

EASTERN OREGON SOLAR SITING RULEMAKING ADVISORY COMMITTEE MEETING PACKET #8



TO: Solar Siting Rulemaking Advisory Committee Members
FROM: Adam Tate, Renewable Energy Planner
SUBJECT: Rulemaking Advisory Committee (RAC) Meeting Packet #8

Dear Solar Siting Rulemaking Advisory Committee Members,

Thank you for bringing your diverse experience and expertise to this long and complicated rulemaking process, we really appreciate the time and energy you have brought to it. We are happy to announce that the RAC process will continue as per your request, and that K&W will continue with us as our facilitation partner.

We will have three additional meetings. This meeting packet is for the first of these meetings which will take place on Thursday, December 5th from 1:00 to 5:00 pm PT. The next meetings will be held on Wednesday, December 18th from 9:00 am to 1:00 pm PT, and on Thursday, January 9th from 1:00 to 5:00 pm PT.

In these meetings we will go over draft rule language for Divisions 4, 6, 23 and 33 that has been refined from the last two RAC meetings, and the subcommittee meetings in order to finalize the policy choices the RAC has left to decide.

As a reminder, these final three meetings will continue our new trend for half-day meetings held virtually over Zoom for all participants.

RAC Meeting Packet Contents:

1. Cover Memo
2. Meeting Agenda
3. Summary from seventh RAC Meetings
4. Maps (Sent separately by Jon via email on 11/27)

To attend the all-virtual meeting please use the following Zoom link for the meeting:

Topic: LCDC Solar Siting Rules Advisory Committee Meeting Time: Dec 5, 2024 01:00 PM
Pacific Time (US and Canada)

Join Zoom Meeting

<https://kearnswest.zoom.us/j/81366530830?pwd=hbG3P43INfPg3hHcLVXWHtZJvGAAOl.1>

Meeting ID: 813 6653 0830

Passcode: 597747

Casaria Taylor will be providing support for the Zoom meeting.

Casaria.taylor@dlcd.oregon.gov 971-600-7699.

Members of the public can livestream the meeting on the DLCD YouTube Channel

[Oregon DLCD - YouTube](#)

For reference all statewide planning land use planning goals may be found [here](#). Information for this committee, including background information and meeting materials may be found on the Eastern Oregon Solar Siting project page [Department of Land Conservation and Development : Eastern Oregon Solar Siting Possibilities : Laws and Rules : State of Oregon](#).

Thank you,

Adam Tate

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AGENDA

Oregon Department of Land Conservation and Development (DLCD) - Solar Siting Rules Advisory Committee (RAC) Meeting

Date and Time

December 5, 2024, from 1:00 – 5:00 pm PT

- The meeting will be held virtually via Zoom.
- Members of the public can livestream the meeting at <https://www.youtube.com/@OregonDLCD>.

Desired Outcomes and Purpose

- Understand, discuss, and resolve sub-group work and recommendations
- Discuss and resolve outstanding sections of the rule.
- Discuss preliminary maps.
- Discuss highlights, outstanding issues and status of RAC work for Land Conservation and Development Commission consideration at their December 6 meeting.

Agenda

Time (PT)	Topic	Lead
1:00 – 1:15 pm (15 min)	Welcome and roll call	Jamie Damon, Kearns & West Facilitator
1:15 – 1:45 pm (30 min)	Sub-Group Report Out <ul style="list-style-type: none">• Overview of draft language and work the small group has completed• Questions and discussion	All
1:45 – 2:30 pm (45 min)	Draft Language Review <ul style="list-style-type: none">• Review updated sections• RAC discussion	All
2:30 – 2:40 pm (10 min)	Break	All



2:40 – 3:50 pm (70 min)	Draft language review <ul style="list-style-type: none">• Review updated sections• RAC discussion	All
3:50 – 4:45 pm (55 min)	Preliminary Maps <ul style="list-style-type: none">• Review maps• RAC discussion	All
4:45 – 5:00 pm (15 min)	Next Steps and Closing <ul style="list-style-type: none">• Land Conservation and Development Commission (LCDC) December 6 meeting• Next RAC meetings:<ul style="list-style-type: none">○ December 18, 9am – 1pm○ January 9, 1 - 5pm	Jamie Damon, Kearns & West Facilitator
5:00 pm	Meeting Adjourn	

