



Oregon

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October 19, 2023

To: Land Conservation and Development Commission

From: Brenda Ortigoza Bateman, Ph.D., Director
Gordon Howard, Community Services Manager
Jon Jinings, Community Services Specialist

Subject: **Agenda Item 7, November 2-3, LCDC Meeting**

Finding Opportunities and Reducing Conflict in Siting Photovoltaic Solar Power Generation Facilities: Part II – Rulemaking for Eastern and Central Oregon

I. Summary

The Oregon Legislature passed House Bill 3409 - the Climate Omnibus Package - in 2023 and was signed into law by Governor Kotek. Among other things, Sections 35 through 37 of HB 3409 direct the Land Conservation and Development Commission (LCDC or commission) to adopt rules relating to siting of photovoltaic solar power generation facilities. Staff have included Sections 35-37 as Attachment A. Specifically, Section 35.(2) requires the commission to adopt rules that consider a variety of development aspects, natural and cultural resource values, and community needs. This rulemaking directive is separate and distinct from rules revising the commission's exceptions rule required to be adopted pursuant to Section 35.(1).

The commission is obligated to adopt rules complying with the directive in Section 35.(2) of HB 3409 (2023) by July 1, 2025.

Purpose. The commission will receive a presentation from the Department of Land Conservation and Development (DLCD or department) staff to instigate the rulemaking necessary to comply with Section 35.(2) of HB 3409 (2023).

Objective. The commission will initiate rulemaking necessary to comply with the directive included in Section 35.(2) of HB 3409 (2023). In doing so, the commission will approve a rulemaking charge and direct the department to appoint a Rules Advisory Committee (RAC). The commission may also consider appointing a commissioner liaison for the RAC process.

For further information about this report, please contact Jon Jinings, Community Services Specialist at 541-325-6928 or jon.jinings@dlcd.oregon.gov.

II. Background

The commission originally adopted specific rules for siting photovoltaic solar power generation facilities on farm and ranch lands protected under Goal 3 in 2011. See OAR 660-033-0130(38). Since that time there have been conversations about how to identify the best possible locations for renewable energy development, including siting of photovoltaic solar power generation facilities on rural lands.

a. The “Siting Table”

During fall 2022 a diverse group of stakeholders, called the “Siting Table,” was convened by three organizations to discuss utility scale solar siting and transmission - The Nature Conservancy, Renewable Northwest, and 1000 Friends of Oregon. Staff with Verde NW facilitated a series of presentations and conversations on the subject. Some of the concepts discussed by participants in the siting table group were introduced as bill language for the 2023 Legislative session. Some of the introduced bill language was shaped and folded into HB 3409. The Legislature enacted HB 3409, and Governor Kotek signed the bill into law during the 2023 regular session.

b. HB 3409, Section 35.(2)

The specific language of Section 35.(2) reads as follows:

(2) On or before July 1, 2025, the commission shall adopt rules:

(a) Establishing criteria through which local governments may be permitted or required to allow the siting of a photovoltaic solar power generation facility, including criteria that consider:

(A) Potential conflicts with other resource lands; and

(B) Soliciting public feedback from neighboring landowners or residents; and

(b) Identifying the characteristics of lands in Eastern Oregon, as defined in ORS 321.700, best suited for counties to allow, encourage and incentivize photovoltaic solar power generation facilities, based on consideration of:

(A) The land’s suitability for contributing to the state’s clean energy goals;

(B) Site characteristics, resource potential, proximity to current and future transmission access and locations for potential interconnection; and

(C) The ability to readily avoid negative impacts on natural resources, forestry, habitat, agriculture, community needs and historic, cultural or archeological resources, or to readily minimize or mitigate those negative impacts.”

c. HB 3409, Sections 36 - 37

Section 36 describes how the department may enter into agreements with other governmental agencies, as well as how those agencies may provide assistance in the development of rules to carry out the directive of Section 35.(2). Section 36 specifically names other state agencies, tribal governments, and counties for agreements and assistance.

