



Oregon

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MEMORANDUM

To: Chair Helm and Members of the Agriculture, Land Use, Natural Resources, and Water Committee

From: Todd Cornett, Assistant Director for Siting

Date: March 16, 2023

Re: ODOE Comments on HB 3179

The Oregon Department of Energy has no position on SB 3179 but wanted to share background information that may be helpful to legislators and staff. In addition to these memos, we have also shared three fact sheets that may be of interest.

The State of Oregon's energy facility siting process is a consolidated review that incorporates most state and local government statutes, rules, standards, ordinances, permits, and other approvals into the authority of the seven-member, Governor-appointed and Senate-confirmed Energy Facility Siting Council (EFSC or Council). This consolidated review eliminates the need to seek multiple approvals through multiple processes that may have incompatible or contradictory approvals, conditions, review timelines, or appeal timelines.

The Oregon Department of Energy, staff to EFSC, works with all participants in the siting process, including but not limited to: applicants, certificate holders, state agencies, local governments, tribal governments, members of the public, and diverse interest groups. ODOE works to ensure the review process is as timely, efficient, transparent, and inclusive as possible while remaining consistent with statutory policy to protect public health and safety, and remaining in compliance with energy policy as well as air, water, solid waste, land use, and other environmental protection policies of this state.

EFSC currently has 7.4 GW of active renewable energy projects that are either operational, in construction, approved but not yet constructed, or under review. If that number is combined with all known county jurisdictional renewable energy projects that are operational, in construction or approved, it is equal to 10.2 GW. These numbers equate to 108 percent of the forecasted onshore state wind needs and 46 percent of the forecasted state solar needs by 2050, as identified by the [Oregon Clean Energy Pathways study](#),¹ one of the many scenarios examined by the Department of Energy in the ["Charting a Course" Policy Brief](#) in the *2022 Biennial Energy Report*. The solar projects cumulatively would occupy 57,816 acres, or approximately 90 square miles, mostly in Exclusive Farm Use zoned lands.

¹ Evolved Energy Research. (2021). Oregon Clean Energy Pathways—Final Report (p. 39).

[https://uploadssl.webflow.com/5d8aa5c4ff027473b00c1516/6328d0cb1553b714a2f95f11_Oregon%20Clean%20Energy%20Pathways%20Analysis%20Final%20Report%20\(2021-06-15\).pdf](https://uploadssl.webflow.com/5d8aa5c4ff027473b00c1516/6328d0cb1553b714a2f95f11_Oregon%20Clean%20Energy%20Pathways%20Analysis%20Final%20Report%20(2021-06-15).pdf)

HB 3179-2

The -2 version of HB 3179 proposes six primary changes:

1. Doubling the Size of County Jurisdictional Solar Projects

During the 2019 legislative session, HB 2329 marginally increased county jurisdiction over wind and geothermal projects and substantially increased county jurisdiction over solar facilities. Sections 1 and 3 of the -2 Amendment proposes to double that size again. These thresholds are outlined in the following table.

	Pre HB 2329 County Thresholds and Current CUP Process Only	Current County Thresholds and Current CUP and HB 2329 Process	HB 3179 -2 Amendment Proposed County Thresholds (CUP and HB 2329 Process)
Solar on High Value Farmland	<=100 Acres	>100 acres to <=160 Acres	>100 acres to <=320 Acres
Solar on predominantly cultivated land	<=100 Acres	>100 Acres to <=1,280 Acres (2 square miles)	>100 Acres to <=2,560 Acres (4 square miles)
Solar on other land	<=320 Acres	>320 Acres to <=1,920 Acres (3 square miles)	>320 Acres to <=3,840 Acres (6 square miles)

Since HB 2329 has gone into effect, ODOE has been notified of eight projects going through the county process. Three were approved and have either been constructed or are eligible to begin construction. Two were appealed with no outcome yet. One was denied by the county. One elected not to move forward and withdrew its application. The last one has not yet received a final county decision. In addition to this memo, the Department has submitted a fact sheet that provides more details on the eight projects that have gone through HB 2329 review.

