EFSC and Public Participation
“The Outside Perspective”

EFSC Workgroup
March 27, 2018
Tamra Mabbott
Community Development Director
City of Umatilla
Energy Facility Siting in Oregon

1. Oregon’s Statewide Planning Program

2. Issues in Columbia Basin

3. Recommendations
Pop QUIZ

What do Prisons and Energy Facilities Have in Common?
Public interest in wireless technology and data storage?

Public interest in transportation?

Yes, but neither are subject to super siting.
## Transportation and Energy

### Transportation

- A. Oregon Highway Plan
- B. Local TSP’s
- C. Local Permitting
- D. Public Investment
- E. Public Need

### Energy

- A. Biennial Energy Report
- B. No local Plans
- C. Local permitting for small projects.
- D. Private Investment
- E. Public Need
Statewide Planning Goals

Goal 1  Citizen Involvement
Goal 2  Land Use Planning
Goal 5  Energy is deemed a significant resource if “an application has been submitted to EFSC.”
Goal 12 Transportation
Goal 13 Energy Conservation
## Comparison of Standards: State Vs County

### Wind Energy Facilities Siting

<table>
<thead>
<tr>
<th></th>
<th>State of Oregon</th>
<th>Umatilla County</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tribunal</strong></td>
<td>EFSC</td>
<td>Planning Commission or Admin Review</td>
</tr>
<tr>
<td><strong>Jurisdiction</strong></td>
<td>105+ MW</td>
<td>Under 105 MW</td>
</tr>
<tr>
<td></td>
<td>&lt;105MW option</td>
<td>No option to refer to state</td>
</tr>
<tr>
<td><strong>Timeline</strong></td>
<td>8 months-2 years</td>
<td>150 days after application deemed “complete” (30 days); plus appeal to LUBA to COA to OS.</td>
</tr>
<tr>
<td></td>
<td>Aver = 4.5 - 5.9 months.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Expedited Review option avail</td>
<td></td>
</tr>
<tr>
<td><strong>Cost</strong></td>
<td>Actual cost of review</td>
<td>$500 initial +expenses</td>
</tr>
<tr>
<td></td>
<td>(approx&gt;$250,000)</td>
<td></td>
</tr>
<tr>
<td><strong>Agency Coordination</strong></td>
<td>Yes</td>
<td>Yes via SAC and Land use review</td>
</tr>
<tr>
<td></td>
<td></td>
<td>May be reimbursed for review of EFSC permit</td>
</tr>
<tr>
<td><strong>Process</strong></td>
<td>EFSC Review</td>
<td>Conditional Use Permit</td>
</tr>
<tr>
<td></td>
<td>State Supreme Court if appealed</td>
<td>Administrative Review</td>
</tr>
<tr>
<td></td>
<td>One step Permit</td>
<td></td>
</tr>
<tr>
<td><strong>Type of Permit</strong></td>
<td>Certificate/License</td>
<td>Land Use Permit</td>
</tr>
<tr>
<td></td>
<td>Binding contract signed by both parties. State defends appeal.</td>
<td></td>
</tr>
<tr>
<td><strong>Standards</strong></td>
<td>OAR 345-022</td>
<td>UCD0 152.617(1HHH)</td>
</tr>
<tr>
<td><strong>Organizational Expertise</strong></td>
<td>Yes with condition</td>
<td>no enforcement capability</td>
</tr>
<tr>
<td><strong>Retirement &amp; Financial Assurance</strong></td>
<td>Yes</td>
<td>Retirement only. Not well-defined. Bond an obstacle for small projects.</td>
</tr>
<tr>
<td><strong>Land Use</strong></td>
<td>Yes</td>
<td>Yes 152.617(1HHH)</td>
</tr>
<tr>
<td></td>
<td>Path A - local permit secured first Path B - part of EFSC permit extensive coord with county</td>
<td></td>
</tr>
<tr>
<td><strong>Waste Minimizaton</strong></td>
<td>Yes*</td>
<td>Indirect via code enforcement, condition &amp; 152.616 C(4)(a)</td>
</tr>
<tr>
<td><strong>Public Services/Community Impact</strong></td>
<td>Yes*</td>
<td>Socio economic impact study part of the CUP Some mitigation apart from Condition</td>
</tr>
<tr>
<td><strong>Structural Standard</strong></td>
<td>Seismic, public Health, Safety, Compliance with OBC*</td>
<td>Refer to Oregon Building Codes Agency Erosion Control Plan</td>
</tr>
<tr>
<td><strong>Soil Protection</strong></td>
<td>Yes</td>
<td>Erosion Control Plan not well defined</td>
</tr>
<tr>
<td><strong>Protected Areas</strong></td>
<td>Yes, e.g. parks, national scenic no “significant” impact standard</td>
<td>Yes, for “significant sites” in Comp Plan</td>
</tr>
