

A-Engrossed
House Bill 2329

Ordered by the House April 16
Including House Amendments dated April 16

Sponsored by Representative HELM, Senator BENTZ; Representatives POWER, SMITH DB (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Modifies definition of "energy facility" for purposes of regulation of energy facilities by Energy Facility Siting Council. Broadens provisions for types of electric power generating plants that may elect to obtain site certificate from council if otherwise not required to obtain site certificate.

Allows counties to approve permits for certain small renewable energy facilities. Establishes permit criteria.

A BILL FOR AN ACT

1
2 Relating to energy facilities; creating new provisions; and amending ORS 469.300 and 469.320.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 469.300 is amended to read:

5 469.300. As used in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992, unless the
6 context requires otherwise:

7 (1) "Applicant" means any person who makes application for a site certificate in the manner
8 provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

9 (2) "Application" means a request for approval of a particular site or sites for the construction
10 and operation of an energy facility or the construction and operation of an additional energy facility
11 upon a site for which a certificate has already been issued, filed in accordance with the procedures
12 established pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

13 (3) "Associated transmission lines" means new transmission lines constructed to connect an en-
14 ergy facility to the first point of junction of such transmission line or lines with either a power
15 distribution system or an interconnected primary transmission system or both or to the Northwest
16 Power Grid.

17 (4) "Average electric generating capacity" means the peak generating capacity of the facility
18 divided by one of the following factors:

19 (a) For wind facilities, 3.00;

20 (b) For geothermal energy facilities, 1.11; or

21 (c) For all other energy facilities, 1.00.

22 (5) "Combustion turbine power plant" means a thermal power plant consisting of one or more
23 fuel-fired combustion turbines and any associated waste heat combined cycle generators.

24 (6) "Construction" means work performed on a site, excluding surveying, exploration or other
25 activities to define or characterize the site, the cost of which exceeds \$250,000.

26 (7) "Council" means the Energy Facility Siting Council established under ORS 469.450.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (8) "Department" means the State Department of Energy created under ORS 469.030.

2 (9) "Director" means the Director of the State Department of Energy appointed under ORS
3 469.040.

4 (10) "Electric utility" means persons, regulated electrical companies, people's utility districts,
5 joint operating agencies, electric cooperatives, municipalities or any combination thereof, engaged
6 in or authorized to engage in the business of generating, supplying, transmitting or distributing
7 electric energy.

8 (11)(a) "Energy facility" means any of the following:

9 (A) An electric power generating plant with a nominal electric generating capacity of 25 mega-
10 watts or more, including but not limited to:

11 (i) Thermal power;

12 (ii) Combustion turbine power plant; or

13 (iii) Solar thermal power plant.

14 (B) A nuclear installation as defined in this section.

15 (C) A high voltage transmission line of more than 10 miles in length with a capacity of 230,000
16 volts or more to be constructed in more than one city or county in this state, but excluding:

17 (i) Lines proposed for construction entirely within 500 feet of an existing corridor occupied by
18 high voltage transmission lines with a capacity of 230,000 volts or more; *[and]*

19 (ii) Lines of 57,000 volts or more that are rebuilt and upgraded to 230,000 volts along the same
20 right of way[.]; **and**

21 **(iii) Associated transmission lines.**

22 *[(D) A solar photovoltaic power generation facility using more than:]*

23 *[(i) 100 acres located on high-value farmland as defined in ORS 195.300;]*

24 *[(ii) 100 acres located on land that is predominantly cultivated or that, if not cultivated, is pre-*
25 *dominantly composed of soils that are in capability classes I to IV, as specified by the National Co-*
26 *operative Soil Survey operated by the Natural Resources Conservation Service of the United States*
27 *Department of Agriculture; or]*

28 *[(iii) 320 acres located on any other land.]*

29 **(D) A solar photovoltaic power generation facility using more than:**

30 **(i) 160 acres located on high-value farmland as defined in ORS 195.300;**

31 **(ii) 1,280 acres located on land that is predominantly cultivated or that, if not cultivated,**
32 **is predominantly composed of soils that are in capability classes I to IV, as specified by the**
33 **National Cooperative Soil Survey operated by the Natural Resources Conservation Service**
34 **of the United States Department of Agriculture; or**