Eastern Oregon Solar Opportunities Rulemaking Advisory Committee (RAC) Meeting Summary

November 13, 2024, RAC Meeting #7 Part 2

Location: Virtual (Zoom)

This meeting was livestreamed, recorded, and available for viewing at <https://www.youtube.com/Oregondlcd>. The following is a high-level summary and meeting overview. Please review the recording and archived meeting packet for details and presentation slides.

Meeting Attendees

RAC Member Attendees:

- Commissioner James Williams, Lake County
- Andrea Kreiner, Oregon Association of Conservation Districts
- Andrew Mulkey, 1000 Friends of Oregon
- April Snell, Water Resources Congress
- Brandon McMullen, Harney County Planning Director
- Damien Hall, Oregon Solar+Storage Industries
- Dan Orzech, Oregon Clear Power
- Dugan Marieb, Pine Gate Renewables
- Elaine Albrich, Davis Wright Tremain
- Emily Griffith, Renewable Northwest
- Greg Corbin, Green Diamond Resource Company
- Jack Southworth, Oregon Cattlemen's Association
- Kimberly Peacher, Department of the Navy
- Laura Tabor, The Nature Conservancy
- Marc Hudson, Oregon Agricultural Trust
- Max Yoklic, New Sun Energy
- Michael Eng, Lostine Fire Wise
- Mike W. McArthur, Community Renewable Energy Association

Ex-Officio Attendees:

- Tom Jackman, Oregon Department of Energy
- Jeremy Thompson, Oregon Department of Fish and Wildlife
- Dan Hubner, Oregon Department of Forestry
- Michael Darin, Oregon Department of Geology and Mineral Industries
- Vernon Wolf, Oregon Department of State Lands
- Brian Cochran, Oregon Department of State Lands

DLCD Staff Attendees:

- Adam Tate, Oregon Department of Land Conservation and Development
- Alexis Hammer, Oregon Department of Land Conservation and Development
- Casaria Taylor, Oregon Department of Land Conservation and Development
- Dawn Marie-Hert, Oregon Department of Land Conservation and Development
- Gordon Howard, Oregon Department of Land Conservation and Development
- Jon Jinings, Oregon Department of Land Conservation and Development

Welcome, Opening Remarks, and Agenda Review

Jamie Damon, Kearns & West, introduced herself as a neutral third-party facilitator and facilitated introductions between RAC members. Jamie provided an overview of the meeting agenda and objectives.

Michael Eng asked to discuss how the determination of significance is intended to be used.

Small Group Outcomes and Staff Updates

Elaine Albrich shared outcomes from the small group meetings. The small group consisted of Elaine, Marc Hudson, Damien Hall, Andrew Mulkey, Commissioner James Williams, Brandon McMullen, and Max Yoklic for RAC members and Jon Jinings and Adam Tate for DLCD. The group primarily focused on Division 23-195, focusing on Subsections 6, 7, 11, and 12. She noted that the draft of the language shared with the RAC has policy questions highlighted in yellow to discuss with the RAC and that the blue highlights were technical language updates. She reflected that the group worked towards consensus on the blue highlighted items.

Jamie facilitated questions and comments from RAC members.

- **Dugan Marieb:** I'm starting to see the path come together. I encourage the RAC to think about how this will work in practice.

Adam Tate, DLCD, shared that DLCD mapping staff have reviewed data sets and have begun the mapping process. He stated that the map will be ready before the December 6 Land Conservation and Development Commission (LCDC) meeting and will be shared with the RAC once it is complete. He added that staff met with the Oregon Department of Energy (ODOE) to review Energy Facility Siting Council (EFSC) application and that ODOE is reviewing the language with their attorneys.

Gordon Howard, DLCD, shared that LCDC will review the rules package and report in January and that DLCD staff will provide guidance on how RAC members can participate.

