



# Oregon

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TO: Land Conservation and Development Commission (LCDC)

FROM: Jon Jinings, Community Services Specialist  
Michael Morrissey, Policy Analyst

SUBJECT: **Agenda Item 6, May 10-11, 2012 LCDC Meeting**

**PUBLIC HEARING AND PROPOSED ADOPTION OF AMENDED  
ADMINISTRATIVE RULES: OAR CHAPTER 660, DIVISION 33,  
SPECIFIC TO PHOTOVOLTAIC SOLAR POWER GENERATION  
FACILITIES ON FARM AND RANCH LANDS**

**I. SUMMARY**

The commission is asked to consider proposed adoption of a revision to OAR 660-033-0130(38). The proposed revision amends the rule in section 38(h) to allow siting of a solar photovoltaic energy facility on non-arable EFU zoned lands on a site of up to 250 acres as a conditional use.

**II. RECOMMENDED ACTION**

The department recommends that the commission review and discuss the proposed amendment to the existing rule as described in Part IV of this staff report and adopt the proposed revision to OAR 660-033-0130(38).

**III. BACKGROUND**

In October 2011, the commission finalized rules in OAR 660 Division 33, related to siting of solar photovoltaic energy generation facilities on farmland. The adoption of the rules culminated over one year's study of the issue and included recommendations from a rules advisory committee (RAC).

In the 2012 legislative session, the House Energy, Environment and Water committee held an informal briefing regarding siting of solar facilities and invited Land Conservation and Development Commission (LCDC) chair Marilyn Worrix and Governor Kitzhaber's Natural Resources Policy Advisor Richard Whitman to testify. During the hearing LCDC was requested to consider revising its recently adopted rule to raise the allowable acreage threshold for siting a solar photovoltaic energy generation facility from 100 acres to 250 acres on non-arable EFU zoned lands, as a conditional use. Chair Worrix agreed to take that request to the commission.

**IV. DEPARTMENT EXPLANATION AND COMMENTS REGARDING PROPOSED DRAFT RULE**

The proposed rule amendment raises the existing threshold for a permit for development on non-arable farmland from 100 acres to 250 acres, as a conditional use. Applications for a development greater than 100 acres would be processed by the Energy Facilities Siting Council (EFSC), using DLCD rules.

The issue of acreage thresholds for siting of these facilities on different categories of farmland was extensively discussed by the rules advisory committee in the original rulemaking described earlier. The results of those discussions and recommendations, adopted by LCDC resulted in a 12-acre limit for siting on high value farmland, a 20-acre limit for siting on arable (but non-high value) farmland and a 100-acre limit for siting on non-arable farmland, generally considered to be rangeland, for an application to a county through a conditional use permit. Discussion topics related to threshold size included effects on farmland on-site, cumulative effects, impacts on wildlife and requirements identified by the solar industry. In addition, the understanding of DLCD staff and the RAC members was that sites over 100 acres in size would be processed by the Energy Facility Siting Council and that statute precluded department involvement in siting of over 100 acres. Discussion subsequent to the prior rulemaking has clarified that department rules can involve sites over 100 acres but that EFSC will process related permits using department rules.

The department has made efforts to contact members of the rules advisory committee by both e-mail and telephone. No specific comments on the proposed rule amendment have been received to-date.

**V. DEPARTMENT RECOMMENDATION AND DRAFT MOTION**

The department recommends that the commission adopt proposed revisions to OAR 660-033-0130(38).

Three possible alternatives and draft motions are provided below:

1. The commission may adopt the proposed rule amendment as drafted. In that case, the appropriate motion is: I move the commission adopt revisions to OAR 660-033-0130(38) as proposed by the department and contained in this staff report.
2. The commission may adopt the proposed rules, with further amendments by the commission, by motion, at this meeting. The appropriate motion would be: I move the commission adopt revisions to OAR 660-033-0130(38) as proposed by the department, and as further amended by the commission at this meeting.

3. The commission may direct staff to prepare amendments to the proposed rule for the commission to consider at its July meeting. If the commission chooses this option, the appropriate motion would be: I move to direct staff to prepare amendments to the proposed rules to address the following issues: \*\*\*\*.