35 **(iii) 1,920 acres located on any other land.**

36 (E) A pipeline that is:

37 (i) At least six inches in diameter, and five or more miles in length, used for the transportation
38 of crude petroleum or a derivative thereof, liquefied natural gas, a geothermal energy form in a
39 liquid state or other fossil energy resource, excluding a pipeline conveying natural or synthetic gas;

40 (ii) At least 16 inches in diameter, and five or more miles in length, used for the transportation
41 of natural or synthetic gas, but excluding:

42 (I) A pipeline proposed for construction of which less than five miles of the pipeline is more than
43 50 feet from a public road, as defined in ORS 368.001; or

44 (II) A parallel or upgraded pipeline up to 24 inches in diameter that is constructed within the
45 same right of way as an existing 16-inch or larger pipeline that has a site certificate, if all studies

1 and necessary mitigation conducted for the existing site certificate meet or are updated to meet
2 current site certificate standards; or

3 (iii) At least 16 inches in diameter and five or more miles in length used to carry a geothermal
4 energy form in a gaseous state but excluding a pipeline used to distribute heat within a geothermal
5 heating district established under ORS chapter 523.

6 (F) A synthetic fuel plant which converts a natural resource including, but not limited to, coal
7 or oil to a gas, liquid or solid product intended to be used as a fuel and capable of being burned to
8 produce the equivalent of two billion Btu of heat a day.

9 (G) A plant which converts biomass to a gas, liquid or solid product, or combination of such
10 products, intended to be used as a fuel and if any one of such products is capable of being burned
11 to produce the equivalent of six billion Btu of heat a day.

12 (H) A storage facility for liquefied natural gas constructed after September 29, 1991, that is de-
13 signed to hold at least 70,000 gallons.

14 (I) A surface facility related to an underground gas storage reservoir that, at design injection
15 or withdrawal rates, will receive or deliver more than 50 million cubic feet of natural or synthetic
16 gas per day, or require more than 4,000 horsepower of natural gas compression to operate, but ex-
17 cluding:

18 (i) The underground storage reservoir;

19 (ii) The injection, withdrawal or monitoring wells and individual wellhead equipment; and

20 (iii) An underground gas storage reservoir into which gas is injected solely for testing or res-
21 ervoir maintenance purposes or to facilitate the secondary recovery of oil or other hydrocarbons.

22 (J) An electric power generating plant with an average electric generating capacity of [35] 50
23 megawatts or more if the power is produced from geothermal or wind energy at a single energy fa-
24 cility or within a single energy generation area.

25 (b) "Energy facility" does not include a hydroelectric facility or an energy facility under para-
26 graph (a)(A)(iii) or (D) of this subsection that is established on the site of a decommissioned United
27 States Air Force facility that has adequate transmission capacity to serve the energy facility.

28 (12) "Energy generation area" means an area within which the effects of two or more small
29 generating plants may accumulate so the small generating plants have effects of a magnitude similar
30 to a single generating plant of 35 megawatts average electric generating capacity or more. An "en-
31 ergy generation area" for facilities using a geothermal resource and covered by a unit agreement,
32 as provided in ORS 522.405 to 522.545 or by federal law, shall be defined in that unit agreement. If
33 no such unit agreement exists, an energy generation area for facilities using a geothermal resource
34 shall be the area that is within two miles, measured from the electrical generating equipment of the
35 facility, of an existing or proposed geothermal electric power generating plant, not including the site
36 of any other such plant not owned or controlled by the same person.

37 (13) "Extraordinary nuclear occurrence" means any event causing a discharge or dispersal of
38 source material, special nuclear material or by-product material as those terms are defined in ORS
39 453.605, from its intended place of confinement off-site, or causing radiation levels off-site, that the
40 United States Nuclear Regulatory Commission or its successor determines to be substantial and to
41 have resulted in or to be likely to result in substantial damages to persons or property off-site.

42 (14) "Facility" means an energy facility together with any related or supporting facilities.