Section 37 requires the department to appoint a diverse Rules Advisory Committee (RAC) consisting of at least 17 members, including:

- “(3)(a) At least two members representing a tribal government or county;
- (b) At least one member who represents public bodies;
- (c) At least one member who represents small-scale renewable energy developers;
- (d) At least one member who represents large-scale renewable energy developers;
- (e) At least one member who has expertise in community renewable energy development;
- (f) At least one member who has expertise in renewable energy siting, policy or planning;
- (g) At least one member who has expertise in transmission siting;
- (h) At least one member who represents electric utilities, as defined in ORS 757.600;
- (i) At least one member who represents the labor interests of the clean energy or renewable energy workforce;
- (j) At least one member who represents environmental justice communities, as defined in ORS 469A.400;
- (k) At least one member who represents owners of irrigated or dryland farmland or rangeland;
- (L) At least one member who has expertise in habitat conservation, preservation and restoration;
- (m) At least one member who has expertise in land and water use;

- (n) At least one member who has expertise in rural economic development;
- (o) At least one member who has expertise in industrial forestland management;
and
- (p) At least one member who has expertise in small woodland management.”

The department believes it may be necessary and appropriate to appoint additional RAC members to fully ensure that all relevant perspectives are included. Additional members are likely to include the Oregon Military Department and the Department of Defense. Multiple members to represent a particular category called out at Section 37(3) are also likely to be needed.

Other provisions of Section 37 require that the RAC prepare a report to be presented to the Legislature on or before September 15, 2025. See Section 37(5) of HB 3409 (2023). The report will describe the rules adopted to comply with the directive in Section 35.(2) and provide recommendations on subjects including agricultural lands mitigation, habitat mitigation and technical assistance needs. Staff also will share report will with multiple entities, including state and federal agencies, named in Section 37(5)(b).

The RAC is required to be supported by a third party or parties. The Legislature has provided funding that will enable the department to obtain the necessary consulting services. Staff anticipate that the report required by Section 37(5) also will be prepared by a consultant.

d. Representative Marsh Letter

Representative Pam Marsh (District 5 – Southern Jackson County) was involved in the Siting Table facilitated by Verde NW and is a named sponsor of HB 3409. On June 10, 2023, Representative Marsh provided a letter to Co-Chairs Sanchez and Steiner, Joint Committee on Ways and Means, and Co-Chairs Pham and Dembrow, Subcommittee on Natural Resources expressing additional clarification on the intent of Sections 35 - 37. Staff have included this letter as Attachment B.

Representative Marsh’s letter identifies that rules to be adopted by the commission shall not mandate county action. Instead, the rules will be voluntary; counties may choose whether or not to use them. Furthermore, the rules will identify circumstances under which participating counties may consider photovoltaic solar power generation facilities that will use, occupy, or cover more acreage than what would otherwise be allowed without an exception to Goals 3 or 4. Accomplishing these objectives are expected to involve revisions to LCDC’s Goal 5 rule, OAR 660-023-0190¹, which will include a “safe-

¹ [Oregon Secretary of State Administrative Rules](#)

harbor² opportunity that As used in Division 23, a safe-harbor is intended to provide local government a guaranteed means of obtaining Goal 5 compliance that requires less time and fewer resources than the standard Goal 5 process.

Staff also expect that revisions to OAR chapter 660, divisions 6 and 33 will be needed. Revisions to other divisions may also be found to be necessary.

III. Draft Rulemaking Charge

The purpose of a rulemaking charge is to allow the commission to offer direction on project management, as well as express its expectations regarding the treatment of subject matter and content. The charge will be the instrument relied on by staff and the RAC for guidance resolving any questions on project direction.

The charge drafted by staff in this instance draws upon the items included in Representative Marsh's letter. Staff intend the draft charge to emphasize certain points the department believes deserve attention and add substance to areas that are not completely fleshed out by the text of HB 3409. Staff have included the draft charge as Attachment C.

IV. Recommended Action

The department recommends that the commission officially initiate rulemaking required pursuant to Section 35.(2), approve the draft charge included as Attachment C, and direct the department to appoint the RAC in the manner described in this staff report.

Proposed Motion: I move that the commission officially initiate rulemaking required pursuant to Section 35.(2), approve the draft charge included as Attachment C, and direct the department to appoint the RAC in the manner described in this staff report.

Alternative Motion: I move that the commission officially initiate rulemaking required pursuant to Section 35.(2), approve the draft charge included as Attachment C, and direct the department to appoint the RAC in the manner described in this staff report, with the following revisions [specify revisions].