Tom Jackman, ODOE, shared that they are taking a close look at the rules and that usually, the EFSC process applies local rules to avoid conflict with state land use goals. He stated that ODOE will take a close look at the final materials and provide feedback to DLCD as part of the public comment period.

Jamie facilitated questions and comments from RAC members.

- **Dugan:** I understand how EFSC applies if a county has established areas of significance, but I do not understand how it would work for site-specific applications.
- **Max:** Developers can always opt into EFSC, but will EFSC apply to these rules so that exemption is not required? What happens if mandatory EFSC jurisdiction is exceeded but 95% of a facility is in the resource area?
- **Andrew:** I have some questions for ODOE. The RAC should consider how the rules apply to projects over the jurisdictional threshold and how that interacts with Goals 3 and 4.
- **Damien:** Is it the right policy decision to plug in the EFSC jurisdiction number for project acreage for resource areas?

Tom asked for RAC members to send their questions to him in writing so he could review them with the Department of Justice.

Jamie reflected that additional conversation would need to happen to determine implementation.

Gordon shared that DLCD's legal counsel reviewed and has strong confidence that Division 33 is consistent under Goal 5.

Jamie facilitated questions and comments from RAC members.

- **Max:** Did the RAC review and discuss the impact statements?
 - **Gordon:** Yes, at the October meeting.
 - **Jon:** The requirement is that the RAC review the statements, but it does not need to approve them. The statements have been filed.
- **Damien:** Can what Gordon shared about the legal review of Division 33 be captured in the staff report?
 - **Gordon:** Yes.

660-023-0195

The RAC walked through Division 23-0195 by each subsection and discussed the technical cleanup and policy questions.

Subsection 1

- **Goal 4.** The RAC agreed to remove Goal 4 if the RAC does not end up addressing forestry concerns.

Subsection 2

- **Microgrid.** The RAC supported the microgrid definition and wanted to circle back to microgrids when the RAC discussed community benefits.
- **Significant photovoltaic solar resource.** The RAC discussed what is meant by "significant" and that typically once a location is determined significant it obtains protections against other types of development. A few RAC members shared concerns about eminent domain use for areas determined as significant. Other RAC members and DLCD staff clarified that land acquisition is not an issue and eminent domain has not been a presumption.

Subsection 6

- **Annual Solar Utility-Scale Capacity Factor.** Some RAC members felt that subpart (b) "An estimated Annual Solar Utility-Scale Capacity Factor of 19-21 percent or greater" should be removed. Other RAC members felt that subparts (a) – (c) act as safeguard provisions for sites. The RAC agreed that "(b) should be amended to "19 percent or greater."
- **Proximity to transmission lines.** RAC members agreed that 10 miles seemed like an appropriate distance. Some RAC members shared concern for a loophole where a project can be placed near a transmission line, but a generation tie (gen-tie) line is run to a different transmission line. RAC members discussed different ways of stating "wholly or substantially," and agreed that the language should be amended to "wholly or

predominantly.” RAC members asked DLCD staff to review the transmission line definition to ensure its accuracy.

