

Metro Review Schedule (Tentative)

Metro/Counties Reserves Decisions

- Final local decisions – early June 2010
- Submission to DLCD – mid to late June 2010
- Notice of opportunity for objections – late June
- Objections filed – late July
- DLCD staff report – mid September
- Exceptions – late September
- LCDC hearing – October 20-22 (Portland)

Metro – Regional Transportation Plan

- Final Metro decision - June
- Submission to DLCD – late July
- Notice of opportunity for objections – late July
- Objections filed – mid to late August
- DLCD staff report or director's decision – October
- Appeal/Exceptions – November
- LCDC hearing – December 1-3 (Grants Pass)

Metro Capacity/UGB Decision

- Final Metro decision – December 2010
- Submission to DLCD – early January 2011
- Notice of opportunity for objections –
- Objections filed – late July
- DLCD staff report or director's decision –
- Appeal/Exceptions –
- LCDC hearing – April – June (2011)

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May 25, 2010

John VanLandingham, Chair  
Land Development and Conservation Commission  
635 Capitol Street, NE, Suite 150  
Salem, OR 97301

### Local Implications of Transportation Planning Rule Implementation

Dear Chair VanLandingham and Commissioners,

We are writing to request your attention to a matter that has had a significant impact on the Corvallis planning program over the last few years. That issue is the implementation of the Transportation Planning Rule (TPR) and its effect upon our annexation and zoning district change decisions. This issue also has larger implications for the success of the statewide planning program, as explained in this letter. We ask that you consider a process to evaluate and amend the Transportation Planning Rule to address these issues.

As you are no doubt aware, OAR 660-012-0060(1) states that the requirements of the TPR must be addressed, "Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility...." This rule makes sense when one thinks about large-scale changes to land use regulations, functional plans, or comprehensive plans that could result in large, system-wide traffic impacts that would be outside the planned parameters of a jurisdiction's transportation system plan (TSP). To ensure orderly development and provision of appropriate transportation infrastructure to support such development, it is reasonable to require reassessment of traffic impacts and to ensure that appropriate mitigation for such impacts be provided in conjunction with large-scale "rule changes."

In the past, when considering zone change decisions that were consistent with Comprehensive Plan Designations, whether stand-alone within the City Limits, or done in conjunction with annexations, a finding that the proposed zoning was consistent with the Comprehensive Plan Designation was sufficient to demonstrate compliance with the TPR. This was because Corvallis' Transportation System Plan (TSP) was based on a model that took into account anticipated

development under Comprehensive Plan designations for the entire Urban Growth Boundary. Our TSP (like most prepared by local jurisdictions, to my knowledge) assumes that anticipated development within the UGB would create an average traffic impact, based on the assumption that there would be some uses that would create high amounts of traffic and others that would create less traffic.

At some point within the last few years our local ODOT representative made it clear that ODOT would no longer accept the argument that if a zone change is consistent with a Comprehensive Plan Designation, then it automatically complies with the TPR. The reason given was the potential for impacts beyond the average impacts assumed in our TSP. ODOT's position was clarified to state that, unless a jurisdiction has prepared a TSP that assumes "worst-case" development from a traffic impact standpoint, then a "significant effect" (per the language of the TPR) could occur. Consequently, the TPR would need to be addressed for these types of applications. Upon further request for clarification, ODOT staff provided a document, developed in April 2006, entitled, "Transportation Planning Rule (TPR) Reviews - Guidelines for Implementing Section 660-012-0060." (see attached excerpt of Section 3.2.14 - Analysis for Zone Changes in Conformance with Comprehensive Plan Amendments) The practical result of this for the City of Corvallis has been to make annexations and zone changes nearly impossible to approve.

The reason for our difficulty with this aspect of the TPR is because of the disconnect between the way the TPR is written and the way in which requirements for transportation system improvements are typically required at the local level. The TPR states that the issue of "significant effect" must be addressed at the time of a rule change - typically these are considered to be zoning district changes, land development code amendments, or comprehensive plan amendments. DLCD requires that we send a notice when we are considering one of these types of rule changes, and DLCD staff have been coordinating with ODOT to make sure the TPR is addressed. In order to sufficiently address the TPR we need to be able to demonstrate that if a proposed rule change could result in a "significant effect" that would worsen the performance standard of an ODOT transportation facility below acceptable levels (or that would send any additional trips to an intersection that is already "failing"), then mitigation for that impact is planned and funded, or will be required with development. However, it is not unusual for us to receive annexation applications that include only zone change and annexation requests, with no subdivision or other plan for development proposed in conjunction with the annexation. Actual development on a property that is annexed may not occur until several years after an annexation is approved.

Based on our understanding of "takings" law, in order to be Constitutionally permissible, required improvements and exactions by local governments must have a rational nexus and must be able to demonstrate rough proportionality to the anticipated impacts of a development. Therefore, it does not seem to be legally permissible to require transportation system improvements in association with an annexation/zone change approval if no impacts are associated with the approval. And, as you are no doubt aware, our City and most local

jurisdictions do not have adequate funding to allow these types of improvement projects to be included in our Capital Improvement Program. Therefore, we are largely dependant upon new development to make infrastructure improvements to mitigate for the impacts of the development. Additionally, it is not unusual for an improvement needed to bring a failing intersection back to an acceptable level of service to cost millions of dollars, which is typically well beyond the means available to the applicant for a small annexation. Although the TPR does not appear to address the need for rough proportionality, we certainly do!