43 (15) "Geothermal reservoir" means an aquifer or aquifers containing a common geothermal fluid.

44 (16) "Local government" means a city or county.

45 (17) "Nominal electric generating capacity" means the maximum net electric power output of

1 an energy facility based on the average temperature, barometric pressure and relative humidity at
2 the site during the times of the year when the facility is intended to operate.

3 (18) "Nuclear incident" means any occurrence, including an extraordinary nuclear occurrence,
4 that results in bodily injury, sickness, disease, death, loss of or damage to property or loss of use
5 of property due to the radioactive, toxic, explosive or other hazardous properties of source material,
6 special nuclear material or by-product material as those terms are defined in ORS 453.605.

7 (19) "Nuclear installation" means any power reactor, nuclear fuel fabrication plant, nuclear fuel
8 reprocessing plant, waste disposal facility for radioactive waste, and any facility handling that
9 quantity of fissionable materials sufficient to form a critical mass. "Nuclear installation" does not
10 include any such facilities that are part of a thermal power plant.

11 (20) "Nuclear power plant" means an electrical or any other facility using nuclear energy with
12 a nominal electric generating capacity of 25 megawatts or more, for generation and distribution of
13 electricity, and associated transmission lines.

14 (21) "Person" means an individual, partnership, joint venture, private or public corporation, as-
15 sociation, firm, public service company, political subdivision, municipal corporation, government
16 agency, people's utility district, or any other entity, public or private, however organized.

17 (22) "Project order" means the order, including any amendments, issued by the State Department
18 of Energy under ORS 469.330.

19 (23)(a) "Radioactive waste" means all material which is discarded, unwanted or has no present
20 lawful economic use, and contains mined or refined naturally occurring isotopes, accelerator
21 produced isotopes and by-product material, source material or special nuclear material as those
22 terms are defined in ORS 453.605. The term does not include those radioactive materials identified
23 in OAR 345-50-020, 345-50-025 and 345-50-035, adopted by the council on December 12, 1978, and re-
24 vised periodically for the purpose of adding additional isotopes which are not referred to in OAR
25 345-50 as presenting no significant danger to the public health and safety.

26 (b) Notwithstanding paragraph (a) of this subsection, "radioactive waste" does not include ura-
27 nium mine overburden or uranium mill tailings, mill wastes or mill by-product materials as those
28 terms are defined in Title 42, United States Code, section 2014, on June 25, 1979.

29 (24) "Related or supporting facilities" means any structure, proposed by the applicant, to be
30 constructed or substantially modified in connection with the construction of an energy facility, in-
31 cluding associated transmission lines, reservoirs, storage facilities, intake structures, road and rail
32 access, pipelines, barge basins, office or public buildings, and commercial and industrial structures.
33 "Related or supporting facilities" does not include geothermal or underground gas storage reser-
34 voirs, production, injection or monitoring wells or wellhead equipment or pumps.

35 (25) "Site" means any proposed location of an energy facility and related or supporting facilities.

36 (26) "Site certificate" means the binding agreement between the State of Oregon and the appli-
37 cant, authorizing the applicant to construct and operate a facility on an approved site, incorporating
38 all conditions imposed by the council on the applicant.

39 (27) "Thermal power plant" means an electrical facility using any source of thermal energy with
40 a nominal electric generating capacity of 25 megawatts or more, for generation and distribution of
41 electricity, and associated transmission lines, including but not limited to a nuclear-fueled,
42 geothermal-fueled or fossil-fueled power plant, but not including a portable power plant the principal
43 use of which is to supply power in emergencies. "Thermal power plant" includes a nuclear-fueled
44 thermal power plant that has ceased to operate.

45 (28) "Transportation" means the transport within the borders of the State of Oregon of radio-

1 active material destined for or derived from any location.

2 (29) "Underground gas storage reservoir" means any subsurface sand, strata, formation, aquifer,
3 cavern or void, whether natural or artificially created, suitable for the injection, storage and with-
4 drawal of natural gas or other gaseous substances. "Underground gas storage reservoir" includes a
5 pool as defined in ORS 520.005.