Subsection 7

- **Agricultural lands protection – subpart (a).** Some RAC members suggested expanding soil classes under subpart (a) if the lands do not have the ability to 300 pounds of forage. Other RAC members stated that the classes and forage amounts should stay as is for mapping, and then after a map is received, the RAC can revisit the topic. The RAC agreed to use the current numbers as a starting point.
- **Forest lands.** The RAC agreed to remove forest lands due to a lack of capacity for this phase.
- **Determination of significance with mitigation.** The RAC discussed integrations of subsections 11 and 12 in subpart (b) and decided to wait until the RAC discussed subsection 11 in detail.
- **Oregon Department of Wildlife (ODFW).** The RAC noted that more wildlife data is available now than when the counties first looked at Goal 5 inventories. The RAC noted concern about the practical implementation if an area is qualified outside of ODFW ranges but inside the county's Goal 5 inventory.
- **Water rights – subpart (b).** The RAC discussed the use of “without an appurtenant water right,” and suggested refining the language. One member suggested amending the language to “unless water right is moved to another agricultural use, or not terminated.” Another member suggested, “without an appurtenant water right, unadjudicated water right or decree.” The RAC noted that agricultural use in water rights is important.
- **Agricultural lands protection – subpart (b).** The RAC discussed if 640 acres was the correct amount. Some members reflected that it could be over 640 acres. Other members reflected this amount could have a cumulative impact on sage grouse, while others noted that Division 33 has a rule that triggers review to ensure the land use pattern is not altered. Some members reflected that there could be confusion of 640 acres being used as one metric and 300 pounds of forage being used as another.
- **Historic, Cultural, or Archeological Resources.** The RAC asked if 50% comprised is the right number. DLCD staff shared they are still working with the Historic and Cultural TAC to firm up numbers.
- **Significant Sage Grouse Habitat.** RAC members reflected that DLCD and ODFW rules on Significant Sage Grouse Habitat are not the same. A RAC member asked how these rules would reflect updates as habitat changes. ODFW staff shared that they regularly update maps and seeing the referenced rule is ideal.
- **Category 1 Wildlife habitat.** RAC members asked if consultation with ODFW is correct, and ODFW staff noted they do not have the authority to approve. RAC members encouraged having a time frame for consultation with ODFW.
- **Water rights – subpart (c).** The RAC discussed water rights, transfers, and cancellations, and noted that language captured in subparts (c)(G) should apply to all references to water rights. RAC members reflected that subsections would make the language clearer and that some terms like “critical groundwater designation” are defined, whereas “regulatory

drought” is not. Marc and April volunteered to work together to propose language to make this section clearer.

Process and Next Steps

Max asked how the RAC was feeling about its progress and if it wanted to limit the rules or have additional meetings.

- **Elaine:** The RAC is functioning well and working hard. I do not think the RAC can present its recommendation until 23-0195 is complete.
- **Andrea Kreiner:** I only feel comfortable sharing a status update with LCDC. The RAC could share concepts, but not specific language. Can we meet again after receiving the map and updated language?
- **Laura Tabor:** The RAC needs additional working time and a final version of the language to review and vote on. Deadlines are helpful to maintain the RAC’s focus and momentum.
- **Dan Orzech:** The RAC is making good progress but can only give a status update. When can the RAC receive the map? The RAC cannot issue a final report without seeing it.
 - **Gordon:** DLCD is hoping to have something next week.
- **Dugan:** I agree the RAC would benefit from another meeting after a map is received, but a deadline is important.
- **Max:** The small group has been very productive, and I would be willing to continue to participate.
- **Damien:** I agree with others.
- **Andrew:** I agree that the small group has been helpful. Before the RAC meets again we need a map, the small group to finalize the technical criteria, and DLCD to finalize earmarked sections for input with ODFW and tribes.
- **April:** I agree that we need more time and would support extending the public comment period.
- **Laura:** I would like the opportunity to participate in the wildlife issues with ODFW.

Gordon appreciated the RAC’s comments and shared he will report back to DLCD management to see what can be done. He shared that the absolute deadline for this work is July 2025, but DLCD was hoping to have something for LCDC to review before the legislative session. He confirmed that if the RAC process is extended, the public comment would also be extended.

Commissioner Mark Bennett shared that he would convey this input to his colleagues and affirmed the LCDC wants a good quality product.

Jamie summarized that the RAC could convey to LCDC that it is making good progress, that it wants to see a map and final draft one week before voting, and that having a deadline is helpful to keep its momentum going. She reflected that having two or three additional meetings and one small group meeting to focus on the technical components sounds like an appropriate timeline for the RAC.

The RAC agreed with this summary.

Next steps:

- DLCD to meet with management to determine the process's next steps.
- DLCD to develop a map.
- DLCD to finalize earmarked sections for input with ODFW and tribes.
- The technical small group to finalize the technical criteria.
- April and Marc to propose language regarding water rights.

Meeting Adjourn

The meeting adjourned at 1:05 pm PT.