NewSun ENERGY

550 NW Franklin Ave., Suite 408
Bend, OR 97702

February 13, 2024

House Committee on Agriculture, Land Use, Natural Resources, and Water
Oregon State Capitol
Salem, OR 97301

RE: Support for House Bill 4090

Chair Helm and Members of the Committee:

NewSun Energy is a leading, local renewable energy development company that focuses exclusively on decarbonization in the Pacific Northwest and especially the State of Oregon. NewSun strongly supports the passage of HB 4090 including the Dash-4 Amendment. As one of region's most prominent experts on renewable energy facility development, siting, permitting, and interconnection and transmission, we appreciate the opportunity to support the measure and respond to questions and concerns raised by stakeholders.

Why is the Bill Needed and are there Projects on Federal Lands?
The Energy Facility Siting Council ("EFSC") currently requires a site certificate for an energy facility sited wholly on federal land, even though such facilities undergo federal review under the National Environmental Policy Act ("NEPA") and other federal review processes and standards. There are at least a dozen proposals for renewable energy projects on public lands in Oregon at various stages in the development process. The fact that no projects have been approved or constructed is likely due to the duplicative and burdensome permitting construct that this bill aims to remedy. HB 4090 is one of the very few actions the State can take to immediately accelerate transmission infrastructure, which is known to be the biggest hurdle to achieving Clean Energy Targets under HB 2021, and renewable energy development by several years.

Are there Adequate Protections Under Federal Laws?
Yes. The NEPA process is comprehensive, burdensome, and requires robust public participation and process including with federal and state agencies and local and tribal governments. In addition to NEPA, renewable energy facilities must comply with other applicable federal laws and standards. For example, projects on public lands must also comply with BLM regulations at 43 CFR Part 2800 promulgated pursuant to the Federal Land Policy and Management Act ("FLPMA") and must not significantly conflict with BLM Resource Management Plans (the land use plans governing public lands). Therefore, while the NEPA analysis focuses on impacts to the human environment, other federal standards covering a wide array of siting issues are binding and applicable to renewable energy facilities and provide comprehensive protections.

Should We Wait and See What Happens with Federal Efforts First?
No. While the federal government is undertaking actions to promote renewable energy development and transition away from fossil fuels, those efforts do not open lands to development in a carte blanche manner. Without significant changes to those efforts, it is unclear whether those efforts will provide any meaningful progress in Oregon. From the climate advocate and development perspective, those changes do not do enough, or fast enough, to get us to our climate goals.

What Efforts is the Federal Government Undertaking?
In order to facilitate decarbonization and transmission siting the U.S. Department of Energy ("DOE") proposed modifications to its Categorical Exclusion rules ("CEs" or "CatExs"), primarily directed at transmission lines in existing right-of-way corridors, along with other rules for solar and battery facilities on "previously disturbed or developed" lands. *See* 88 Fed. Reg. 78681 (Nov. 16, 2023). That rulemaking is broadly *not* applicable to the issue under HB 4090. The DOE will not be the lead agency reviewing and issuing permits for renewable energy facilities on public land and, therefore, the CEs will not be readily applicable to locations where renewable energy facilities will be built.[1] Where the CEs do apply, such as to actions by Bonneville Power Administration, they will complement and accelerate permitting for needed transmission lines. Various organizations submitted comments supporting the changes for transmission lines and battery systems, including the Center for Biological Diversity, Defender of Wildlife, and WildEarth Guardians. In addition, The Nature Conservancy submitted a letter stating that they "support the establishment of CEs that will focus transmission, solar generation, and energy storage development on previously disturbed sites, which will encourage clean energy development in a way that alleviates pressures on ecologically, culturally, or socially important landscapes."