### **ATTACHMENTS**

#### **A. Proposed Amendments to OAR 660-033-0130**

1 **660-033-0130**

2  
3 **Minimum Standards Applicable to the Schedule of Permitted and**  
4 **Conditional Uses**

5  
6 The following standards apply to uses listed in OAR 660-033-0120 where  
7 the corresponding section number is shown on the chart for a specific use  
8 under consideration. Where no numerical reference is indicated on the chart,  
9 this division does not specify any minimum review or approval criteria.  
10 Counties may include procedures and conditions in addition to those listed in  
11 the chart as authorized by law: (subsection 38 only shown. See (h) p. 5, for  
12 only amendment to rule.)

13  
14  
15 (38) A proposal to site a photovoltaic solar power generation facility shall be  
16 subject to the following definitions and provisions:

17  
18 (a) “Arable land” means land in a tract that is predominantly cultivated or, if  
19 not currently cultivated, predominantly comprised of arable soils.

20  
21 (b) “Arable soils” means soils that are suitable for cultivation as determined  
22 by the governing body or its designate based on substantial evidence in the  
23 record of a local land use application but do not include high-value farmland  
24 soils described at ORS 195.300(10) unless otherwise stated.

25  
26 (c) “Nonarable land” means land in a tract that is predominantly not  
27 cultivated and predominantly comprised of nonarable soils.

28  
29 (d) “Nonarable soils” means soils that are not suitable for cultivation. Soils  
30 with an NRCS agricultural capability class V-VIII and no history of  
31 irrigation shall be considered nonarable in all cases. The governing body or  
32 its designate may determine other soils, including soils with a past history of  
33 irrigation, to be nonarable based on substantial evidence in the record of a  
34 local land use application.

35  
36 (e) “Photovoltaic solar power generation facility” includes, but is not limited  
37 to, an assembly of equipment that converts sunlight into electricity and then  
38 stores, transfers, or both, that electricity. This includes photovoltaic  
39 modules, mounting and solar tracking equipment, foundations, inverters,

1 wiring, and storage devices and other components. Photovoltaic solar power  
2 generation facilities also include electrical cable collection systems  
3 connecting the photovoltaic solar generation facility to a transmission line,  
4 all necessary grid integration equipment, new or expanded private roads  
5 constructed to serve the photovoltaic solar power generation facility, office,  
6 operation and maintenance buildings, staging areas and all other necessary  
7 appurtenances. For purposes of applying the acreage standards of this  
8 section, a photovoltaic solar power generation facility includes all existing  
9 and proposed facilities on a single tract, as well as any existing and proposed  
10 facilities determined to be under common ownership, on lands with less than  
11 1320-feet of separation from the tract on which the new facility is proposed  
12 to be sited. Projects connected to the same parent company or individuals  
13 shall be considered to be in common ownership regardless of the operating  
14 business structure. A photovoltaic solar power generation facility does not  
15 include a net metering project established consistent with ORS 757.300 and  
16 OAR chapter 860, division 39 or a Feed-in-Tariff project established  
17 consistent with ORS 757.365 and OAR chapter 860, division 84.

18  
19 (f) For high-value farmland described at ORS 195.300(10), a photovoltaic  
20 solar power generation facility shall not preclude more than 12 acres from  
21 use as a commercial agricultural enterprise unless an exception is taken  
22 pursuant to ORS 197.732 and OAR chapter 660, division 4. The governing  
23 body or its designate must find that:

24  
25 (A) The proposed photovoltaic solar power generation facility will not create  
26 unnecessary negative impacts on agricultural operations conducted on any  
27 portion of the subject property not occupied by project components.  
28 Negative impacts could include, but are not limited to, the unnecessary  
29 construction of roads, dividing a field or multiple fields in such a way that  
30 creates small or isolated pieces of property that are more difficult to farm,  
31 and placing photovoltaic solar power generation facility project components  
32 on lands in a manner that could disrupt common and accepted farming  
33 practices;

34  
35 (B) The presence of a photovoltaic solar power generation facility will not  
36 result in unnecessary soil erosion or loss that could limit agricultural  
37 productivity on the subject property. This provision may be satisfied by the  
38 submittal and county approval of a soil and erosion control plan prepared by  
39 an adequately qualified individual, showing how unnecessary soil erosion  
40 will be avoided or remedied and how topsoil will be stripped, stockpiled and

1 clearly marked. The approved plan shall be attached to the decision as a  
2 condition of approval;