V. Attachments

- A. HB 3409, Sections 35-37**
- B. Representative Marsh Letter Dated June 10, 2023.**
- C. Draft Rulemaking Charge for HB 3409, Section 35(2)**

² [Oregon Secretary of State Administrative Rules](#)

ATTACHMENT A

HB 3409, SECTIONS 35-37A and SECTION 95

FINDING OPPORTUNITIES AND REDUCING CONFLICT IN SITING PHOTOVOLTAIC SOLAR POWER GENERATION FACILITIES

SECTION 35. (1) On or before November 3, 2023, the Land Conservation and Development Commission shall adopt rules to allow a local government to consider a photovoltaic solar power generation facility a rural industrial use for purposes of justifying a reason for an exception under ORS 197.732 (2)(c)(A).

(2) On or before July 1, 2025, the commission shall adopt rules:

(a) Establishing criteria through which local governments may be permitted or required to allow the siting of a photovoltaic solar power generation facility, including criteria that consider:

(A) Potential conflicts with other resource lands; and

(B) Soliciting public feedback from neighboring landowners or residents; and

(b) Identifying the characteristics of lands in Eastern Oregon, as defined in ORS 321.700, best suited for counties to allow, encourage and incentivize photovoltaic solar power generation facilities, based on consideration of:

(A) The land's suitability for contributing to the state's clean energy goals;

(B) Site characteristics, resource potential, proximity to current and future transmission access and locations for potential interconnection; and

(C) The ability to readily avoid negative impacts on natural resources, forestry, habitat, agriculture, community needs and historic, cultural or archeological resources, or to readily minimize or mitigate those negative impacts.

SECTION 36. The Department of Land Conservation and Development may enter into intergovernmental agreements under ORS chapter 190 with other state agencies, tribal governments and counties, for the purposes of:

(1) Supporting the Land Conservation and Development Commission in adopting rules under section 35 of this 2023 Act;

(2) Furnishing information or technical assistance;

(3) Providing feedback on the membership and work of the Rules Advisory Committee for Siting Photovoltaic Solar Power Generation Facilities established under section 37 of this 2023 Act;

(4) Identifying opportunities to streamline permitting and review processes across and between state agencies; and

(5) With regard to tribal governments, consulting on how best to protect historic, cultural or archeological resources without revealing sensitive information.

SECTION 37. (1) The Rules Advisory Committee for Siting Photovoltaic Solar Power Generation Facilities is established to serve as an advisory committee, as described in ORS 183.333, to the Land Conservation and Development Commission in adopting administrative rules under section 35 (2) of this 2023 Act.

(2) The Department of Land Conservation and Development shall appoint the members of the rules advisory committee. In appointing members, the department shall solicit and consider recommendations for membership from:

- (a) Public bodies;
- (b) Tribal governments;
- (c) Federal and state agencies;
- (d) Energy, community and conservation advocates; and
- (e) Individuals who have expertise in the energy or natural resources industries, including renewable energy developers, utilities and agricultural producer associations.

(3) The membership of the rules advisory committee shall consist of at least 17 members, including:

- (a) At least two members representing a tribal government or county;
- (b) At least one member who represents public bodies;
- (c) At least one member who represents small-scale renewable energy developers;
- (d) At least one member who represents large-scale renewable energy developers;
- (e) At least one member who has expertise in community renewable energy development;
- (f) At least one member who has expertise in renewable energy siting, policy or planning;
- (g) At least one member who has expertise in transmission siting;
- (h) At least one member who represents electric utilities, as defined in ORS 757.600;
- (i) At least one member who represents the labor interests of the clean energy or renewable energy workforce;
- (j) At least one member who represents environmental justice communities, as defined in ORS 469A.400;
- (k) At least one member who represents owners of irrigated or dryland farmland or rangeland;
- (L) At least one member who has expertise in habitat conservation, preservation and restoration;