6 (30) "Utility" includes:

7 (a) A person, a regulated electrical company, a people's utility district, a joint operating agency,
8 an electric cooperative, municipality or any combination thereof, engaged in or authorized to engage
9 in the business of generating, transmitting or distributing electric energy;

10 (b) A person or public agency generating electric energy from an energy facility for its own
11 consumption; and

12 (c) A person engaged in this state in the transmission or distribution of natural or synthetic gas.

13 (31) "Waste disposal facility" means a geographical site in or upon which radioactive waste is
14 held or placed but does not include a site at which radioactive waste used or generated pursuant
15 to a license granted under ORS 453.635 is stored temporarily, a site of a thermal power plant used
16 for the temporary storage of radioactive waste from that plant for which a site certificate has been
17 issued pursuant to this chapter or a site used for temporary storage of radioactive waste from a
18 reactor operated by a college, university or graduate center for research purposes and not con-
19 nected to the Northwest Power Grid. As used in this subsection, "temporary storage" includes
20 storage of radioactive waste on the site of a nuclear-fueled thermal power plant for which a site
21 certificate has been issued until a permanent storage site is available by the federal government.

22 **SECTION 2.** ORS 469.320 is amended to read:

23 469.320. (1) Except as provided in subsections (2) and (5) of this section, no facility shall be
24 constructed or expanded unless a site certificate has been issued for the site thereof in the manner
25 provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. No facility shall be
26 constructed or operated except in conformity with the requirements of ORS 469.300 to 469.563,
27 469.590 to 469.619, 469.930 and 469.992.

28 (2) A site certificate is not required for:

29 (a) An energy facility for which no site certificate has been issued that, on August 2, 1993, had
30 operable electric generating equipment for a modification that uses the same fuel type and increases
31 electric generating capacity, if:

32 (A) The site is not enlarged; and

33 (B) The ability of the energy facility to use fuel for electricity production under peak steady
34 state operating conditions is not more than 200 million Btu per hour greater than it was on August
35 2, 1993, or the energy facility expansion is called for in the short-term plan of action of an energy
36 resource plan that has been acknowledged by the Public Utility Commission of Oregon.

37 (b) Construction or expansion of any interstate natural gas pipeline or associated underground
38 natural gas storage facility authorized by and subject to the continuing regulation of the Federal
39 Energy Regulatory Commission or successor agency.

40 (c) An energy facility, except coal and nuclear power plants, if the energy facility:

41 (A) Sequentially produces electrical energy and useful thermal energy from the same fuel source;
42 and

43 (B) Under average annual operating conditions, has a nominal electric generating capacity:

44 (i) Of less than 50 megawatts and the fuel chargeable to power heat rate value is not greater
45 than 6,000 Btu per kilowatt hour;

1 (ii) Of 50 megawatts or more and the fuel chargeable to power heat rate value is not greater
2 than 5,500 Btu per kilowatt hour; or

3 (iii) Specified by the Energy Facility Siting Council by rule based on the council's determination
4 relating to emissions of the energy facility.

5 (d) Temporary storage, at the site of a nuclear-fueled thermal power plant for which a site cer-
6 tificate has been issued by the State of Oregon, of radioactive waste from the plant.

7 (e) An energy facility as defined in ORS 469.300 (11)(a)(G), if the plant also produces a secondary
8 fuel used on site for the production of heat or electricity, if the output of the primary fuel is less
9 than six billion Btu of heat a day.

10 (f) An energy facility as defined in ORS 469.300 (11)(a)(G), if the facility:

11 (A) Exclusively uses biomass, including but not limited to grain, whey, potatoes, oilseeds, waste
12 vegetable oil or cellulosic biomass, as the source of material for conversion to a liquid fuel;

13 (B) Has received local land use approval under the applicable acknowledged comprehensive plan
14 and land use regulations of the affected local government and the facility complies with any state-
15 wide planning goals or rules of the Land Conservation and Development Commission that are di-
16 rectly applicable to the facility;

17 (C) Requires no new electric transmission lines or gas or petroleum product pipelines that would
18 require a site certificate under subsection (1) of this section;

19 (D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling
20 facility located within one mile of the facility or is transported from the facility by rail or barge;
21 and

22 (E) Emits less than 118 pounds of carbon dioxide per million Btu from fossil fuel used for con-
23 version energy.