Part of our particular problem in Corvallis is that ODOT's performance standards for a number of ODOT facilities and intersections within and around Corvallis are already below acceptable levels. The way the TPR is written, if any rule change might result in sending additional trips to a facility that is already failing, then minimally, mitigation for that impact must be established with the rule change. It is a "straw that broke the camel's back" type of scenario where a potential rule change that could potentially send a handful of trips to an intersection that is already failing would be obligated to provide mitigation to bring the failing intersection to an acceptable performance standard, or minimally, to mitigate for the potential "worst-case" traffic impacts of the rule change.

Some other jurisdictions utilize a process where it is possible to "condition" a zone change decision to require that the TPR be met with subsequent development. However, Corvallis Code does not currently allow us to "condition" a zone change and it is not clear to us how a zone change could be a contingent decision. Therefore, attaching a condition of approval to a zone change decision does not appear to be a viable option for addressing the TPR. Additionally, to condition a zone change such that development on a property could create no more additional trips than were allowed under the prior zoning (until such time as necessary traffic mitigation were in place) would effectively nullify the purpose for the zone change.

Another strategy that has been explored is attaching a condition of approval to address the TPR in conjunction with development on an annexed property through the Planned Development (PD) process. However, Corvallis, like Eugene and some other jurisdictions in Oregon, has been instructed by DLCD that we must remove obstacles to providing "needed housing" in our community through a clear and objective (non-discretionary, non-PD) process. Specifically, we have been required to put in place measures that require us to remove Planned Development Overlays from residential properties at the request of the owner (unless PD development is requested by an owner, or already established on the property through a Detailed Development Plan approval). The upshot for us is that, unlike in the past, the establishment of a Planned Development Overlay on a residential property no longer holds the binding force it once did. We cannot find that simply approving a Planned Development on a property in conjunction with an annexation/zone change application, or establishing a PD Overlay zone, will ensure that the TPR will be addressed through PD conditions. This is because PD approvals can expire and property owners can request to remove PD Overlays in the future and we would be obligated to approve

such a request under the “needed housing” rules. The recent Oregon Court of Appeals decision in Willamette Oaks, LLC v City of Eugene (232 OR App 29) has reinforced the problems with relying on a Planned Development Overlay to address the TPR in the future (that decision found that it was not permissible to delay the determination of whether potential development that would occur as the result of a "rule change" might result in a "significant effect" per the TPR).

Because of these issues, we have been in a bind regarding residential annexation applications for the past several years. One developer in particular has recently applied for the third time to annex particular properties into the City. Although we believe we may have found a way to adequately address the TPR through a planned development approval associated with the annexation and zone change requests, it remains to be seen whether this approach will be successful, and the convoluted process required is not a reasonable model to follow for all future annexations.

Aside from our particular issues with the TPR, we believe there are some larger issues with how implementation of the TPR seems to be inconsistent with some of the other goals of the Statewide planning program:

- Subverting Planned Urban Densities - By obstructing the ability to zone properties consistent with comprehensive plan designations, the TPR, as it is currently being implemented, is obstructing jurisdictions from achieving their planned densities, and may be contributing to the sprawl of development into other areas that are less subject to the dictates of the TPR, but which are less able to handle increased density. In other jurisdictions, we have heard reports that conditional zone changes mandate very low density development until such time that necessary transportation system improvements are completed. As noted previously, many of these necessary transportation system improvements are of such a scope that they cannot be realistically financed by private development or by local governments. Consequently, we seem to be “held hostage” to system improvements over which we have little control.
- Inconsistent with the Statewide Planning Program - Simply put, the Oregon program is predicated on establishing areas for urban growth and allowing for urban-level development in those areas. The current interpretation of the TPR is effectively denying jurisdictions’ ability to implement urban-level development within urban growth boundaries.
- Discouraging Economic Recovery - Potential projects along ODOT-affected corridors have been discouraged by the prospect of addressing cost-prohibitive mitigation measures. This is especially true for small business owners.

- Inconsistent with the Original Goals of the TPR? - In its infancy, the Transportation Planning Rule was touted as a set of regulations designed to reduce vehicle miles traveled by promoting alternative modes of transportation, etc. It is unclear how this has evolved into a regulation that seems to be designed to facilitate the flow of vehicles and freight along state highways. This goal also seems to run counter to recent statewide initiatives to reduce greenhouse gas emissions, etc. Typically, building increased highway capacity results in more vehicles on the highways: "If you build it, they will come."

In conclusion, we ask that you consider initiating a process to evaluate and amend the Transportation Planning Rule to address the issues raised in this letter. Clearly, there is a need for a larger funding solution to provide for needed improvements to state highways; however, holding local jurisdictions "hostage" until this issue is resolved is not a sustainable solution (in either sense of the word). Please feel free to contact me if you have any questions regarding the issues we've identified.

