

Requested by Representative HELM

**PROPOSED AMENDMENTS TO
HOUSE BILL 2329**

1 On page 1 of the printed bill, line 2, after “facilities;” insert “creating
2 new provisions; and”.

3 On page 2, line 6, delete the boldfaced material.

4 In lines 7 and 8, restore the bracketed material.

5 Delete lines 17 through 23 and insert:

6 “(D) A solar photovoltaic power generation facility using more than:

7 “(i) 160 acres located on high-value farmland as defined in ORS 195.300;

8 “(ii) 1,280 acres located on land that is predominantly cultivated or that,
9 if not cultivated, is predominantly composed of soils that are in capability
10 classes I to IV, as specified by the National Cooperative Soil Survey operated
11 by the Natural Resources Conservation Service of the United States De-
12 partment of Agriculture; or

13 “(iii) 1,920 acres located on any other land.”.

14 On page 3, lines 10 through 12, restore the bracketed material.

15 In line 10, delete “35” and insert “50”.

16 On page 7, delete lines 20 through 26 and insert:

17 “(8)(a) Notwithstanding the definition of ‘energy facility’ in ORS 469.300,
18 the developer of a facility described as follows may elect to obtain a site
19 certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to
20 469.619, 469.930 and 469.992:

21 “(A) An electric power generating plant with an average electric gener-

1 ating capacity of less than 50 megawatts produced from wind energy at a
2 single energy facility or within a single energy generation area;

3 “(B) An associated transmission line; or

4 “(C) A solar photovoltaic power generation facility that is not an energy
5 facility as defined in ORS 469.300 (11)(a)(D).

6 “(b) An election to obtain a site certificate under this subsection shall
7 be final upon submission of an application for a site certificate.

8 **“SECTION 3. Sections 4 to 6 of this 2019 Act are added to and made
9 a part of ORS chapter 215.**

10 **“SECTION 4. As used in sections 4 to 6 of this 2019 Act:**

11 **“(1) ‘Habitat category 1’ means habitat that is irreplaceable or es-
12 sential habitat for a fish or wildlife species or population, or a unique
13 assemblage of fish or wildlife species, and that is limited on either a
14 physiographic province or site-specific basis, depending on the indi-
15 vidual species, population or unique assemblage.**

16 **“(2) ‘Habitat category 2’ means habitat that is essential habitat for
17 a fish or wildlife species or population, or a unique assemblage of fish
18 or wildlife species, and that is limited on either a physiographic prov-
19 ince or site-specific basis, depending on the individual species, popu-
20 lation or unique assemblage.**

21 **“(3) ‘Habitat category 3’ means essential habitat for a fish or
22 wildlife species or population, or important habitat for a fish or
23 wildlife species or population that is limited on either a physiographic
24 province or site-specific basis, depending on the individual species or
25 population.**

26 **“(4) ‘Habitat category 4’ means important habitat for a fish or
27 wildlife species.**

28 **“(5) ‘Habitat category 5’ means habitat for fish and wildlife having
29 high potential to become either essential or important habitat for fish
30 and wildlife.**

1 **“(6) ‘Habitat category 6’ means habitat for fish and wildlife that has**
2 **low potential to become essential or important habitat for fish and**
3 **wildlife.**

4 **“(7)(a) ‘Renewable energy facility’ means an electric power gener-**
5 **ating plant that generates electricity from a renewable energy source.**

6 **“(b) ‘Renewable energy facility’ does not mean:**

7 **“(A) An energy facility as defined in ORS 469.300;**

8 **“(B) A solar photovoltaic power generation facility using:**

9 **“(i) 100 acres or less located on high-value farmland as defined in**
10 **ORS 195.300;**

11 **“(ii) 100 acres or less located on land that is predominantly culti-**
12 **vated or that, if not cultivated, is predominantly composed of soils**
13 **that are in capability classes I to IV, as specified by the National Co-**
14 **operative Soil Survey operated by the Natural Resources Conservation**
15 **Service of the United States Department of Agriculture; or**

16 **“(iii) 320 acres or less located on any other land;**

17 **“(c) A net metering facility as defined in ORS 757.300; or**

18 **“(d) A community solar project as defined in ORS 757.386.**

19 **“SECTION 5. (1) An application for land use approval to establish**
20 **a renewable energy facility must be made through a permit application**
21 **under ORS 215.402 to 215.438 and meet the criteria under this section.**

22 **The applicant shall demonstrate to the county that:**

23 **“(a) The renewable energy facility will comply with any standards**
24 **and rules adopted by the Energy Facility Siting Council under ORS**
25 **469.501 that the county considers to be applicable to the renewable**
26 **energy facility.**

27 **“(b) The construction and operation of the renewable energy facility**
28 **will not result in significant adverse impacts to historic, cultural and**
29 **archeological resources that are:**

30 **“(A) Listed on the National Register of Historic Places under the**

1 National Historic Preservation Act (P.L. 89-665, 54 U.S.C. 300101 et
2 seq.);

3 “(B) Inventoried in a local comprehensive plan; or

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

6 “(c) A habitat assessment and habitat mitigation plan have been
7 conducted for the site of the renewable energy facility as described in
8 subsection (4) of this section.

