

Enrolled House Bill 2109

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Department of Land Conservation and Development)

CHAPTER

AN ACT

Relating to county land use permits to establish renewable energy facilities; amending ORS 215.446; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 215.446 is amended to read:

215.446. (1) As used in this section:

[(a) "Renewable energy facility" means an electric power generating plant that generates electricity from a renewable energy source.]

[(b) "Renewable energy facility" does not mean:]

[(A) An energy facility as defined in ORS 469.300;]

[(B) A solar photovoltaic power generation facility using:]

[(i) 100 acres or less located on high-value farmland as defined in ORS 195.300;]

[(ii) 100 acres or less located on land that is predominantly cultivated or that, if not cultivated, is predominantly composed of soils that are in capability classes I to IV, as specified by the National Cooperative Soil Survey operated by the Natural Resources Conservation Service of the United States Department of Agriculture; or]

[(iii) 320 acres or less located on any other land;]

[(C) A net metering facility as defined in ORS 757.300; or]

[(D) A community solar project as defined in ORS 757.386.]

(a) "Average electric generating capacity" has the meaning given that term in ORS 469.300.

(b) "Energy generation area" has the meaning given that term in ORS 469.300.

(c) "Renewable energy facility" means:

(A) A solar photovoltaic power generation facility using:

(i) More than 100 acres but not more than 160 acres located on high-value farmland as defined in ORS 195.300;

(ii) More than 100 acres but not more than 1,280 acres located on land that is predominantly cultivated or that, if not cultivated, is predominantly composed of soils that are in capability classes I to IV, as specified by the National Cooperative Soil Survey operated by the Natural Resources Conservation Service of the United States Department of Agriculture; or

(iii) More than 320 acres but not more than 1,920 acres located on any other land.

(B) An electric power generating plant with an average electric generating capacity of at least 35 megawatts but less than 50 megawatts if the power is produced from geothermal or wind energy at a single plant or within a single energy generation area.

(2) An application for a land use permit to establish a renewable energy facility must be made under ORS 215.416. An applicant must demonstrate to the satisfaction of the county that the renewable energy facility meets the standards under subsection (3) of this section.

(3) In order to issue a permit, the county shall require that the applicant:

(a)(A) Consult with the State Department of Fish and Wildlife, prior to submitting a final application to the county, regarding fish and wildlife habitat impacts and any mitigation plan that is necessary;

(B) Conduct a habitat assessment of the proposed development site;

(C) Develop a mitigation plan to address significant fish and wildlife habitat impacts consistent with the administrative rules adopted by the State Fish and Wildlife Commission for the purposes of implementing ORS 496.012; and

(D) Follow administrative rules adopted by the State Fish and Wildlife Commission and rules adopted by the Land Conservation and Development Commission to implement the Oregon Sage-Grouse Action Plan and Executive Order 15-18.

(b) Demonstrate that the construction and operation of the renewable energy facility, taking into account mitigation, will not result in significant adverse impacts to historic, cultural and archaeological resources that are:

(A) Listed on the National Register of Historic Places under the National Historic Preservation Act (P.L. 89-665, 54 U.S.C. 300101 et seq.);

(B) Inventoried in a local comprehensive plan; or

(C) Evaluated as a significant or important archaeological object or archaeological site, as those terms are defined in ORS 358.905.

(c) Demonstrate that the site for a renewable energy facility, taking into account mitigation, can be restored adequately to a useful, nonhazardous condition following permanent cessation of construction or operation of the facility and that the applicant has a reasonable likelihood of obtaining financial assurances in a form and amount satisfactory to the county to secure restoration of the site to a useful, nonhazardous condition.

(d) Meet the general and specific standards for a renewable energy facility adopted by the Energy Facility Siting Council under ORS 469.470 (2) and 469.501 that the county determines are applicable.

(e) Provide the financial assurances described in paragraph (c) of this subsection in the form and at the time specified by the county.

(4) Upon receipt of a reasonable cost estimate from the state agency or tribe, the applicant and county may jointly enter into a cost reimbursement agreement administered by the county with:

(a) The State Department of Fish and Wildlife to receive comments under subsection (3)(a) of this section.

(b) The State Historic Preservation Officer or any affected federally recognized Indian tribe to receive comments under subsection (3)(b) of this section.

(c) The State Department of Energy to receive comments under subsection (3)(c) and (d) of this section as well as comments regarding other matters as the county may require.

(5) A county that receives an application for a permit under this section shall, upon receipt of the application, provide notice to persons listed in subsection (6) of this section. The notice must include, at a minimum:

(a) A description of the proposed renewable energy facility;

(b) A description of the lots or parcels subject to the permit application;

(c) The dates, times and locations where public comments or public testimony on the permit application can be submitted; and

(d) The contact information for the governing body of the county and the applicant.

(6) The notice required under subsection (5) of this section must be delivered to:

- (a) The State Department of Fish and Wildlife;
- (b) The State Department of Energy;
- (c) The State Historic Preservation Officer;
- (d) The Oregon Department of Aviation;
- (e) The United States Department of Defense; and
- (f) Federally recognized Indian tribes that may be affected by the application.

SECTION 2. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by House March 22, 2021

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 Timothy G. Sekerak, Chief Clerk of House

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 Tina Kotek, Speaker of House

Passed by Senate May 11, 2021

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 Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2021

Approved:

.....M,....., 2021

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 Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2021

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 Shemia Fagan, Secretary of State