3  
4 (C) Construction or maintenance activities will not result in unnecessary soil  
5 compaction that reduces the productivity of soil for crop production. This  
6 provision may be satisfied by the submittal and county approval of a plan  
7 prepared by an adequately qualified individual, showing how unnecessary  
8 soil compaction will be avoided or remedied in a timely manner through  
9 deep soil decompaction or other appropriate practices. The approved plan  
10 shall be attached to the decision as a condition of approval;

11  
12 (D) Construction or maintenance activities will not result in the unabated  
13 introduction or spread of noxious weeds and other undesirable weeds  
14 species. This provision may be satisfied by the submittal and county  
15 approval of a weed control plan prepared by an adequately qualified  
16 individual that includes a long-term maintenance agreement. The approved  
17 plan shall be attached to the decision as a condition of approval;

18  
19 (E) The project is not located on high-value farmland soils unless it can be  
20 demonstrated that:

21  
22 (i) Non high-value farmland soils are not available on the subject tract;

23  
24 (ii) Siting the project on non high-value farmland soils present on the subject  
25 tract would significantly reduce the project's ability to operate successfully;  
26 or

27  
28 (iii) The proposed site is better suited to allow continuation of an existing  
29 commercial farm or ranching operation on the subject tract than other  
30 possible sites also located on the subject tract, including those comprised of  
31 non high-value farmland soils; and

32  
33 (F) A study area consisting of lands zoned for exclusive farm use located  
34 within one mile measured from the center of the proposed project shall be  
35 established and:

36  
37 (i) If fewer than 48-acres of photovoltaic solar power generation facilities  
38 have been constructed or received land use approvals and obtained building  
39 permits within the study area no further action is necessary.

40

1 (ii) When at least 48-acres of photovoltaic solar power generation have been  
2 constructed or received land use approvals and obtained building permits,  
3 either as a single project or as multiple facilities, within the study area the  
4 local government or its designate must find that the photovoltaic solar  
5 energy generation facility will not materially alter the stability of the overall  
6 land use pattern of the area. The stability of the land use pattern will be  
7 materially altered if the overall effect of existing and potential photovoltaic  
8 solar energy generation facilities will make it more difficult for the existing  
9 farms and ranches in the area to continue operation due to diminished  
10 opportunities to expand, purchase or lease farmland, acquire water rights or  
11 diminish the number of tracts or acreage in farm use in a manner that will  
12 destabilize the overall character of the study area.

13  
14 (g) For arable lands a photovoltaic solar power generation facility shall not  
15 preclude more than 20 acres from use as a commercial agricultural enterprise  
16 unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660,  
17 division 4. The governing body or its designate must find that:

18  
19 (A) The project is not located on high-value farmland soils or arable soils  
20 unless it can be demonstrated that:

21  
22 (i) Nonarable soils are not available on the subject tract;

23  
24 (ii) Siting the project on nonarable soils present on the subject tract would  
25 significantly reduce the project's ability to operate successfully; or

26  
27 (iii) The proposed site is better suited to allow continuation of an existing  
28 commercial farm or ranching operation on the subject tract than other  
29 possible sites also located on the subject tract, including those comprised of  
30 nonarable soils;

31  
32 (B) No more than 12-acres of the project will be sited on high-value  
33 farmland soils described at ORS 195.300(10) unless an exception is taken  
34 pursuant to ORS 197.732 and OAR chapter 660, division 4;

35 (C) A study area consisting of lands zoned for exclusive farm use located  
36 within one mile measured from the center of the proposed project shall be  
37 established and:

38

1 (i) If fewer than 80-acres of photovoltaic solar power generation facilities  
2 have been constructed or received land use approvals and obtained building  
3 permits within the study area no further action is necessary.  
4

5 (ii) When at least 80-acres of photovoltaic solar power generation have been  
6 constructed or received land use approvals and obtained building permits,  
7 either as a single project or as multiple facilities, within the study area the  
8 local government or its designate must find that the photovoltaic solar  
9 energy generation facility will not materially alter the stability of the overall  
10 land use pattern of the area. The stability of the land use pattern will be  
11 materially altered if the overall effect of existing and potential photovoltaic  
12 solar energy generation facilities will make it more difficult for the existing  
13 farms and ranches in the area to continue operation due to diminished  
14 opportunities to expand, purchase or lease farmland, acquire water rights or  
15 diminish the number of tracts or acreage in farm use in a manner that will  
16 destabilize the overall character of the study area; and  
17