ODOE is unaware of any analysis of the efficacy of the change in county jurisdictional thresholds from HB 2329. During testimony related to the bill, the stated purpose of changing the thresholds was to expedite renewable energy generation development. Prior to considering a doubling of those thresholds again, an analysis could be conducted to determine if the change in jurisdictional thresholds did in fact result in expedited renewable energy generation development and what, if any, were the impacts to counties and other groups interested in the siting process or large-scale solar projects.

2. Eliminating Council Jurisdiction for Projects Located Entirely on Federal Lands

Section 4 of the -2 Amendment proposes to eliminate EFSC jurisdiction for any project entirely located on federal lands. The state offers a standards-based review designed to protect important state resources by evaluating projects against a defined set of standards. State agencies are part of the review process and are eligible for reimbursement for the time and resources they spend during the review. It is the applicant's burden to show, through evidence, that each standard is met. EFSC can only evaluate what is proposed by the applicant. The federal National Environmental Policy Act review evaluates the potential impacts of projects and seeks to minimize those impacts, mostly related to important federal resources. In addition to other methods, this can be done by directing the applicant to evaluate the project in locations different than proposed. While state agencies may participate in the federal review, they are not eligible for reimbursement. In addition to this memo, the Department has submitted a fact sheet that further illustrates the differences between state and federal review processes.

Prior to considering the elimination of EFSC jurisdiction for projects located entirely on federal land, an analysis could be conducted to determine the potential impact to important state resources absent the state siting review. That analysis should include applicable state agencies and interest groups.

3. Issue Decision on Solar Projects within 120 Days of Filing

Section 4 of the -2 Amendment proposes to change the time frame Council currently has in ORS 469.370(9) to reach a final decision after the application is deemed to be complete from one year to 120 days. This proposed change appears to make the Council timeframe consistent with county conditional use decisions as required by ORS 215.427. However, the 120-day time limit in that statute is only applicable to applications within urban growth boundaries as well as mineral aggregate extraction applications. All other conditional use permit applications, including solar project applications, are subject to 150 days.

The EFSC process includes more steps, more notification, more participants, and more requirements than a county conditional use process. The Council's land use standard, which incorporates the local government requirements, is just one of 15 general Council standards. As such, the EFSC process takes longer to reach a decision than the county process. To date, the average number of days between completeness and a Council final decision in the review of a solar project (where there are no parties to a contested case) is 196 days. The one solar project that included a full contested case with multiple parties took substantially longer.

4. \$250,000 Limit on EFSC Fees for Solar Photovoltaic Power Generation Facilities

Section 5 of the -2 Amendment proposes changes to ORS 469.421 that would limit the amount of fees for solar photovoltaic power generation facilities to \$250,000. Currently, ORS 469.421(1) requires applicants to pay "all expenses incurred by the Energy Facility Siting Council and the department related to the review and decision of the council." The costs of the state siting process include but are not limited to ODOE staff, Department of Justice staff, other state agencies, local governments, tribal governments, property owner notifications, newspaper notifications, Council meetings, and a third-party hearing officer to conduct the contested case phase. To date, the average cost of review of a solar project (where there are no parties to a contested case) is \$272,000. The one solar project that included a full contested case with multiple parties was substantially higher.

Application, amendment, and compliance fees cover approximately 75 percent of the costs of the siting division and the work of the Council. ORS 469.421(8) authorizes the activities of the Council to also be covered by the annual Energy Supplier Assessment (ESA). This covers the remaining 25 percent of costs. These are the only sources of revenue for Council and the siting division. If applicant costs for solar projects are capped at \$250,000, any additional costs, including inflationary costs in future years, would have to be covered by those entities who pay into the ESA.

5. Fish and Wildlife

Section 1 of the -2 Amendment proposes changes to mitigation requirements for impacts to wildlife habitat. The current language was established during the 2019 legislative session through HB 2329 and is only applicable to renewable energy projects under county jurisdiction as allowed by that bill. ODOE has not participated in the review of any HB 2329 projects and will therefore defer comments to the Oregon Department of Fish and Wildlife and other wildlife interest groups.

6. Rights of Way

Section 2 of the -2 Amendment proposes changes to ORS 374.305 related to county courts or boards of county commissioners' written permission related to renewable energy infrastructure in road, highway,

and other rights of way. We will defer to county courts and boards of commissions to respond to this proposed change.