Respectfully,



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cc. Ken Gibb, Community Development Director, City of Corvallis  
Richard Whitman, Director, Oregon Department of Land Conservation and Development



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May 28, 2010

Richard Whitman, Director  
Department of Land Conservation and Development  
635 Capitol St. NE, Suite 150  
Salem, OR 97301-2540

Subject: Transportation Planning Rule (TPR) comments

On June 2-4, 2010, the Land Conservation and Development Commission (LCDC) will be holding their next regular meeting to take action on policy agenda items for the remainder of the biennium. We understand that one topic that will be discussed is the Transportation Planning Rule (TPR). In anticipation of this discussion, the Department of Land Conservation and Development (DLCD) and LCDC have encouraged local jurisdictions to share their concerns regarding the TPR. We appreciate this opportunity and would like to provide the following comments in hopes of improving the effectiveness of the TPR.

Background

As DLCD staff is aware, implementation of the TPR over the last few years has been an unpredictable process to navigate, in part due to the various court decisions that have been issued. As it stands today, the TPR poses some serious implications for local jurisdictions in their efforts to plan for, and accommodate, growth in their communities. These circumstances are exacerbated by the fact that local governments are struggling financially to provide a variety of services to their communities. This includes the provision of adequate transportation facilities. The TPR is predicated on the concept that state, county and city governments will have all necessary transportation facilities in place or programmed (with funding strategies) for their respective planning periods. We understand that the HB 3379 committee may be addressing the question of adequate funding. Needless to say, the ability to accomplish this is an increasing challenge.

In Eugene, there are several city, county and state transportation facilities that are currently (or nearly) falling below the facility's performance standard. While some of these facilities may benefit from planned improvements included in our local Transportation System Plan (TSP), others are yet to be addressed. While some local streets have been problematic in evaluating the TPR, by in large, Eugene's biggest challenge has been related to ODOT facilities, as well as some Lane County facilities. Where no future improvements are planned, new development or redevelopment has been severely restricted, if not completely halted.

While the City of Eugene fully supports the intent and purpose of Goal 12 and the TPR, recent court rulings have created unintended consequences that in some cases, seem to be in conflict with other statewide planning goals.

#### Current Challenges

The current application of the TPR poses challenges both to local governments as they plan for growth, as well as individual property owners who are attempting to further develop their land. Following is a brief discussion of those challenges:

**Privately Initiated Amendments:** When reading the TPR, it appears that the main focus of the rule was to assure that larger scale changes in a community's land use plans require careful consideration of corresponding transportation impacts. Under these circumstances, one would expect that a local government would be undertaking some form of comprehensive amendment process, possibly involving its TSP as well. For privately initiated amendments, this is not the case. Typically, such requests are site specific and limited in scope. Under these circumstances, the comprehensive nature of the TPR does not match the realities of small scale, quasi-judicial proposals. This is especially true for zone changes.

OAR 660-012-0060(1) states that the TPR applies to amendments of functional plans, an acknowledged comprehensive plan or land use regulation. While previous rulings have determined that a zone change is considered an amendment of a land use regulation, we believe that the TPR, as written, does not account for the realities associated with typical zone changes requests.

The amendments described above address fundamental changes to a local government's adopted plans (Amendments of comprehensive plans and local land use or zoning codes). A zone change, by definition, is simply a request to conform a property's zoning to an adopted and acknowledged comprehensive plan designation. Regardless of this viewpoint, application of the TPR at the time of zone changes has created circumstances we believe are contrary to the state's objectives.

With respect to privately initiated actions, an applicant is responsible for bringing an entire transportation facility into compliance with accepted standards, if that facility is not identified for improvement on the city's TSP. While the TPR allows the city to lower its level of service, the prospect of amending the TSP in response to a simple zone change request is infeasible. Expecting other agencies to do the same for their respective facilities is even more unrealistic. This approach essentially means that one single property owner must bear the responsibility of mitigating a failing facility [as prescribed under 0060(2) or (3)]. In the case of ODOT facilities, the typical mitigation necessary far exceeds the capacity of a single property owner. In Eugene, this has resulted in applications either being withdrawn or severely reduced in scale to avoid mitigation.

**Growth Management Planning:** Eugene is in the process of developing its strategy for accommodating its 20 year growth needs. The challenge of ensuring adequate city transportation facilities to serve this growth is substantial, especially when many facilities are currently at, or near capacity. While the TPR does provide some limited relief valves (660-012-0060(2)(d) and 660-012-0060(6)), Eugene's primary challenge has been with ODOT facilities, and to a lesser degree, county facilities. While the city works closely with these agencies on transportation issues, it has little control for ensuring long term solutions on their respective facilities. In the absence of any additional flexibility within the TPR, Eugene may be precluded from pursuing strongly supported efficiency measures for growth within its UGB if these strategies affect already impacted facilities.

### Unintended Consequences

Based on these and other circumstances, application of the TPR in Eugene is resulting in the following unintended consequences:

#### **Discourages economic recovery**

Given the circumstances above, potential projects along certain ODOT affected corridors have essentially been stifled at the prospect of addressing cost prohibitive mitigation measures. This has been especially true for small property/business owners. Several projects (both residential and commercial) have been pursued in Eugene, but ultimately withdrawn, solely because of the prospect of TPR mitigation. Unfortunately, the very areas in Eugene that are more readily able to accommodate additional growth or redevelopment are located in the vicinity of these impacted facilities.