18 (D) The requirements of OAR 660-033-0130(38)(f)(A), (B), (C) and (D) are  
19 satisfied.  
20

21 (h) For nonarable lands, a photovoltaic solar power generation facility shall  
22 not preclude more than ~~400~~ 250-acres from use as a commercial agricultural  
23 enterprise unless an exception is taken pursuant to ORS 197.732 and OAR  
24 chapter 660, division 4. The governing body or its designate must find that:  
25

26 (A) The project is not located on high-value farmland soils or arable soils  
27 unless it can be demonstrated that:  
28

29 (i) Siting the project on nonarable soils present on the subject tract would  
30 significantly reduce the project's ability to operate successfully; or  
31

32 (ii) The proposed site is better suited to allow continuation of an existing  
33 commercial farm or ranching operation on the subject tract as compared to  
34 other possible sites also located on the subject tract, including sites that are  
35 comprised of nonarable soils;  
36

37 (B) No more than 12-acres of the project will be sited on high-value  
38 farmland soils described at ORS 195.300(10);  
39

1 (C) No more than 20-acres of the project will be sited on arable soils unless  
2 an exception is taken pursuant to ORS 197.732 and OAR chapter 660,  
3 division 4;

4  
5 (D) The requirements of OAR 660-033-0130(38)(f)(D) are satisfied;

6  
7 (E) If a photovoltaic solar power generation facility is proposed to be  
8 developed on lands that contain a Goal 5 resource protected under the  
9 county's comprehensive plan, and the plan does not address conflicts  
10 between energy facility development and the resource, the applicant and the  
11 county, together with any state or federal agency responsible for protecting  
12 the resource or habitat supporting the resource, will cooperatively develop a  
13 specific resource management plan to mitigate potential development  
14 conflicts. If there is no program present to protect the listed Goal 5  
15 resource(s) present in the local comprehensive plan or implementing  
16 ordinances and the applicant and the appropriate resource management  
17 agency(ies) cannot successfully agree on a cooperative resource  
18 management plan, the county is responsible for determining appropriate  
19 mitigation measures; and

20  
21 (F) If a proposed photovoltaic solar power generation facility is located on  
22 lands where the potential exists for adverse effects to state or federal special  
23 status species (threatened, endangered, candidate, or sensitive), or to wildlife  
24 species of concern identified and mapped by the Oregon Department of Fish  
25 and Wildlife (including big game winter range and migration corridors,  
26 golden eagle and prairie falcon nest sites, and pigeon springs), the applicant  
27 shall conduct a site specific assessment of the subject property in  
28 consultation with all appropriate state, federal, and tribal wildlife  
29 management agencies. A professional biologist shall conduct the site  
30 specific assessment by using methodologies accepted by the appropriate  
31 wildlife management agency and shall determine whether adverse effects to  
32 special status species or wildlife species of concern are anticipated. Based on  
33 the results of the biologist's report, the site shall be designed to avoid  
34 adverse affects to state or federal special status species or to wildlife species  
35 of concern as described above. If the applicant's site specific assessment  
36 shows that adverse effects cannot be avoided, the applicant and the  
37 appropriate wildlife management agency will cooperatively develop an  
38 agreement for project-specific mitigation to offset the potential adverse  
39 effects of the facility. Where the applicant and the resource management  
40 agency cannot agree on what mitigation will be carried out, the county is

1 responsible for determining appropriate mitigation, if any, required for the  
2 facility.

3  
4 (G) The provisions of paragraph (F) are repealed on January 1, 2022.

5  
6 (i) The county governing body or its designate shall require as a condition of  
7 approval for a photovoltaic solar power generation facility, that the project  
8 owner sign and record in the deed records for the county a document binding  
9 the project owner, and the project owner's successors in interest, prohibiting  
10 them from pursuing a claim for relief or cause of action alleging injury from  
11 farming or forest practices as defined in ORS 30.930(2) and (4).

12  
13 (j) Nothing in this section shall prevent a county from requiring a bond or  
14 other security from a developer or otherwise imposing on a developer the  
15 responsibility for retiring the photovoltaic solar power generation facility.

16  
17 (k) The commission may re-evaluate the acreage thresholds identified in  
18 subsections (f), (g) and (h) should ORS 469.300(11)(a)(D) be amended.

19  
20 Stat. Auth.: ORS 197.040

21 Stats. Implemented: ORS 197.040 & 215.213

22