24 (g) A standby generation facility, if the facility complies with all of the following:

25 (A) The facility has received local land use approval under the applicable acknowledged com-
26 prehensive plan and land use regulations of the affected local government and the facility complies
27 with all statewide planning goals and applicable rules of the Land Conservation and Development
28 Commission;

29 (B) The standby generators have been approved by the Department of Environmental Quality
30 as having complied with all applicable air and water quality requirements. For an applicant that
31 proposes to provide the physical facilities for the installation of standby generators, the requirement
32 of this subparagraph may be met by agreeing to require such a term in the lease contract for the
33 facility; and

34 (C) The standby generators are electrically incapable of being interconnected to the trans-
35 mission grid. For an applicant that proposes to provide the physical facilities for the installation of
36 standby generators, the requirement of this subparagraph may be met by agreeing to require such
37 a term in the lease contract for the facility.

38 (3) The Energy Facility Siting Council may review and, if necessary, revise the fuel chargeable
39 to power heat rate value set forth in subsection (2)(c)(B) of this section. In making its determination,
40 the council shall ensure that the fuel chargeable to power heat rate value for facilities set forth in
41 subsection (2)(c)(B) of this section remains significantly lower than the fuel chargeable to power
42 heat rate value for the best available, commercially viable thermal power plant technology at the
43 time of the revision.

44 (4) Any person who proposes to construct or enlarge an energy facility and who claims an ex-
45 emption under subsection (2)(a), (c), (f) or (g) of this section from the requirement to obtain a site

1 certificate shall request the Energy Facility Siting Council to determine whether the proposed fa-
2 cility qualifies for the claimed exemption. The council shall make its determination within 60 days
3 after the request for exemption is filed. An appeal from the council's determination on a request for
4 exemption shall be made under ORS 469.403, except that the scope of review by the Supreme Court
5 shall be the same as a review by a circuit court under ORS 183.484. The record on review by the
6 Supreme Court shall be the record established in the council proceeding on the exemption.

7 (5) Notwithstanding subsection (1) of this section, a separate site certificate shall not be re-
8 quired for:

9 (a) Transmission lines, storage facilities, pipelines or similar related or supporting facilities, if
10 such related or supporting facilities are addressed in and are subject to a site certificate for another
11 energy facility;

12 (b) Expansion within the site or within the energy generation area of a facility for which a site
13 certificate has been issued, if the existing site certificate has been amended to authorize expansion;
14 or

15 (c) Expansion, either within the site or outside the site, of an existing council certified surface
16 facility related to an underground gas storage reservoir, if the existing site certificate is amended
17 to authorize expansion.

18 (6) If the substantial loss of the steam host causes a facility exempt under subsection (2)(c) of
19 this section to substantially fail to meet the exemption requirements under subsection (2)(c) of this
20 section, the electric generating facility shall cease to operate one year after the substantial loss of
21 the steam host unless an application for a site certificate has been filed in accordance with the
22 provisions of ORS 469.300 to 469.563.

23 (7) As used in this section:

24 (a) "Standby generation facility" means an electric power generating facility, including standby
25 generators and the physical structures necessary to install and connect standby generators, that
26 provides temporary electric power in the event of a power outage and that is electrically incapable
27 of being interconnected with the transmission grid.

28 (b) "Total energy output" means the sum of useful thermal energy output and useful electrical
29 energy output.

30 (c) "Useful thermal energy" means the verifiable thermal energy used in any viable industrial
31 or commercial process, heating or cooling application.