HB 2329 as Drafted

At the time this hearing posted for public hearing, there were no amendments available online. As such, the agency worked on a memo for the base bill. Some elements of that memo seem applicable to the committee's continued conversation on renewable energy siting and development, and are shared here to inform legislators, staff, and other interested parties.

The introduced version of HB 3179 directs ODOE to study the following six elements and report its findings to the legislature:

1. Mitigating Risk that the Renewable Portfolio Standard Goals are Not Met

As also noted above, EFSC and counties combined currently have 10.2 GW of projects either operational, under construction, approved but not yet constructed, or under review. This would total 108 percent of the forecasted onshore state wind needs and 46 percent of the forecasted state solar needs by 2050, as identified by the [Oregon Clean Energy Pathways study](#),² one of the many scenarios examined by the Department of Energy in the ["Charting a Course" Policy Brief](#) in the *2022 Biennial Energy Report*. In addition to this memo, the Department has submitted a fact sheet that provides more details on the current landscape around energy siting and what is needed to meet state goals for renewable energy.

2. More Efficient Permitting at the State and County Level

ODOE is currently mid-way through a siting program assessment being conducted by a third-party consultant. This assessment consists of internal and external stakeholder outreach and a thorough evaluation of administrative practices. The report, anticipated in Q2 of 2023, will include recommendations for efficiency improvements. EFSC also recently directed ODOE to initiate the first in a series of rulemakings to create more clarity – and therefore more efficiency in the state siting rules.

Because EFSC only implements substantive elements of local land use requirements as part its land use standard, evaluating procedural elements to identify potential county permitting efficiencies would be more appropriately conducted by counties or the Department of Land Conservation and Development.

3. Expedited Permitting

The state energy siting process already includes an expedited review for facilities less than 100 MW, which eliminates the Notice of Intent stage and directs EFSC to reach a final decision within six months after the application is determined complete, if there are no intervenors in a contested case. To date, EFSC has received two solar applications that meet the expedited review threshold. The first was approved within the six-month statutory timeframe and the second is expected to be approved in March 2023, also within the six-month statutory timeframe.

4. Expanding Local Government Jurisdiction

Please see comments above under the heading **"Doubling the Size of County Jurisdictional Solar Projects."**

² Evolved Energy Research. (2021). Oregon Clean Energy Pathways—Final Report (p. 39). [https://uploadssl.webflow.com/5d8aa5c4ff027473b00c1516/6328d0cb1553b714a2f95f11_Oregon%20Clean%20Energy%20Pathways%20Analysis%20Final%20Report%20\(2021-06-15\).pdf](https://uploadssl.webflow.com/5d8aa5c4ff027473b00c1516/6328d0cb1553b714a2f95f11_Oregon%20Clean%20Energy%20Pathways%20Analysis%20Final%20Report%20(2021-06-15).pdf)

5. Fish and Wildlife Mitigation Requirements

EFSC's Fish and Wildlife application requirement and associated standard implement the Oregon Department of Fish & Wildlife's habitat categorization and mitigation policies. ODFW works with and supports ODOE staff in its review and recommendations to EFSC, and often works with applicants before an application is submitted.

6. Elimination of Redundant Permitting Processes

The state's process is a standards-based review designed to protect important state resources and that evaluates projects against a defined set of standards. State agencies are part of the review process and are eligible for reimbursement for the time and resources they spend during the review. It is the applicant's burden to show through evidence that each standard is met. EFSC can only evaluate what is proposed by the applicant. The federal National Environmental Policy Act review evaluates the potential impacts of projects and seeks to minimize those impacts, mostly related to important federal resources. In addition to other methods, this can be done by directing the applicant to evaluate the project in locations different than proposed. While state agencies may participate in the federal review, they are not eligible for reimbursement.

ODOE's Siting division is structured to be as reliant on fees as possible to minimize the amount annually charged to the energy supplier assessment (ESA) pool. We consistently average approximately 75 percent reliance on fees and 25 percent reliance on ESA. This means the division is not staffed to take on significant new work without an impact to existing work or an increased reliance on ESA. Based on the cost of our current program assessment, we believe this study would cost approximately \$150,000 if a consultant were hired. Costs would be less if conducted by ODOE staff based on a lower average hourly billable rate. However, if conducted by ODOE staff, during the duration of the study, application and amendment timelines would be longer due to the need to reallocate staff resources. There would also be a greater reliance on ESA.