

Energy Facilities Siting Council  
Oregon Department of Energy  
625 Marion St. NE  
Salem, OR 97301-3737

Dear Chairman Shiprack:

Thank you for the opportunity to comment on ONDA's petition to amend the rules of the Energy Facility Siting Council (Council) to include the entirety of the Steens Mountain Cooperative Management and Protection Area (CMPA) as a "protected area" under the Council's regulations. The Council should deny the petition under three of the six factors listed in the Council's request for comments on the petition. These factors are as follows:

1. **The continued need for the rule.** The protected areas listed in the Council's rules are all places that are protected from development under either federal or state law. The Steens Act, however, expressly protects private property rights on private lands within the CMPA, including the right to develop renewable energy projects. Because the Steens Act allows for development of these lands, there is no need to include private lands within the CMPA as protected, and therefore, there is no need for the rule proposed by ONDA.
2. **The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations.** ONDA's proposed rule directly conflicts with both Federal law and State law. First, the Steens Act explicitly protects private property rights within the CMPA. Second, the proposed rule would prohibit development on lands that are not designated for protection, contrary to ORS 469.501(1)(C).
3. **The statutory citation or legal basis for the rule.** ONDA's proposed rule exceeds the Council's statutory authority. ORS 469.501 authorizes the Council to issue rules setting forth "Areas designated for protection by the state or federal government, including but not limited to monuments, wilderness areas, wildlife refuges, scenic waterways and similar areas." ONDA's proposed rule, however, would include lands that are not "designated for protection." Also, the private lands within the CMPA are not similar to "monuments, wilderness areas, wildlife refuges, [or] scenic waterways," which are the types of areas the Oregon legislature sought to have included in any rule implementing the statute. Therefore, the Council should deny the petition.

In addition to the factors listed above, EFSC's notice also requested comments "on whether options exist for achieving the rule's substantive goals in a way that reduces the negative economic impact on businesses," as required by ORS 813.390(2). Foreclosing sustainable economic development on private lands within the CMPA would prevent local businesses in Harney County from benefitting economically from the development of renewable energy in the areas that are presently able to be developed.

For these reasons, the Council should deny ONDA's petition.

Sincerely,