32 *[(8) Notwithstanding the definition of "energy facility" in ORS 469.300 (11)(a)(J), an electric power*
33 *generating plant with an average electric generating capacity of less than 35 megawatts produced from*
34 *wind energy at a single energy facility or within a single energy generation area may elect to obtain*
35 *a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and*
36 *469.992. An election to obtain a site certificate under this subsection shall be final upon submission of*
37 *an application for a site certificate.]*

38 **(8)(a) Notwithstanding the definition of "energy facility" in ORS 469.300, the developer**
39 **of a facility described as follows may elect to obtain a site certificate in the manner provided**
40 **in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992:**

41 **(A) An electric power generating plant with an average electric generating capacity of**
42 **less than 50 megawatts produced from wind energy at a single energy facility or within a**
43 **single energy generation area;**

44 **(B) An associated transmission line; or**

45 **(C) A solar photovoltaic power generation facility that is not an energy facility as defined**

1 in ORS 469.300 (11)(a)(D).

2 (b) An election to obtain a site certificate under this subsection shall be final upon sub-
3 mission of an application for a site certificate.

4 **SECTION 3.** Sections 4 to 6 of this 2019 Act are added to and made a part of ORS chapter
5 215.

6 **SECTION 4.** As used in sections 4 to 6 of this 2019 Act:

7 (1) "Habitat category 1" means habitat that is irreplaceable or essential habitat for a fish
8 or wildlife species or population, or a unique assemblage of fish or wildlife species, and that
9 is limited on either a physiographic province or site-specific basis, depending on the individ-
10 ual species, population or unique assemblage.

11 (2) "Habitat category 2" means habitat that is essential habitat for a fish or wildlife
12 species or population, or a unique assemblage of fish or wildlife species, and that is limited
13 on either a physiographic province or site-specific basis, depending on the individual species,
14 population or unique assemblage.

15 (3) "Habitat category 3" means essential habitat for a fish or wildlife species or popu-
16 lation, or important habitat for a fish or wildlife species or population that is limited on ei-
17 ther a physiographic province or site-specific basis, depending on the individual species or
18 population.

19 (4) "Habitat category 4" means important habitat for a fish or wildlife species.

20 (5) "Habitat category 5" means habitat for fish and wildlife having high potential to be-
21 come either essential or important habitat for fish and wildlife.

22 (6) "Habitat category 6" means habitat for fish and wildlife that has low potential to be-
23 come essential or important habitat for fish and wildlife.

24 (7)(a) "Renewable energy facility" means an electric power generating plant that gener-
25 ates electricity from a renewable energy source.

26 (b) "Renewable energy facility" does not mean:

27 (A) An energy facility as defined in ORS 469.300;

28 (B) A solar photovoltaic power generation facility using:

29 (i) 100 acres or less located on high-value farmland as defined in ORS 195.300;

30 (ii) 100 acres or less located on land that is predominantly cultivated or that, if not cul-
31 tivated, is predominantly composed of soils that are in capability classes I to IV, as specified
32 by the National Cooperative Soil Survey operated by the Natural Resources Conservation
33 Service of the United States Department of Agriculture; or

34 (iii) 320 acres or less located on any other land;

35 (c) A net metering facility as defined in ORS 757.300; or

36 (d) A community solar project as defined in ORS 757.386.

37 **SECTION 5.** (1) An application for land use approval to establish a renewable energy fa-
38 cility must be made through a permit application under ORS 215.402 to 215.438 and meet the
39 criteria under this section. The applicant shall demonstrate to the county that:

40 (a) The renewable energy facility will comply with any standards and rules adopted by the
41 Energy Facility Siting Council under ORS 469.501 that the county considers to be applicable
42 to the renewable energy facility.

43 (b) The construction and operation of the renewable energy facility will not result in
44 significant adverse impacts to historic, cultural and archeological resources that are:

45 (A) Listed on the National Register of Historic Places under the National Historic Pres-

1 ervation Act (P.L. 89-665, 54 U.S.C. 300101 et seq.);

2 (B) Inventoried in a local comprehensive plan; or

3 (C) Evaluated as a significant or important archeological object or archeological site, as
4 those terms are defined in ORS 358.905.

5 (c) A habitat assessment and habitat mitigation plan have been conducted for the site
6 of the renewable energy facility as described in subsection (4) of this section.

7 (d) Following the permanent cessation of operation of the renewable energy facility, the
8 site can be adequately restored to a usable, nonhazardous condition.