- (m) At least one member who has expertise in land and water use;
 - (n) At least one member who has expertise in rural economic development;
 - (o) At least one member who has expertise in industrial forestland management; and
 - (p) At least one member who has expertise in small woodland management.
- (4) In addition to its duties under subsection (1) of this section, the rules advisory committee shall prepare a report that includes:
- (a) A summary of the rules adopted under section 35 of this 2023 Act;
 - (b) Review of renewable energy siting assessment tools used by the State Department of Energy and recommendations regarding missing or outdated data sets;
 - (c) Review of existing practices relating to mitigation of impacts of photovoltaic solar power generation facilities and transmission development and recommendations for:
 - (A) Mitigating impacts on farming practices on agricultural lands through best practices and land use regulations;
 - (B) Mitigating impacts on fish and wildlife habitat in accordance with the policies described under ORS 496.012 and 506.109;
 - (C) Supporting certainty for developers regarding mitigation requirements within the siting process; and
 - (D) Identifying characteristics and considerations of regional and local habitats that may require specific mitigation practices; and
 - (d) Recommendations for technical assistance resources to support county siting processes and the engagement of public bodies, tribal governments and communities in the siting process for renewable energy and transmission development.
- (5)(a) On or before September 15, 2025, the Department of Land Conservation and Development shall provide an interim copy of the report under subsection (4) of this section to an appropriate interim committee of the Legislative Assembly in the manner provided in ORS 192.245.
- (b) On or before December 31, 2025, the department shall provide a copy of the final report under subsection (4) of this section to, and seek feedback from:
- (A) Regional energy planning entities;
 - (B) The Energy Facility Siting Council;
 - (C) The Environmental Justice Council;
 - (D) The Land Conservation and Development Commission
 - (E) The State Department of Fish and Wildlife;

(F) The State Department of Agriculture; and

(G) Relevant federal agencies, including the United States Department of Defense, the Bureau of Land Management, the United States Forest Service and the Bonneville Power Administration.

(6) A majority of the members of the rules advisory committee constitutes a quorum for the transaction of business.

(7) Official action by the rules advisory committee requires the approval of a majority of the members of the rules advisory committee.

(8) The rules advisory committee may adopt rules necessary for the operation of the rules advisory committee and form subcommittees.

(9) In addition to other scheduled meetings, the rules advisory committee shall also meet at least four times a year in different parts of this state where there is considered, planned or ongoing renewable energy and transmission development.

(10) In performing their duties under this section, the Department of Land Conservation and Development and the rules advisory committee shall coordinate with and support any efforts to establish a statewide energy strategy.

(11) The department shall contract with a third party or parties to provide support to the rules advisory committee, including support related to:

(a) Facilitating and coordinating meetings; and

(b) Furnishing data, maps and technical assistance.

(12) A member of the rules advisory committee is entitled to compensation and expenses as provided in ORS 292.495.

SECTION 37a. Sections 36 and 37 of this 2023 Act are repealed on January 2, 2026.

SECTION 95. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Land Conservation and Development by section 1 (1), chapter ____, Oregon Laws 2023 (Enrolled House Bill 5027), for the biennium beginning July 1, 2023, for the planning program, is increased by \$1,240,433 for the purpose of carrying out the provisions of sections 24, 25, 26, 35 and 36 of this 2023 Act.

June 10, 2023

Dear Co-Chairs Sanchez and Steiner, Joint Committee on Ways and Means, and Co-Chairs Pham and Dembrow, Subcommittee on Natural Resources:

I wanted to offer additional context and intent, for the record, on Sections 35-37 of HB 3409. I hope this will be helpful in supporting the implementation of what can often be a complicated and intricate area – land use rulemaking – to accomplish the bill’s overarching policy intent as indicated in its title “Finding Opportunities and Reducing Conflict in Utility Scale Photovoltaic Solar Siting.”

To accomplish this, Section 35 directs the Land Conservation and Development Commission to adopt administrative rules and specifies items to be included in these efforts. Under Section 35 it is intended, among other things, that the Land Conservation and Development Commission will consider and adopt, as needed, and based upon recommendations from a Rulemaking Advisory Committee (RAC), revisions to administrative rules that implement Goal 2 (Exceptions Process), Goal 3 (Agricultural Land), Goal 4 (Forest Land), and Goal 5 (Renewable Energy Resources).

Revisions to the Goal 5 rule are intended to be the centerpiece of the necessary rulemaking(s). Revisions to the Goal 5 rule are expected to include a “safe-harbor” option, which would allow for certain solar projects to not require other goal exceptions, and direction for counties interested in creating more detailed local programs. Both approaches – a “safe-harbor” or other Goal 5 revisions – are intended to be voluntary and allow counties to opt in as they see fit.