<tr>
<td><strong>Aesthetic/Scenic</strong></td>
<td>Yes, for resources i.d. in Co Comp Plan, by tribal govt, fed agencies</td>
<td>Yes, for resources in Comp Plan. Also 152.617 C(1) Not well defined</td>
</tr>
<tr>
<td><strong>Fish &amp; Wildlife Standard</strong></td>
<td>Yes, OAR 345-022-0090 Rigorous</td>
<td>Yes, UCD0 Compliance with ODFW Review, Standard not well defined</td>
</tr>
<tr>
<td><strong>T &amp; E Species</strong></td>
<td>Yes</td>
<td>Yes, per ODFW review</td>
</tr>
<tr>
<td>Historic, Cultural Archeological</td>
<td>Yes. Applicant conducts survey.*</td>
<td>Yes, survey required but not well-defined. Compliance with Comp Plan CTUIR and SHPO</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>----------------------------------</td>
<td>------------------------------------------------------------------</td>
</tr>
<tr>
<td>Recreation</td>
<td>Yes for &quot;important&quot; sites</td>
<td>Yes, if site is &quot;significant&quot; in Comp Plan.</td>
</tr>
<tr>
<td>Public Health &amp; Safety</td>
<td>Yes. Requires protection from turbine blade hazards and electrical hazards. See also 345-024-0100</td>
<td>No, not directly, only by referral from state (PUC) and federal agencies and by Condition. Also in 152.617 C (4), fire hazard, combust material.</td>
</tr>
<tr>
<td>Noise Standard</td>
<td>Yes, DEQ Standards monitoring, enforcement mitigated</td>
<td>Yes DEQ standards, and setback limited enforcement capability Also in 152.617 C (2). See also COO Chapter 96.</td>
</tr>
<tr>
<td>Wetlands</td>
<td>Yes, coord. with DSL. DSL bound by Site Cert to issue permit.</td>
<td>Yes, via referral to DSL and condition to comply with DSL permitting.</td>
</tr>
<tr>
<td>WPCF Permit</td>
<td>Yes, coord. with DEQ. DEQ bound by Site Cert to issue permit.</td>
<td>Yes, via referral to DEQ and condition to comply with DEQ permitting.</td>
</tr>
<tr>
<td>Water Right</td>
<td>Yes, coord. with OWRD. OWRD bound by Site Cert to issue permit.</td>
<td>Yes, via referral to OWRD and condition to comply with OWRD permitting.</td>
</tr>
<tr>
<td>Other Standards</td>
<td>OAR 345 Division 24</td>
<td>UCDO 152.615 Additional CUP restrictions UCDO 152.617 C(5) CUP in EFU Zone for util fac. trans consider r-o-w to minimize impact to timber and/or accepted timber practices protect f &amp; w access comply w/TSP and Pub Works Other conditions deemed necessary See other general UCDO Sections.</td>
</tr>
<tr>
<td>Other Safety Standards</td>
<td>OAR 345-024-0010 EFSC requires applicant to design, construct and operate not w/in close proximity to public; protect from danger, safety of blades.</td>
<td>Refer to Oregon PUC</td>
</tr>
<tr>
<td>Cumulative Impacts</td>
<td>OAR 345-024-0015 requires: (1) utilize existing roads (2) use underground T lines and combining T routes (3) connect to existing substations or minimize # of new substations (4) design to reduce risk to raptors and other wildlife (5) Design to minimize adverse visual features (6) Use min lighting necessary</td>
<td></td>
</tr>
</tbody>
</table>

*denotes standard may not be used to deny application by EFSC, per ORS 469.501, but standard addressed with conditions.
Issues in the Columbia Basin

Energy Generation Area (EGA)

Solar Siting and AVA designation

Transmission Line Siting (farm land protection and high value soil versus locational dependency)
Recommendations

- State Agency Coordination – Update DOE State Agency Coordination Program. ORS 197.180 and OAR 660 - 030
- Reconcile definition of “energy facility” and “utility facility necessary for.” Condemnation not intended for private development.
- Increase regulatory threshold – Buy local!
- PUC – Continue oversight of Public Utilities
Recommendations continued

- Adopt a Statewide Energy Plan, similar to Oregon Highway Plan. Streamline process for projects on the State Plan.
- Adopt local energy plans and update Goal 13 at local level.
- Evaluate cumulative impacts of transmission lines.
Discussion
What is the State Agency Coordination Program?