9 (2) As a condition of approval of a permit application for a renewable energy facility, the
10 applicant shall provide financial assurances or sureties in an amount and form acceptable to
11 the county.

12 (3) The applicant and the governing body of the county may enter into a cost re-
13 imbursement agreement with the State Historic Preservation Officer or any affected feder-
14 ally recognized Indian tribe in order for the officer or tribe to provide comments on the
15 potential for significant adverse impacts described in subsection (1)(b) of this section.

16 (4)(a) The applicant shall consult with the State Department of Fish and Wildlife to as-
17 sess habitat that would potentially be impacted by the renewable energy facility. The as-
18 sessment shall result in identification of the habitat categories defined in section 4 (1) to (6)
19 of this 2019 Act applicable to all habitat potentially impacted by the renewable energy facility.

20 (b) The applicant shall consult with the department to develop a habitat mitigation plan
21 for habitat potentially impacted by the renewable energy facility. The habitat mitigation plan
22 must:

23 (A) For habitat category 1, ensure no loss of either habitat quantity or quality by pro-
24 hibiting development unless all impacts can be avoided.

25 (B) For habitat category 2, ensure no net loss of either habitat quantity or quality and
26 a net benefit of habitat quantity or quality by prohibiting development unless mitigation of
27 any unavoidable impacts can be made through reliable in-kind, in-proximity habitat miti-
28 gation that achieves no net loss of either predevelopment habitat quantity or quality and
29 provides a net benefit of habitat quantity or quality.

30 (C) For habitat category 3, ensure no net loss of either habitat quantity or quality by
31 prohibiting development unless mitigation of any unavoidable impacts can be made through
32 reliable in-kind, in-proximity habitat mitigation that achieves no net loss of either predevel-
33 opment habitat quantity or quality.

34 (D) For habitat category 4, ensure no net loss in either habitat quantity or quality by
35 prohibiting development unless mitigation of any unavoidable impacts can be made through
36 reliable in-kind or out-of-kind, in-proximity or off-proximity habitat mitigation that achieves
37 no net loss in either predevelopment habitat quantity or quality.

38 (E) For habitat category 5, ensure a net benefit in either habitat quantity or quality by
39 requiring mitigation of any unavoidable impacts through actions that contribute to essential
40 or important habitat.

41 (F) For habitat category 6, minimize impacts by requiring actions that minimize direct
42 habitat loss and avoid impacts to off-site habitat.

43 (G) For greater sage grouse habitat, address, avoid or mitigate impacts as described in
44 the Oregon Sage-Grouse Action Plan adopted under Executive Order 15-18, dated September
45 16, 2015.

1 (c) Mitigation measures allowed under paragraph (b)(B), (C), (D), (E) or (G) of this sub-
2 section must be implemented and completed either prior to or concurrent with development
3 of the renewable energy facility. Progress toward achieving mitigation goals and standards
4 must be reported as scheduled pursuant to performance measures provided for in the miti-
5 gation plan. If mitigation is allowed pursuant to this subsection, the mitigation plan may
6 allow for the use of mitigation banks or payment-to-provide mitigation based on the nature,
7 extent and duration of the impact of the renewable energy facility or on the risk of the
8 habitat mitigation plan not achieving mitigation goals.

9 **SECTION 6.** (1) A county that receives an application for a permit under section 5 of this
10 2019 Act shall provide notice to persons listed in subsection (2) of this section. The notice
11 shall include, at a minimum:

- 12 (a) A description of the proposed renewable energy facility;
13 (b) A description of the lots or parcels subject to the permit application;
14 (c) The dates, times and locations where public comments or public testimony can be
15 submitted on the permit application; and
16 (d) The contact information for the governing body of the county and the applicant.
17 (2) The notice required under subsection (1) of this section shall be delivered to:
18 (a) The State Department of Fish and Wildlife;
19 (b) The State Department of Energy;
20 (c) The State Historic Preservation Officer;
21 (d) The Oregon Department of Aviation;
22 (e) The United States Department of Defense; and
23 (f) Federally recognized Indian tribes that may be affected by the application.
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