



March 25, 2025

To: Representative John Lively, Chair, House Climate, Energy, and Environment Committee
Representative Bobby Levy, Vice Chair, House Climate, Energy, and Environment Committee
Representative Mark Gamba, Vice Chair, House Climate, Energy, and Environment Committee
Members of the House Climate, Energy, and Environment Committee
From: Emily Griffith, Oregon Policy Manager, Renewable Northwest

Re: Opposition to HB 3422 Regarding Adding Standards to EFSC Goal Exceptions

Chair Lively, Vice Chair Levy, Vice Chair Gamba, and Members of the Committee,

Renewable Northwest ("RNW") is a regional, non-profit renewable energy advocacy organization based in Oregon, dedicated to decarbonizing the electricity grid by accelerating the integration of renewable electricity resources. Our members include renewable energy developers and businesses, environmental organizations, and consumer groups.

Thank you for the opportunity to offer our concerns on HB 3422, which proposes to add new standards for which the Energy Facility Siting Council ("EFSC") can issue exceptions to statewide planning goals. **Renewable NW opposes HB 3422** as it creates unnecessary and burdensome requirements for renewable energy project developers in Oregon. The goal exception process at EFSC is already extremely thorough and adding this standard will reduce renewable energy investment, add significant complexity, cost, and risk for energy developers and slow down progress towards Oregon's clean energy transition.

Currently, EFSC can issue an exception if (*in summary*):

- (1) The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;
- (2) The land subject to the exception is determined (by LCDRC) as impracticable to be used for its original purpose due to adjacent land uses; or
- (3) The following standards are met:
 - A. Reasons justify why the goal protection should not apply;
 - B. The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated; and
 - C. The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.

Developers who are not seeking an exception with (1) or (2), are required to meet ALL standards of (3). **This bill proposes to add a requirement to (3), stating “Areas that do not require a new exception cannot reasonably accommodate the proposed facility;”**

This would require developers siting and permitting through the EFSC process to conduct an alternative site analysis. This added criteria would require developers requesting a goal exception through (3) to conduct an alternatives analysis. This analysis will require developers to investigate all land that is not subject to a goal exception. The EFSC process normally does not require this analysis, asking developers to evaluate and compare multiple potential locations. However, developers must still provide substantial evidence that the chosen site meets the state’s energy facility siting requirements and qualifies for a land use goal exception.

The Goal Exception Process is Thorough

EFSC’s land use goal exception process is thorough because it requires a rigorous, multi-step review to ensure that deviations from the state’s land use goals are justified, well-documented, and aligned with public interests. The process includes public hearings and opportunities for the public to provide input and challenge exceptions. Applications for exceptions must include substantial evidence, including economic, environmental, and planning analyses that justify the departure from the statewide goal. Requests are reviewed not only by the local government but also by state agencies and the Land Conservation and Development Commission (“LCDC”) to ensure consistency with Oregon’s planning framework. If an exception is granted, it can be challenged before the Land Use Board of Appeals (“LUBA”) and the courts, ensuring accountability.

There are Remaining Uncertainties with the Bill Language

The language included in the bill is broad and vague and may lead to unintended consequences. For example, it is unclear what the alternatives analysis scope would be as the analysis area is not described. Would the bounds of the analysis be tied to the county or the entire state? While an entire state analysis would be extensively more burdensome, either way, EFSC’s focus is on whether the site meets state-level energy and land use criteria. EFSC’s exception process is centralized at the state level where they specifically consider energy projects. Here, the developer must demonstrate that the proposed site itself qualifies for an exception, focusing on site-specific conditions rather than comparing it to other locations. Requiring an alternatives analysis at EFSC is inappropriate.

It is also unclear what would be necessary to include in the analysis. We can conjecture based on the alternatives analysis developers do at the county level, but the requirements of the alternative’s analysis are not specified in the language, nor is there a provision about a rulemaking or process for who would create those rules and when. Leaving this language broad creates an environment for extensive litigation.

Developers require site control prior to requesting a goal exception. If this standard is added to the statute, it introduces another avenue for EFSC to deny a goal exception application, or request an extensive amount of further study before they issue an exception.

The language would go into effect by October 2025 and would apply to all projects at EFSC that have yet to receive a goal exception, regardless of where they are in the application process. This administratively and financially burdensome addition for projects already at EFSC could undermine projects that are well into the development process.

Highly Burdensome for Applicants and Staff in Already Constrained Siting Environment

This bill has the potential to add highly burdensome requirements for project developers to meet and for EFSC Staff to review. This makes the EFSC process impractical. The addition would create more complex justification requirements. Requiring developers to prove that no reasonable alternative site exists that meets project needs while also complying with land use goals is nearly impossible given Oregon's land use zoning and constrained access to transmission. The vast majority of land outside of urban areas (with sites large enough for utility scale renewable energy) is zoned as Exclusive Farmland Use ("EFU"), which can automatically trigger the need for a goal exception, depending on detailed criteria based on factors such as soil type, access to and history of irrigation, and others.

The high percentage of EFU land in Oregon means that the need for a Goal 3 exception is highly likely. Equally, as it is a burdensome and somewhat uncertain process, developers will only approach EFSC requesting a goal exception if the site is appropriate for development. Determining a site's suitability is already a complex process that considers technical, environmental, and economic qualities that limit where projects can be placed - perhaps chief of those criteria is the ability to interconnect to the transmission system, which is severely constrained in Oregon.

Introduces Greater Cost, Delay, and Litigation Potential

Adding this standard would increase time and costs. Identifying and evaluating multiple potential sites would require extensive technical study where developers would have to demonstrate that alternative sites lack transmission infrastructure, have environmental constraints or are economically infeasible. Requiring all of this additional study not only adds significant cost and administrative burden, but can critically delay siting and development timelines.

Furthermore, this bill would introduce a greater risk of legal challenges and appeals. Potential litigants could argue that other sites were improperly dismissed, leading to prolonged litigation before LUBA or the courts - making energy project approvals more uncertain and contentious, especially if the scope of the alternatives analysis is broader than the county.

Increases Barriers to Meeting Oregon's Energy Needs and Policies

This bill conflicts with Oregon's state energy mandate. Utility-scale wind, solar, and battery storage all depend on specific geographic conditions (i.e, wind speed, solar irradiance and transmission access and capacity). There are not many locations that meet all criteria necessary

for project development. Requiring an alternatives analysis is unnecessary and if additional bureaucratic hurdles are added to the siting and permitting process in Oregon, it will reduce investment in energy infrastructure here. This has implications for not only reaching Oregon's energy policies, but for maintaining grid reliability, as well.

Renewable NW is opposed to HB 3422. Requiring an alternative site analysis in the EFSC process would add significant complexity, cost, and risk for energy developers. It would slow Oregon's clean energy transition, increase litigation, and make it more difficult to site critical clean energy infrastructure. The current EFSC framework is already designed to balance land-use protections with the need for energy infrastructure while avoiding unnecessary delays. Because our land-use system does not acknowledge renewable energy, it is extremely difficult to get renewable energy developed in Oregon. This bill is proposing to make this process even more difficult which will inevitably result in even less renewable energy development in a time when we urgently require more.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Emily Griffith", with a stylized flourish at the end.

Emily Griffith
Oregon Policy Manager
Renewable Northwest