#### **Promotes sprawl**

In order to avoid cost prohibitive mitigation, applicants that do proceed are scaling back or limiting their development requests to avoid the requirement for mitigation, resulting in low intensity development. This is especially frustrating when both the city and the applicant are attempting to promote efficient use of the land within the UGB only to find a developer reluctantly reduce the level of development in order to avoid costly mitigation. A recent example of this is a comprehensive plan amendment and zone change approval for a residential parcel. In order to avoid mitigation requirements, the applicant proposed to condition the decision so that the resulting number of units would not exceed 1 unit per acre. Instead of pursuing a project that could yield up to 350+ units (as allowed under the city's adopted plans), future development will be limited to 28 units.

In another instance, a 23 acre parcel designated for high density residential development in the City's Metro Plan and neighborhood plan reduced proposed density by over 300 dwelling units (13 units per acre) after realizing the mitigation costs necessary to satisfy the TPR. The resulting density is slightly above the minimum required for the high density designation. The loss of these 300 units will eventually need to be made up elsewhere.

Continued development scenarios such as this will ultimately require Eugene to consider larger UGB expansions in the future.

#### **Precludes communities from balancing transportation and land use objectives**

As currently applied, the TPR allows very little, if any, opportunity for local governments to balance its land use objectives with the transportation requirements specified in the TPR. For example, comprehensive plans and neighborhood plans that were adopted and acknowledged by the state cannot necessarily be relied upon as a blueprint for future growth. In essence, the TPR prohibits consideration of previously adopted plans (even if these studies contained transportation considerations) when evaluating a zone change request. For zone change requests that are simply attempting to bring properties into conformity with the adopted comprehensive plan designations, the TPR, not the comprehensive plan, is the primary determinant of future growth potential. Under this approach, the TPR essentially trumps any adopted land use goal, objective or policy.

### Limits growth management solutions

The current application of the TPR raises serious concerns for how cities can plan for future growth. Eugene is in the process of evaluating how to accommodate its future housing and employment needs. As Eugene looks at efficiency measures for how to grow more densely within our UGB, we are already seeing many areas of the city potentially eliminated from consideration simply because they involve failing or near failing ODOT or county facilities with no programmed improvements. These circumstances can be especially frustrating when considering growth scenarios that emphasize less dependence on vehicle use. The flexibility allowed in the TPR (660-012-0060(6)), while helpful, provides minimal assistance in satisfying the TPR.

### Opportunities for Improvement

Based on the experiences in Eugene, we would like to offer the following suggestions on how the TPR might be improved:

1. **Exempt Zone Changes:** As noted above, Eugene believes that zone changes should not be considered an “amendment of a land use regulation”. We have found that application of the TPR at the time of zone change is impacting the state’s land use and growth management objectives disproportionate to the potential transportation benefits that may be achieved (see comments above). While it might seem advantageous to mitigate potential traffic impacts before any actual development is proposed, such mitigation rarely occurs, as applications are either abandoned or scaled back significantly to avoid any mitigation.
2. **Flexibility to provide mitigation over the planning period:** Greater flexibility in both the thresholds for determining impact and the mechanisms for implementing mitigation measures would help realize feasible improvements while accommodating growth. Areas to address could include:
  - Clarify/Modify the term “Significant Affect”: The TPR provides minimal guidance as it relates to determining “significant affect”. Eugene has based its determination on “reasonable worst case scenarios” which is not defined in the TPR. While some clarification of “significant affect” would be helpful, the larger concern is determining a reasonable level of impact in the absence of any actual project. Without the benefit of having development proposals to evaluate, these hypothetical scenarios can vary greatly. Any potential definition should account for projects that may be higher or lower in intensity over time (not simply worst case scenarios for every proposal).
  - Work with ODOT to modify their mobility standards (Volume to capacity ratio) to be less restrictive and/or balanced with other land use objectives.
  - Minor vs. major transportation Improvements: Consider eliminating this distinction or modifying it at a minimum, as it is referenced in 660-012-0060(2)(e). Eugene has had 2 recent examples where mitigation was proposed by an applicant, that if determined to be major improvements under 0060(2)(e), could have precluded the mitigation from being provided because it would require an amendment to the city’s TSP (infeasible during a zone change process). If the affected agency supports the mitigation proposal, whether the mitigation is minor or major should be immaterial.
  - Phased Compliance: Consider amendments to allow greater flexibility in phasing mitigation. Consider allowing projects that are identified in adopted transportation system plans, whether funding is secured or not.

3. **Make the burden of mitigation proportional to the impact:** Under the current TPR, the rule has no accommodation for considering the proportional impact of a particular request. In essence, the rule functions under a "last straw" concept. If a transportation facility is near failing and the next request pushes the impact beyond acceptable levels, that project is responsible for bringing the transportation facility up to the identified performance standard. Particularly when ODOT facilities are involved, there are rarely modest (and proportional) mitigation measures available to a developer that would bring the facility up to the identified performance standard to restore capacity. Rather, it is more common to see the necessary mitigation be a substantial project. For most applicants, these choices are completely infeasible and disproportionate to their project.

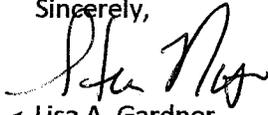
Given that these circumstances run contrary to other laws that limit a local government to imposing proportional mitigation (e.g. Dolan), we encourage the state to consider an amendment that bases the burden of mitigation in some proportional way. One option would be to consider a "fee in lieu" approach if no proportional mitigation is available.

