



Oregon

Tina Kotek, Governor



550 Capitol St. NE
Salem, OR 97301
Phone: 503-378-4040
Toll Free: 1-800-221-8035
FAX: 503-373-7806
www.oregon.gov/energy

To: Oregon Energy Facility Siting Council

From: Thomas L. Jackman, Rules Coordinator

Date: November 27, 2024

Subject: Agenda Item B (Action Item) – Review of Land Conservation and Development Commission’s Eastern Oregon Solar Siting Possibilities Rulemaking for the December 13, 2024 EFSC Meeting – [Updated \(see track changes below\)](#)

Attachments: Attachment 1 – Notice of Proposed Rulemaking

BACKGROUND AND SUMMARY

The Council is tasked with many duties in Oregon statute. One of those duties is to review efforts by Oregon agencies who seek to “adopt, amend or rescind a rule relating to energy facility development.” See ORS 469.520(2). While the Council is not required to do so, the statute states that the Council “may order such changes [to the proposed rules] as it considers necessary to conform to state policy as stated in ORS 469.010 and 469.310.” Id. The former deals with “the goal of Oregon to promote the efficient use of energy resources and to develop permanently sustainable energy resources” and the latter deals with policy that “the siting, construction and operation of energy facilities shall be accomplished in a manner consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of this state.”

HB 3409, also known as the Climate Omnibus Package, was passed by the Oregon Legislature in 2023. Sections 35- 37 of HB 3409 are entitled “Finding Opportunities and Reducing Conflict in Utility Scale Photovoltaic Solar Siting.” These three sections include specific direction to the Land Conservation and Development Commission to promulgate administrative rules designed to assist counties with siting considerations for utility-scale photovoltaic solar facilities. Section 37(2) called for the Department of Land Conservation and Development (DLCD) 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.

After six RAC meetings over the course of 2024, DLCD filed a notice of proposed rulemaking (NOPR) on October 31, 2024, directed at fulfilling this task by the Oregon legislature. They subsequently held two additional RAC meetings and intend to hold three more over the course of the next month.

OVERVIEW OF DRAFT LANGUAGE

DLCD's proposed draft language in their NOPR primarily does the following:

- Establishes a voluntary "safe harbor" option in OAR chapter 660, division 23, allowing counties to identify preferred locations for siting photovoltaic solar power generation facilities.
- Establishes 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.
- Identifies 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 substantively avoid other important resources or values.
- Include measures designed to mitigate impacts to commercial farming, ranching and forestry activities on lands protected under Goals 3 and 4.

Notably, the rules contain language that appears to specifically target this process at sub-EFSC thresholds. See, proposed 660-006-0033(2)-(4).

Given that there are planned to be a total of five RAC meetings after the NOPR was filed, it is currently not possible to say that the final product of this rulemaking will not have cause for concern or require comment from the Council, but staff recommends that the Council find that the language as presented in the October 31, 2024 NOPR promotes the use of renewable energy in line with the state's energy policy and does so while protecting the public health and safety.

RECOMMENDATION COUNCIL ACTION

Staff recommends that the Council find that the Land Conservation and Development Commission's Eastern Oregon Solar Siting Possibilities Rulemaking rules as presented in their October 31, 2024 Notice of Proposed Rulemaking, included as Attachment 1, conforms with state policy as stated in ORS 469.010 and ORS 469.310. ~~Staff also recommends that the Council authorize it to schedule a public hearing for the January 2025 Council meeting.~~

POSSIBLE FUTURE COUNCIL REVIEW AND ACTION

Over the coming months, as LCDC finalizes its rulemaking language, staff may update their recommendations to the Council as needed. If staff determine that changes warrant additional discussion and review, an updated report will be prepared. Regardless of the final rule language, staff will ensure that any new language is forwarded to the Council for review, and the Council may request an updated report at that time.