9 “(d) Following the permanent cessation of operation of the
10 renewable energy facility, the site can be adequately restored to a us-
11 able, nonhazardous condition.

12 “(2) As a condition of approval of a permit application for a
13 renewable energy facility, the applicant shall provide financial assur-
14 ances or sureties in an amount and form acceptable to the county.

15 “(3) The applicant and the governing body of the county may enter
16 into a cost reimbursement agreement with the State Historic Preser-
17 vation Officer or any affected federally recognized Indian tribe in order
18 for the officer or tribe to provide comments on the potential for sig-
19 nificant adverse impacts described in subsection (1)(b) of this section.

20 “(4)(a) The applicant shall consult with the State Department of
21 Fish and Wildlife to assess habitat that would potentially be impacted
22 by the renewable energy facility. The assessment shall result in iden-
23 tification of the habitat categories defined in section 4 (1) to (6) of this
24 2019 Act applicable to all habitat potentially impacted by the renewable
25 energy facility.

26 “(b) The applicant shall consult with the department to develop a
27 habitat mitigation plan for habitat potentially impacted by the
28 renewable energy facility. The habitat mitigation plan must:

29 “(A) For habitat category 1, ensure no loss of either habitat quan-
30 tity or quality by prohibiting development unless all impacts can be

1 **avoided.**

2 **“(B) For habitat category 2, ensure no net loss of either habitat**
3 **quantity or quality and a net benefit of habitat quantity or quality by**
4 **prohibiting development unless mitigation of any unavoidable impacts**
5 **can be made through reliable in-kind, in-proximity habitat mitigation**
6 **that achieves no net loss of either predevelopment habitat quantity**
7 **or quality and provides a net benefit of habitat quantity or quality.**

8 **“(C) For habitat category 3, ensure no net loss of either habitat**
9 **quantity or quality by prohibiting development unless mitigation of**
10 **any unavoidable impacts can be made through reliable in-kind, in-**
11 **proximity habitat mitigation that achieves no net loss of either pre-**
12 **development habitat quantity or quality.**

13 **“(D) For habitat category 4, ensure no net loss in either habitat**
14 **quantity or quality by prohibiting development unless mitigation of**
15 **any unavoidable impacts can be made through reliable in-kind or**
16 **out-of-kind, in-proximity or off-proximity habitat mitigation that**
17 **achieves no net loss in either predevelopment habitat quantity or**
18 **quality.**

19 **“(E) For habitat category 5, ensure a net benefit in either habitat**
20 **quantity or quality by requiring mitigation of any unavoidable impacts**
21 **through actions that contribute to essential or important habitat.**

22 **“(F) For habitat category 6, minimize impacts by requiring actions**
23 **that minimize direct habitat loss and avoid impacts to off-site habitat.**

24 **“(G) For greater sage grouse habitat, address, avoid or mitigate**
25 **impacts as described in the Oregon Sage-Grouse Action Plan adopted**
26 **under Executive Order 15-18, dated September 16, 2015.**

27 **“(c) Mitigation measures allowed under paragraph (b)(B), (C), (D),**
28 **(E) or (G) of this subsection must be implemented and completed ei-**
29 **ther prior to or concurrent with development of the renewable energy**
30 **facility. Progress towards achieving mitigation goals and standards**

1 must be reported as scheduled pursuant to performance measures
2 provided for in the mitigation plan. If mitigation is allowed pursuant
3 to this subsection, the mitigation plan may allow for the use of miti-
4 gation banks or payment-to-provide mitigation based on the nature,
5 extent and duration of the impact of the renewable energy facility or
6 on the risk of the habitat mitigation plan not achieving mitigation
7 goals.

8 **“SECTION 6. (1) A county that receives an application for a permit**
9 **under section 5 of this 2019 Act shall provide notice to persons listed**
10 **in subsection (2) of this section. The notice shall include, at a mini-**
11 **mum:**

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

13 **“(b) A description of the lots or parcels subject to the permit ap-**
14 **plication;**

15 **“(c) The dates, times and locations where public comments or pub-**
16 **lic testimony can be submitted on the permit application; and**

17 **“(d) The contact information for the governing body of the county**
18 **and the applicant.**

19 **“(2) The notice required under subsection (1) of this section shall**
20 **be delivered to:**

21 **“(a) The State Department of Fish and Wildlife;**

22 **“(b) The State Department of Energy;**

23 **“(c) The State Historic Preservation Officer;**

24 **“(d) The Oregon Department of Aviation;**

25 **“(e) The United States Department of Defense; and**

26 **“(f) Federally recognized Indian tribes that may be affected by the**
27 **application.”.**

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