multi-year utility and supply-chain milestones are completely outside developers’ control, even the most diligent projects routinely experience energization delays, subjecting capital-intensive projects awaiting technical utility approvals to the uncertainties of recurring local extension proceedings. Second, the variety, and sometimes ambiguity, of permit validity periods in local county ordinances creates potential uncertainty as to how long a permit is valid for. As a result, local planning staff and community members may not know whether certain proposed solar projects are actually proceeding toward construction, or the overall number and acreage of solar projects in the community. **The revision requested in the application would clarify the rule in both directions, providing a standard permit validity period that provides both developers and communities with certainty.**

NewSun Energy respectfully requests that DLCD initiate rulemaking to adopt the proposed amendments. Correcting this administrative drafting error honors the consensus reached by the RAC, eliminates arbitrary regional disparities, provides certainty to local governments, and supports the capital investments required to achieve Oregon’s clean energy goals.

Sincerely,

A handwritten signature in blue ink, appearing to read "Max Yoklic".

Max Yoklic
In-House Counsel, Permitting & Real Estate
NewSun Energy

cc:

Dr. Brenda Bateman, Commissioner Bennett, Casaria Taylor

Exhibit A

**RAC Meeting Transcript
August 28, 2024 Meeting¹**

2:40:30 [Jon Jinings, DLCD] “The idea, again, so we know, we all know everybody has in their local programs something that speaks to the duration of a permit as well as the opportunity to get it changed. And we have it in our rules too, but in another location. And so, the question is, you know, does it make sense, is it reasonable or not, to consider having, you know, one that's more directly applicable to photovoltaic solar?”

2:43:08 [Jamie Damon, Kearns & West] “So, the question is: should there be a permit expiration? One of the things that Jon brought up to me when I asked him and said ‘why is this an issue,’ is he said that permits can stay on the books that can get extended for, you know, a really long period of time. Communities change, people change, folks aren’t aware that, you know, something’s happening so there’s that issue as well.”

2:43:35 [Max Yoklic, NewSun Energy] “Is that the conflict we’re reducing by creating this regulatory time frame?”

2:43:52 [Damien Hall, OSSIA] “Yeah, so there is a default rule for conditional uses, [unintelligible], the question is, eight years, is that enough time? The current rule, kind of, always grants one extension from the county, and then the county can do any number of things which is where you get to the forever or not, versus or they can just say ‘you don't have any more extensions you’re done here.’ So, it kind of cuts both ways, and this [rule] seems a little more certain.”

2:44:29 [Jon Jinings, DLCD] “Like you said about, having a number of approvals, unexecuted approvals, undeveloped approvals, you know, could create some uncertainty and anxiety out there. ‘Now we’ve got twelve, now we’ve got thirteen, now we’ve got fourteen, how many of these are going to have to get built, we don't know.’ I mean, so again, I’m not saying we are having this situation, I’m just saying that could happen, and in some places maybe it has, and is there, to the extent that that does, result in some conflict – might not be the wrong word – that’s not we’re after right, there’s attention and concern and uncertainty, you know, does that merit some special deliberation?”

2:45:49 [Marc Hudson, Oregon Agricultural Trust] “For my mind, the length of time is beneficial because you do get in these situations with community approvals, where there's a new approval

¹ Oregon Dept. Land Conservation & Development, Eastern Oregon Solar Siting Possibilities Rulemaking Advisory Committee Mtg. 5, YouTube (Aug. 28, 2024), <https://www.youtube.com/live/X2A1ttRjbmw>.

coming up and the community is looking at, 'well we've already approved X number of these past acres, you know, only X percent of them are already built, you know, so like how many of these are we going to keep approving?' kind of thing. And so, at least now it's like we know that the old ones that they never got built they're going to slide off, kind of thing, to my mind. And so, I think it's good, again. (...)

2:52:39 [Damien Hall, OSSIA] "Certainty is important, right, it sounds like from certain counties but not all counties are the same, and [unintelligible] sometimes you get a new board of county commissioners who think 'hey, one of these extension requests is an opportunity to make this thing go away,' and that on the developer/applicant side, that's, you know, a big risk if you're already however many years um invested, you know, advancing you got the land use before doing all the other things for the project. So that's what I meant that it kind of cuts – this the way that its written right now – the rule kind of cuts both ways. (...)"

2:54:07 [Andrew Mulkey, 1000 Friends of Oregon] "Well, I'm a bit of a broken record, so I'll just say I think I'm fine with the language here. I think you, um, I agree the points that I think you want to make the time period long enough so that it can allow folks who have these permits some flexibility to deal with uncertainties and, you know, oh 'we didn't get the interconnection this year but we're still going for it, we're going to get it next year' or something – that type of thing. I think the extension periods are fine. I think the time periods that we've been talking about – eight years, ten years – all make sense to me. And then in terms of from 1000 Friends' perspective, I guess, because the idea of like [unintelligible] – I think the applicant probably should have some reasons why, but to Damien's point I wouldn't want to turn this into like a litigation. So, I think at least making the standards, you know, either being really clear about what they are or making them discretionary enough that it would be really [unintelligible] to try to deal with it that the county decided that they met, you know, that that would be okay circumstances, especially because it's not a forever extension, there's an ultimate cap on it. So, I think that is what ultimately makes it good policy in my perspective."