4. **Balance the needs of ODOT facilities with other statewide planning goals:** Under its current application, the TPR provides minimal means to balance the needs of other statewide planning goals, in particular Goals 9 and 10. While we support the need for maintaining effective and functioning transportation systems, we do not believe that it is in the best interest of our community or the state to do so at the expense of sound growth management strategies. Given the limited resources to local governments, as well as the state, we are concerned that under the current approach, TPR compliance may lead cities to make decisions based predominately on a path of least resistance (e.g. avoids substantial transportation mitigation). We would encourage LCDC and staff to consider greater flexibility in the TPR to enable actions that balance the objectives of Goals 9 and 10 with those in Goal 12.

While we realize that our comments call for a more comprehensive assessment of the TPR, we do believe that left unchecked, the circumstances we've described will become more common place throughout the state. Eugene has had the unenviable position of being at the leading edge of these impacts, as a result of recent court decisions in our community. However, we are hearing from other communities who are beginning to experience similar impacts.

We appreciate your willingness to listen and look forward to the opportunity of working with your office on potential solutions.

Sincerely,

  
for Lisa A. Gardner  
Planning Director  
City of Eugene

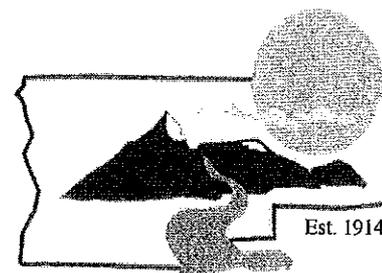
cc: John VanLandingham, Chair, LCDC  
Linda Ludwig, LOC

# JEFFERSON COUNTY

## COMMUNITY DEVELOPMENT DEPARTMENT

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June 3, 2010

Mr. John Van Landingham, Chair  
Land Conservation & Development Commission  
c/o Department of Land Conservation & Development  
635 Capitol Street NE, Suite 150  
Salem, OR 97301-2524

Subject: Agenda Item 9 - Discussion and Update of the Commission's 2009-11 Policy Agenda.

Dear Chair Van Landingham and Commissioners:

This letter is written on behalf of the Solar Farm Technical Advisory Committee (SoFTAC) which was recently formed by Jefferson County to discuss entitlement issues related to utility-scale solar farms. SoFTAC consists of members from different state agencies, Senator Wyden's office, Representative Huffman, Governor Kulongoski's office, Confederated Tribes of the Warm Springs, the University of Oregon, Oregon Natural Desert Association, renewable energy developers and others. Our first meeting was in March 2010 and our next meeting is scheduled for June 30. As a group we decided to work to amend the 12/20 acre limitations from OAR 660-033-0130 to better address siting issues specific to solar farms.

The State of Oregon has worked hard to emerge as a leader in the sustainable and renewable industries through the adoption of the Business Energy Tax Credits, the Renewable Portfolio Standard and other measures. The RPS mandate will be difficult to meet unless we change land use law to better analyze the impacts of such facilities – outright acreage limitations fall short of this goal. Through close coordination between local and state agencies we can implement regulations to assure appropriately sited facilities can be approved through a review process with reasonable timelines.

One focus of the SoFTAC will be the 20-acre maximum for power generation facilities in OAR 660-033-0130(22). As you know, the rules pertaining to power generation facilities on agricultural land were amended last year to better accommodate and analyze the impacts of wind facilities with new language found at OAR 660-033-0130(37). Central Oregon has many characteristics that make it attractive for utility-scale solar farm development including marginal resource lands with no irrigation and proximity to high capacity infrastructure. The hope is that this group will define a better solution than the acreage maximum and that OAR 660-033-0130 can be amended to better accommodate solar facilities in appropriate locations.

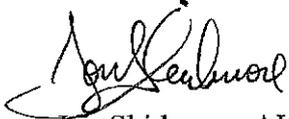
060310 SoFTAC LCDC Letter

EXHIBIT: 14 AGENDA ITEM: 9  
LAND CONSERVATION & DEVELOPMENT  
COMMISSION  
DATE: 6-3-10  
PAGES: 4  
SUBMITTED BY: Jon Skidmore

We request that the Commission to add this important policy issue to the Department's 2009 – 2011 Policy Agenda. Jon Jinings is a member of the group. I can pledge that the group will assist staff in reviewing the issues, drafting legislation and documentation for the Commission's review. We are hopeful that the Commission understands the entitlement challenges to renewable energy production facilities within OAR 660-033-0130 and will work with us to amend the rules. Please note our focus is to find solutions to siting such facilities on marginal resource lands.

Please contact me if you have any questions regarding the SoFTAC or this letter at 541-475-4462 or [jon.skidmore@co.jefferson.or.us](mailto:jon.skidmore@co.jefferson.or.us).