The BLM is also undertaking an effort to streamline solar facility development in lower conflict areas on public lands by adopting a Programmatic Environmental Impact Statement ("PEIS"). 89 Fed. Reg. 3687 (Jan 19, 2024). The draft PEIS recommends restricting solar development to locations that are: (1) proximal to transmission lines; (2) on low grade; and (3) outside of 21 exclusion areas for natural resource uses and values. Projects sited in these locations will still need to undergo a project-specific NEPA analysis. However, it is unlikely that the PEIS will, in practice, accelerate solar energy development on public lands because the vast majority of locations it identifies as lower conflict in Oregon are not feasible for development due to the lack of transmission infrastructure and existing capacity. Projects in other areas would undergo full NEPA review, if even allowed. In contrast, this bill will have the immediate effect of accelerating renewable energy development by eliminating a duplicative permitting process.

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[1] When analyzing environmental effects under NEPA, the federal agency with primary decision-making authority is designated as the lead agency and *the lead agency can only apply categorical exclusions that it has explicitly adopted*. *See* 40 C.F.R. 1507.3; 40 C.F.R. 1501.7. DOE is not the lead agency for reviewing applications for renewable energy facilities on federal lands because it is not the agency primarily responsible for land management, such as the Bureau of Land Management ("BLM"). DOE will rarely, if ever, be designated a co-lead agency for these types of applications.

Should Oregon Focus on the State's Siting Process Instead?
No. HB 3180 directs DLCD to conduct a rulemaking to identify locations of low conflict siting for solar energy that would receive streamlined permitting treatment at the state level. The intent and scope of that rulemaking are nearly identical to federal efforts—stakeholders that were involved in the workgroups that led to HB 3180, which included NewSun, coalesced around a concept for low conflict siting focusing on: (1) proximity to transmission lines and (2) avoidance of other natural resource uses and values. Reaching our Clean Energy Targets requires targeted permitting at all levels of government. It is sensible and reasonable for the State of Oregon to undertake efforts to promote renewable energy development at the state level **in parallel with** efforts being undertaken at the federal level.

Will This Bill Have Unintended Consequences?
No. For the reasons discussed previously, this bill will not have unintended consequences. In addition, federal agencies will move forward with energy facility siting decisions with state input, and EFSC rarely, if ever, denies permit requests. Therefore, this measure will not change the amount of land potentially impacted. It will, however, reduce timelines and costs associated with permitting renewable energy, which will not only speed up deployment but will provide a signal and financial benchmark encouraging investment in the State of Oregon.

Can we Decarbonize Without Building Renewables on Federal Lands?
No. Decarbonization is a city, county, state, federal, and international effort. The State of Oregon will not be able to meet its Clean Energy Targets without enabling renewable energy development in every way possible, from rooftop distributed generation on residential homes to utility-scale energy facilities on private and public lands.

Was There Adequate Process and Participation?
Yes. This legislative concept has been worked for several years with Republican and Democratic House leadership as well as stakeholders. Those conversations culminated in the introduction of this policy in the same committee last year in HB 3179, a bill which underwent significant scrutiny by a variety of stakeholders including in legislative hearings. This policy concept did not move forward as part of that bill so that the county solar permitting threshold could be elevated. Representative Fahey reintroduced this bill to continue the conversation that started last session. In addition, this bill version has been reviewed by and discussed with a wide variety of stakeholders, resulting in bill amendments addressing stakeholder concerns. When it comes to matters of the utmost urgency like decarbonization, we cannot wait to take immediate action and this bill provides a straightforward and narrow change that will shave years and millions of dollars off permitting timelines.

Conclusion

HB 4090 is a common-sense solution that will accelerate decarbonization, spur renewable energy investment in the state, distribute precious state resources, and still provide protection and public input on energy facility siting. The benefits of the bill include that it:

- Is narrowly tailored to promote renewable energy and related transmission;
- Streamlines renewable energy and transmission facility permitting on federal land while maintaining adequate protections and public involvement;
- Ensures involvement of local government on critical issues;
- Reduces timelines to achieve infrastructure buildout such as transmission lines; and
- Reduces the burden on state government and EFSC staff so that they can focus on processing the incoming wave of facilities on non-federal lands.

For these reasons, we urge you to move forward with HB 4090.

Thank you for considering these comments.

Sincerely,

Max M. Yoklic
In-House Counsel, Permitting & Real Estate
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