



State Representative Ken Helm
House District 34, Oregon State Legislature

November 4, 2020

Director Jim Rue
Oregon Department of Land Conservation & Development
635 Capitol St. NE, Suite 150
Salem, Oregon 97301

Re: HB 2329 (2019) Renewable Energy Facilities

Dear Director Rue:

As the principal sponsor of HB 2329 (ORS 215.446), I offer this letter to clarify the legislative intent behind the bill, especially on the question of whether Measure 56 notices were expected from its passage. For the reasons provided below, I can confirm that the Legislature did not intend for this legislation to require the distribution of these notices.

Background

In the 2019 Session, HB 2329 was enacted to create a new exemption for certain renewable energy applications from the jurisdiction of the Energy Facility Siting Council (EFSC). The intended effect was to allow local government to preside over the review of larger solar photovoltaic, geothermal, and wind energy projects on lands zoned for exclusive farm use that would have otherwise been subject to EFSC review. The trade-off for allowing local review of larger projects was to require additional review criteria relating to wildlife habitat, cultural and historic resources, bonding, and retirement similar to those in the EFSC siting standards only for those projects that would previously have been subject to EFSC review.

Rather than identify specific types of energy generation, the new statute, ORS 215.446, created a definition for “renewable energy facility.” This definition does not exclude other types of energy generation that may occur on lands zoned for exclusive farm use (solar thermal energy, certain biomass products, including woody biomass and animal manure, landfill gas and other biogases, small hydropower, thermal energy, etc...) that would unmistakably constitute “renewable energy,” nor does it limit the definition to only lands zoned for exclusive farm use. In other words, all renewable energy facilities in all county zoning designations would be subject to the additional review criteria specified by ORS 215.446.

This broad application of the new review criteria was unintentional. In fact, applying additional review criteria to all types of renewable energy projects at all county locations was not even contemplated or discussed during the legislative conversations on HB 2329. The sole purpose of legislation was to allow an alternative for certain renewable energy facilities to undergo review under approved county standards instead of EFSC review.

Unintended Effect

As drafted, HB 2329 unintentionally triggers the Measure 56 notice provisions by applying new review criteria on all renewable energy facilities subject to local review located in any rural land zoning category. Under the Measure 56 statute, local governments must notify affected property owners when local or statutory zoning changes limit or prohibit formerly permissible land uses. Once local governments distribute the notices, the Oregon Department of Land Conservation and Development (DLCD) is required to reimburse local governments for the cost of any notices related to a statutory change.

At no time during the debate on HB 2329 did the Legislature discuss whether the bill would trigger Measure 56. Quite simply, this issue wasn't mentioned because the legislation was intended to adjust land use review authority for certain renewable energy facilities, not to increase the level of scrutiny for all types of renewable energy projects.

DLCD estimates that fulfilling the notice requirements could cost the State of Oregon as much as \$750,000. While the cost may not reach the full \$750,000, as not every county impacted may ask for reimbursement, DLCD would nonetheless face severe budget cuts to remedy this unanticipated situation. As you have explained, the department would need to ask the Emergency Board to appropriate funding for the reimbursement costs. But to my mind, in this time of tight budgets and so much hardship, it makes no sense to waste limited dollars on a drafting mistake, and I believe the better solution would be to amend ORS 215.446.

Closing

As we have discussed, an inadvertent drafting error in HB 2329 has triggered Measure 56 notices and placed an unanticipated burden on DLCD and Oregon's counties. I recognize that once DLCD discovered this error in the spring of 2020 that the agency worked closely with key legislators and stakeholders to address the situation, both through proposed legislation and an Emergency Board request. However, due to the overwhelming concerns of the COVID-19 pandemic and wildfires, the Legislature has not addressed this issue during any of the 2020 special sessions. As a result, I will fully support efforts during the 2021 Session to fix HB 2329 and relieve DLCD and the counties of any Measure 56 burdens.

Sincerely,



Representative Ken Helm
House District 34
Oregon State Legislature

cc:

Tina Kotek, Speaker of the House
Brian Clem, Chair, House Committee on Agriculture & Land Use
Kristen Sheeran, Office of the Governor
Amira Streeter, Office of the Governor