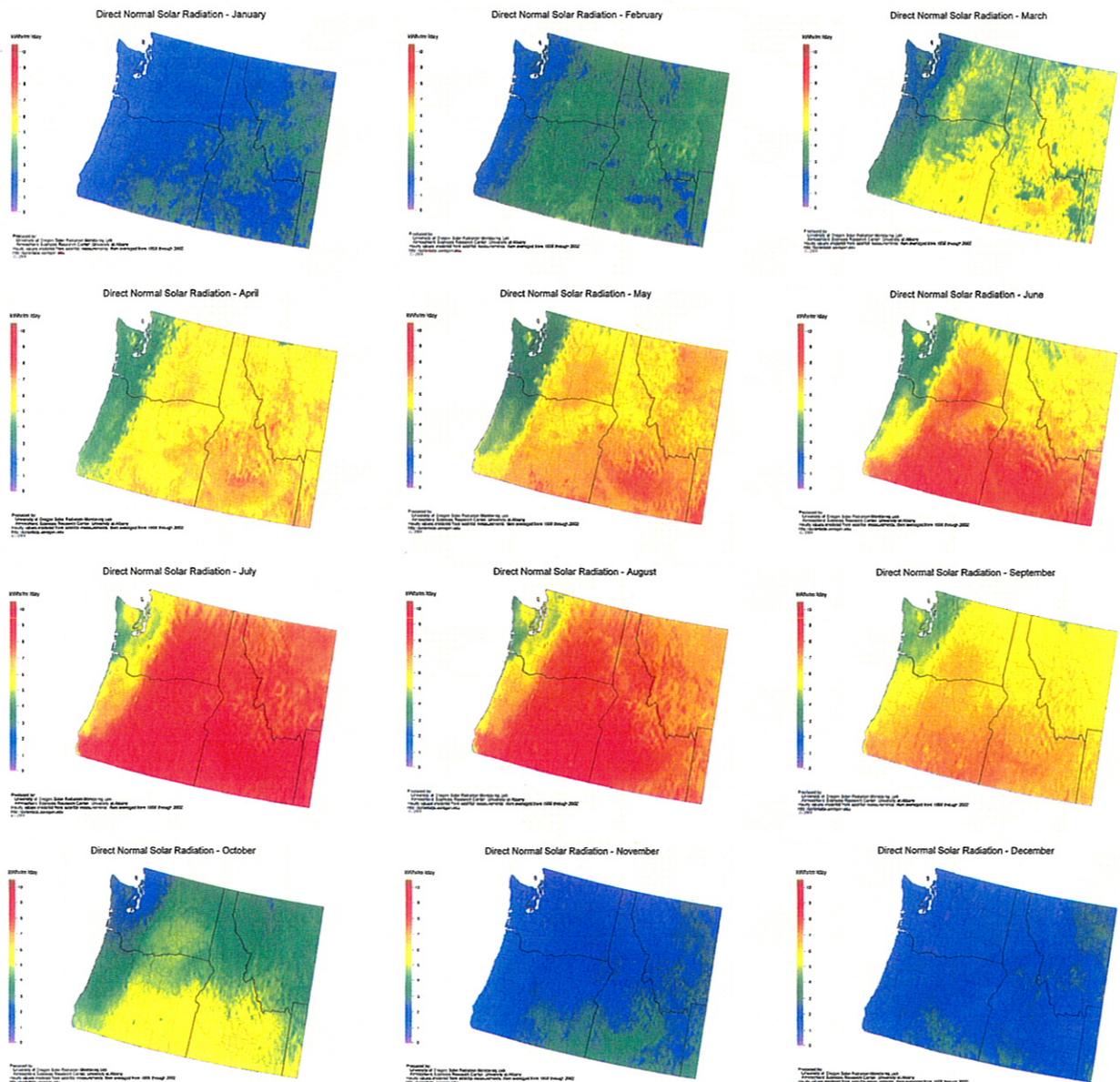
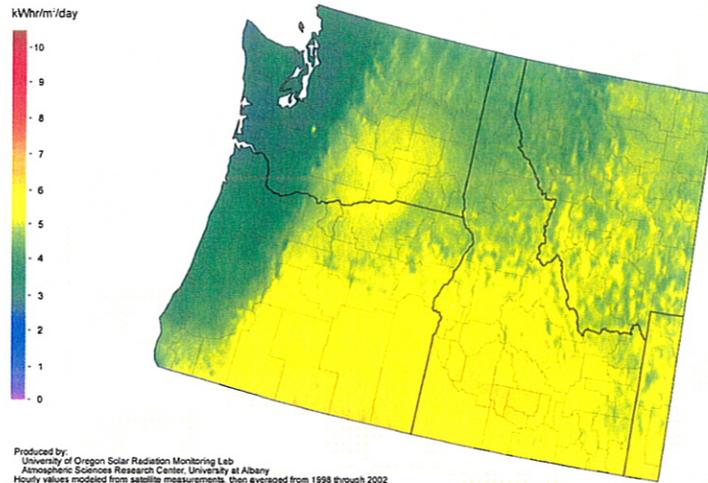
Sincerely,

A handwritten signature in black ink, appearing to read "Jon Skidmore", with a stylized flourish at the end.