It is also the intent that administrative rules regarding facility siting adopted under Section 35 would include criteria based on broad consideration of community priorities and benefits. Equally, it is the intent that those adopted rules would also include connectivity of agricultural and forest lands and wildlife habitat areas in its consideration of natural resources and resource lands.

Section 37 provides direction for the establishment of a Rulemaking Advisory Committee (RAC) to assist the Land Conservation and Development Commission in carrying out their responsibilities under HB 3409. It is intended that the Department of Land Conservation and Development will initiate consultation with Tribal governments in advance of convening the RAC. Additionally, it is the intent that counties should be a central piece of the process and DLCD engagement, including through county membership on the RAC.

Thank you for your consideration.

Pam Marsh
State Representative
House District 5

AGENDA ITEM # 7
NOVEMBER 2-3, 2023 - LCDC MEETING
ATTACHMENT C

HB 3409, also known as the Climate Omnibus Package, was passed by the Oregon Legislature in 2023. Sections 35- 37 of HB 3409 are titled "Finding Opportunities and Reducing Conflict in Utility Scale Photovoltaic Solar Siting." These three sections include specific direction to the Land Conservation and Development Commission (commission) to promulgate administrative rules designed to assist counties with siting considerations for utility-scale photovoltaic solar facilities. Section 37(2) calls for the Department to appoint a diverse Rules Advisory Committee (RAC) to help with necessary administrative rule development. The minimum required RAC membership is described in Section 37.(3), and includes representatives from tribes, local governments, renewable energy developers and experts, public utilities, labor, environmental justice, agriculture, environmental protection, forestry, and economic development

Department staff have developed a draft charge to aid in the implementation of HB 3409, Sections 35-37. It is intended that the charge will support the RAC's efforts by serving as an expression of commission expectations. Should there be confusion or disagreement among the RAC, the charge will be looked to for guidance. The following draft language has been reviewed by DLCD's Rural Team, Policy Team, Community Involvement Advisory Committee (CIAC), and the Local Officials Advisory Committee (LOAC).

Proposed charge:

Members of the Rules Advisory Committee (RAC) will provide assistance to agency staff to analyze, draft, and recommend Oregon Administrative Rules (OARs) that faithfully implement the legislative intent and direction outlined in Sections 35 thru 37 of House Bill 3409 (2023 Session). The Land Conservation and Development Commission will consider administrative rules that:

- *Are informed by consultation with Tribal Governments regarding how best to protect historic, cultural or archeological resources without revealing sensitive information.*
- *Are informed by public information sessions to be offered in conjunction with Rule Advisory Committee (RAC) meetings held in Eastern Oregon communities.*
- *Establish a voluntary "safe harbor" option in OAR chapter 660, division 23 allowing counties to identify preferred locations for siting photovoltaic solar power generation facilities.*
- *Establish guidance in OAR chapter 660, division 23 for counties that decline using the "safe harbor" option in favor of developing a more detailed local program to identify preferred locations for siting photovoltaic solar power generation facilities.*
- *Identify that areas considered "significant" for photovoltaic solar power generation_ for purposes of OAR chapter 660, division 23 are to be designated based on having an adequate estimated Annual Solar Utility-Scale Capacity Factor, and reasonable proximity to transmission, as well as the ability to entirely or substantially avoid other important resources or values.*
- *Include area selection criteria based on broad consideration of community priorities and benefits. . Among other things, consideration will be given to possible impacts to city growth scenarios, future housing availability, and urbanization strategies."*
- *include connectivity of agricultural and forest lands and wildlife habitat areas in its consideration of natural resources and resource lands.*

- *Include revisions to OAR chapter 660, Divisions 6 and 33 identifying acreage thresholds for photovoltaic solar power generation facilities considered under the newly established provisions of OAR chapter 660, division 23 that are larger than would otherwise be allowable without an exception to Goals 3 or 4.*
- *Include revisions to any applicable administrative rules necessary to carry out the mandate of "Finding Opportunities and Reducing Conflict in Utility Scale Photovoltaic Solar Siting." Applicable rules include, but are not limited to, OAR chapter 660, divisions 4, 6, 23, and 33.*
- *Include measures designed to mitigate impacts to commercial farming, ranching and forestry activities on lands protected under Goals 3 and 4. Mitigation measures should provide certainty for applicants as well as decision makers.*

If approved, this charge would lead the document of operating principles for the Rules Advisory Committee as they begin their work.