

COUNTY DECOMMISSIONING AND BONDING REQUIREMENTS FOR SOLAR

Baseline Standard

There is a baseline approval standard for bonding and decommissioning that **is identical at EFSC and the County**. That baseline is that: (a) the site can be restored to a useful, nonhazardous condition following retirement; and (b) that the applicant has a reasonable likelihood of obtaining financial assurances in a form and amount satisfactory to the County or EFSC to do the restoration. That standard is provided in OAR 345-022-0050 and ORS 215.446(3).

Under OAR 345-022-0050, to issue a site certificate, EFSC must find that:

- (1) The site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility.
- (2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition.

Under ORS 215.446(3), to issue a permit for a solar facility, a county “*shall require*” that the applicant:

Demonstrate that the site for a renewable energy facility, taking into account mitigation, can be restored adequately to a useful, nonhazardous condition following permanent cessation of construction or operation of the facility and that the applicant has a reasonable likelihood of obtaining financial assurances in a form and amount satisfactory to the county to secure restoration of the site to a useful, nonhazardous condition.

In other words, both Counties and EFSC must determine the facility can be restored adequately to pre-construction conditions and that the developer has the money to do so. That determination must be based on evidence. The county standard is statutory, so **every county in the state is required to determine that the standard has been met** in order to legally issue a permit for a solar facility.

Details on EFSC Permits

EFSC has adopted separate regulations governing what information related to retirement must be submitted with an application to ensure that there is evidence that the baseline approval standard can be met. OAR 345-021-0010(1)(w). EFSC also imposes mandatory conditions of approval on site certificates that require a site certificate holder to provide a bond or letter of credit before beginning construction of the facility and to submit a retirement plan prior to retiring the facility. OAR 345-025-0006. While all counties do not have these specific requirements, they often have their own – sometimes more stringent – requirements.

Details on County Permits

Many counties have adopted local zoning regulations implementing ORS 215.466(3) that **impose standards or requirements that meet or exceed the decommissioning and bonding conditions imposed at EFSC**. For example, the Crook County Zoning Ordinance requires an applicant for a solar facility to submit a decommissioning plan addressing public health and safety, the environment, wildlife, and a long list of substantive restoration requirements, as well as very specific bonding standards for calculations, comparisons, implementation, status, and dispute resolution. CCZO 18.161.010(2)(e).

Even if a county has not adopted additional county zoning regulations, the baseline approval standard must still be met. Therefore, in practice, counties impose conditions of approval equivalent to EFSC's mandatory conditions – that the financial assurance is provided at some point prior to construction and that a decommissioning plan is approved prior to retirement – either as required under county code or otherwise as necessary to satisfy ORS 215.446. NewSun, for example, has directly experienced this and has specific bonding and decommissioning requirements in permits in Crook, Wasco, and Deschutes counties. The conditions of approval in those approved permits include:

Crook County: *Implementation of final decommissioning and financial assurance will be provided entirely at the cost of the Applicant/Project developer to Crook County. The financial assurance will be one of the following: an irrevocable letter of credit, a surety bond or a trust fund in accordance with the approved financial assurances to guarantee the project decommissioning work will be completed in accord with the decommissioning plan. The modified decommissioning plan and financial assurance shall be submitted to the Crook County Counsel for review and approval. County Counsel approval of the decommissioning plan, including the financial assurance, shall not be unreasonably withheld and shall be required prior to the start of clearing and grading on the Project site. The financial assurance shall give consideration to the cost estimate and phasing schedule in the decommissioning plan, and shall provide adequate funding to restore the site, regardless of when construction or operation ends. A final decommissioning plan and financial assurance, acceptable to Crook County Counsel, shall be in place prior to project site clearing and grading.*

Wasco County: *The permit holder shall provide a detailed cost estimate, including a comparison of that estimate to funds set aside, in the form of a financial assurance (bond, letter of credit, insurance policy other such form of guarantee acceptable to Wasco County), and a plan for assuring the availability of adequate funds for completion of dismantling or decommissioning, prior to receiving zoning approval on a building permit. This financial assurance will comply with requirements listed in Chapter 19 of the Wasco County LUDO under Criterion 19.c. (2), (3), (4), and (5).*

Deschutes County: *Decommissioning plan submitted and COA requiring plan to be adhered to. \$1M performance bond which can be revised by CC. Prior to construction, the applicant shall secure Improvement Agreement approval, including a performance bond in favor of Deschutes County, or cash, for removal and restoration in an initial amount of \$1,000,000, or other amount approved by the Board of County Commissioners as part of the Improvement Agreement approval. The bond shall be redeemable by the County if the applicant fails to remove the facility in its entirety and restore the site as conditioned no later than 12 months after ceasing commercial electrical generation, (defined as one continuous year with no commercial electrical sales) or 12 months after termination of the site lease, whichever first occurs.*

Practically speaking, the salvage value of materials mitigates and could even exceed decommissioning costs, given the ease of removing solar facilities due to their simple design and the high value of scrap steel (which is a primary component of solar farms). Therefore, even if a solar company did not have a bond for end-of-life (as counties require) the landowner or county could sell the salvaged steel for more money than it would cost to restore the land.

HB 3179 would not affect the existing standards or any of the implementing county code provisions.