Jon Skidmore, AICP  
Planning Director/CDD Manager

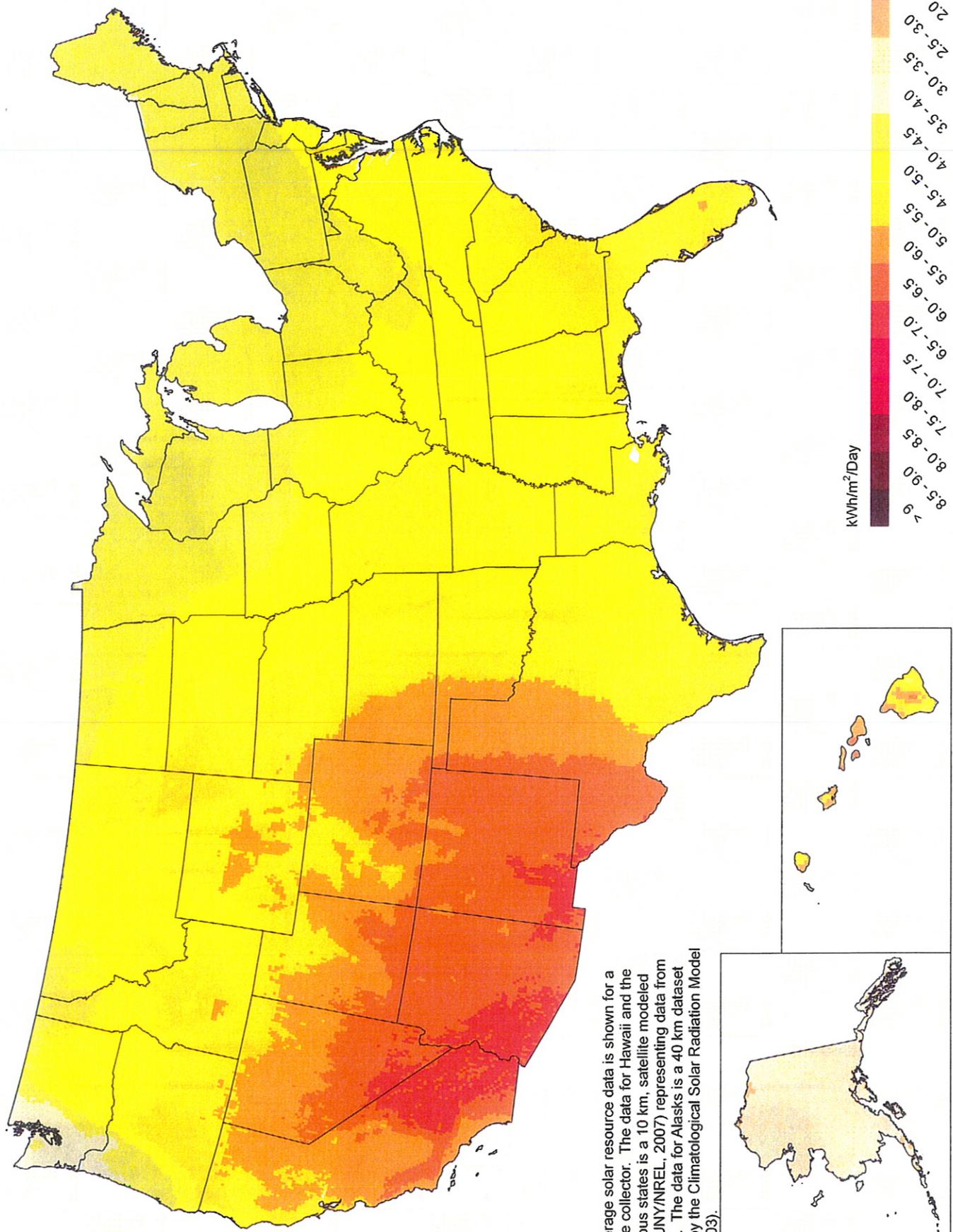
# Pacific Northwest Solar Resource—Beam Irradiance

## Direct Normal Solar Radiation - Annual



# Photovoltaic Solar Resource : Flat Plate Tilted at Latitude

# United States



Annual average solar resource data is shown for a tilt = latitude collector. The data for Hawaii and the 48 contiguous states is a 10 km, satellite modeled dataset (SUNY/NREL, 2007) representing data from 1998-2005. The data for Alaska is a 40 km dataset produced by the Climatological Solar Radiation Model (NREL, 2003).

## Jon Skidmore

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**From:** Troy Gagliano [TGagliano@enxco.com]  
**Sent:** Wednesday, June 02, 2010 8:59 AM  
**To:** michael.morrissey@state.or.us  
**Cc:** Jon Skidmore  
**Subject:** comments on Oregon Administrative Rule 660-033-0010(17)&(22)

Mr. Morrissey, good morning.

I am a solar project developer with enXco out of our Northwest Regional Office in Portland. (see info on our company at [www.enxco.com](http://www.enxco.com)). We have built 30 megawatts (MW) of solar projects in North America and have worked in wind energy since 1987. In total enXco has developed or services over 3,000 MW of renewable energy. We are actively seeking to build solar projects in Oregon and many neighboring states. I am involved with the Solar Farm Technical Advisory Committee and Jon Skidmore has helped me with some questions related to renewable energy permitting in his area of Oregon. I can't make this week's meeting in John Day but wanted to share some thoughts with you.

I am writing regarding Oregon Administrative Rule 660-033-0010(17)&(22) that poses the acreage limitations on high value farm land and non-high value farm land. While I can certainly understand the need to preserve farmlands and irrigated lands, I am concerned that these requirements also pertain to non-arable lands and non-irrigated lands which could be well suited to solar projects.

Large-scale solar development typically requires 8-10 acres of land per megawatt of energy production depending on the type of solar panel used. A 20 acre facility that can only fit a project of 2 to 2.5 MW in size may not justify expense. Utilities are seeking large projects in order to meet customer demands and state requirements to generate more power with renewables. A "large" project for Oregon would be 10 or more MW and that would require at least 100 acres.