Oregon Revised Statute  Chapter 197.180
State agency planning responsibilities; certain information to be submitted to department; determination of compliance with goals and plans; rules; exceptions;

Oregon Administrative Rules Chapter 660
OAR 660 Division 30 The purpose of this division is to respond to the legislative findings and policy....implements provisions in SWPG 2 ...and explains the relationship between OAR chapter 660 divisions 30 and 31. The purpose of Commission certification of agency coordination programs is to assure that state agency rules and programs which affect land use comply with the statewide goals and are compatible with acknowledged city and county comprehensive plans.
Save additional slides for use during discussion.
Permitting Agencies

State Jurisdiction
- Oregon Public Utility Commission (OPUC)
- Energy Facility Siting Council (EFSC)

Local Jurisdiction – Cities and Counties
- Conditional Use Application Review and Approval for Generation Facilities
- Land Use Decision for Transmission Lines
- Follow State Agency Coordination requirements
Jurisdictional Threshold

Large(r) Projects
Energy Facility Siting Council (EFSC) jurisdiction "top down" approach.
25 MW (105 MW wind)

Small Projects – County or City "subjurisdictional"
less than 25 MW
Transmission Line Regulatory Oversight

Federal Jurisdiction
Federal Energy Regulatory Commission (FERC)

National Transmission Technical Coordination

State Jurisdiction
- Energy Facility Siting Council (EFSC)
- Oregon Public Utility Commission (PUC)
- Land Conservation & Development Commission (LCDC) – OAR Standards

Local Jurisdiction
- Local process with LUD Standards
- Health and Safety Concerns
- Visual Impacts
- Limited Opportunity for Master Planning
Resources:


PLANNING COMMISSION CHECK-OFF SHEET FOR
UTILITY FACILITIES NECESSARY

TRANSMISSION LINES &
TOWERS (LESS THAN 200 FEET IN HEIGHT) IN EFU & GF ZONES:

Utility Facilities Necessary for Public Service: include wetland waste treatment systems but do not include commercial facilities for the purpose of generating electrical power for public use by sale, or transmission towers over 200 feet in height.

Land Use Decision: UCDC 152.617 (D) (7)

☐ Show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:
   1. Information provided in the technical and engineering feasibility;
   2. The proposed facility is location dependent. (It must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands.)
      (A) Show a lack of available urban and non-resource lands;
      (B) Due to availability of existing right of way;
      (C) Due to public health and safety concerns; and
      (D) Show it must meet other requirements of state and federal agencies.

Costs associated with any of the factors listed above may be considered, but cost alone, including the cost of land, may not be the only consideration in determining that a utility facility is necessary for public service.

☐ The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility.

☐ Mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.

Note: Any proposed extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060. Furthermore, the provisions of this section do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.
SITING REQUIREMENTS:

- Covenant Not to Sue
- Weed Control Plan
- Preservation Plan addressing: existing vegetation, water resources, wildlife habitat, other significant natural resources, and historical & cultural sites
- Design towers to discourage bird perching and nesting.
- Fire Prevention & Response Plan
- County Road Use Agreement, Crossing and Access Permits
- ODOT (access, crossing, etc.) permits
- DEQ storm water permit
- Riparian Setbacks

OTHER SITING REQUIREMENTS THAT MAY APPLY:

- Easement agreements
- Proof of Insurance
- Construction Plan¹:
  - Licensed contractor
  - Relevant certifications
- Interconnect Agreement²
- Decommissioning Plan:
  - Irrevocable Letter of Credit
  - Bonding

PERMITS:

- County Approval Permits:
  - Land Use Approval (Land Use Decision)
  - County Crossing & Access Permit(s) or Public Works Agreements
  - County Zoning Permit

Other (Possible) Agency Permits and/or approvals:

- FAA
- US Army (Corps)
- BOR & Irrigation District (crossing agreements)
- ODFW
- DSL
- BCD

¹ All transmission lines, whether constructed by utilities such as BPA, PacifiCorp, etc., or by investor utilities are required to be constructed in accordance with the National Electrical Safety Code (NESC).
² Utilities (BPA, PacifiCorp, etc.) will allow interconnect by power generators only where the transmission line has been constructed to the NESC and 24-hour monitoring is in place prior to power supplying the grid.
OAPA recognizes the need to review and update Goal 13 Energy Conservation for the 21st Century. OAPA supports a comprehensive energy goal that incorporates and balances other goals with the desire to conserve energy, balance impacts of energy development and encourage development of a sustainable energy supply for Oregon. We support renewable and sustainable energy development, policies, and the regulations that balance impacts to resource lands and people. OAPA encourages changes to state law to shift the role of final permitting from state agency super siting to local governments.