Some thought to consider:

- Photovoltaic solar projects are simply a racking system, panels, and minimal equipment. They do not consume water during operation. The projects can easily be removed after their useful life (often 20 years) and the land returned to its formal state. Ares of the state with non-arable lands and no irrigation rights could be ideal for solar projects.
- The acreage limitation doesn't recognize the operational characteristics of utility scale solar farms – especially on non-high value farm land.
- Relying on interpretation of "commercial agricultural enterprise" does not provide certainty to developer.
- Goal 3 Exception is a daunting task with no certainty. A developer can't realistically gauge risk with an uncertain goal exception process. Goal exceptions vulnerable to appeal and are expensive and time consuming.

Thank you and please call me with any questions.

### Troy Gagliano

Project Developer

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EXHIBIT: 15 AGENDA ITEM: 9  
LAND CONSERVATION & DEVELOPMENT  
COMMISSION  
DATE: 6-3-10  
PAGES: 1 Jon Skidmore for  
SUBMITTED BY: Troy Gagliano

June 2, 2010

Land Conservation and Development Commission  
635 Capital Street NE, Suite 150  
Salem, Oregon 97301-2450

Subject: 2009-2011 Policy Agenda

Dear Land Conservation and Development Commission,

Obsidian Finance Group (Obsidian) is a Portland, Oregon based hybrid advisory and investment group. Obsidian's team includes a 19 person full-time staff that consists of accountants, lawyers, chartered financial analysts, real estate experts, insolvency experts, finance professionals, and tax professionals. Obsidian Renewables, LLC is developing larger-scale, ground mounted photovoltaic (solar) facilities in Oregon. Obsidian's subsidiaries have purchased over 1,000 acres in southern and central Oregon for the express purpose of developing solar facilities on the property.

With respect to the LCDC 2009-2011 Policy Agenda and larger-scale solar development, Obsidian offers four important points:

- 1) *A significant amount of land in central and eastern Oregon zoned agriculture (including EFU land) is, in fact, non-resource land. Renewable energy development should be allowed on non-resource land, regardless of zoning classification, without satisfying the 12/20 rule. (OAR 660-033-130 (17) & (22))*

True non-resource land contributes little to the State's agricultural economy and will not support a Commercial Agricultural Enterprise as defined in OAR 660-33-0020(2). Land zoned non-resource is available for renewable energy development without the need to satisfy the 12/20 rule.

Land can be non-resource land in fact, even when zoned as agriculture (or range or forestry). Many counties do not even have non-resource zoning. But they do have lands that are often rocky, alkaline, prone to flooding, or without available water rights – factors that preclude contribution to a Commercial Agricultural Enterprise. These natural limitations alone can cause land zoned as resource or EFU to have little to no economic contribution to the agricultural economy.

- 2) *Marginally productive farmland that does not make a significant contribution to the State's agriculture economy and cannot support a Commercial Agricultural Enterprise should be permitted to be used for renewable energy development without satisfying the*

*12/20 rule. Marginal resource lands with Agriculture zoning classifications often have great renewable energy development potential, and it is good policy for such lands to be available for renewable energy development.*

The purpose of the 12/20 rule is to protect the State's valuable agricultural economy and keep productive farmland in productive use. Marginally productive land is often closely associated with highly productive land. For example, many farms and ranches have 50 or more acres that are not in production due to rocks, soil conditions, water, etc. These "rough patches" do not themselves support a Commercial Agricultural Enterprise and should be allowed to be used for renewable energy.

Renewable energy development can be the best economic use for low-production farmland.

- 3) *Renewable energy development is consistent with the goals of a long term, sustainable, healthy, agriculture resource economy. The rules and policies of the LCDC should support integration of renewable energy into rural agricultural practices, not create a tension where renewable energy development is viewed as adverse or destructive to agriculture.*

When considering the State's long-term land use policies and goals, it only makes sense to consider renewable and sustainable energy as woven into the fabric. Please be open to the idea that solar panels or small wind generators installed on those portions of a larger farm or ranch property classified (or sub-classified) as non-resource or low production actually supports rather than precludes the health and future of a Commercial Agricultural Enterprise.

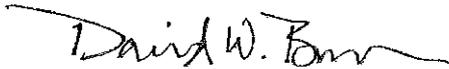
- 4) *The State's policy regarding the use of highly productive farmlands should continue to have the type of balancing of considerations that form the basis for the 12/20 rule, but there should be a new rule that recognizes the distinctive nature of solar farms.*

Let me illustrate by example. The Klamath Basin is an area where the historic impound and storage of water, and its use for irrigation and energy production is giving ground to other priorities. New irrigation strategies require new energy sources and renewable energy is a solution that is consistent with all of the State, federal and private objectives and priorities reflected in the Klamath Basin plans. A portion of the irrigated farmland should be able to be devoted to renewable energy because renewable energy can secure the ability to economically irrigate far into the future, thus assuming the survival of a very important Commercial Agricultural Enterprise.

Rules modifying the 12/20 acre rule should recognize that developing solar farms is not treated in the same manner as the development of a coal plant or natural gas facility.

Thank you for your time and consideration. We would be pleased to work with staff on this.

Sincerely,

A handwritten signature in black ink that reads "David W. Brown". The signature is written in a cursive style with a long, sweeping underline.

David Brown  
Senior Principal  
Obsidian Finance Group, LLC