



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

www.oregon.gov/LCD



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TO: Land Conservation and Development Commission (LCDC)

FROM: Jon Jinings, Community Services Specialist

SUBJECT: **Agenda Item 7, September 1-2, 2010 LCDC Meeting**

**PUBLIC HEARING AND PROPOSED ADOPTION OF NEW
ADMINISTRATIVE RULES: OAR CHAPTER 660, DIVISION 33,
TEMPORARY WORKFORCE HOUSING FOR LARGE ENERGY-
RELATED CONSTRUCTION PROJECTS**

I. SUMMARY

Consider proposed adoption of amendments to OAR 660-033-0130(16), (17), (22) and (37), to allow on-site and off-site temporary housing opportunities to be considered as part of a proposal to site an energy facility on agricultural lands.

II. RECOMMENDED ACTION

The department recommends that the commission adopt the proposed amendments to OAR 660-033-0130(16), (17), (19) and (37).

III. BACKGROUND

Oregon's laws protecting agricultural lands and laws pertaining to land use exceptions include provisions to allow certain types of large projects in rural areas. Construction activities to establish projects such as: new energy generation facilities (including renewable energy facilities), and large gas pipelines and power transmission facilities are employee-intensive and often take many months or longer to complete. For example, construction activities to establish a 100 MW wind power facility are likely to require up to 150 employees and can easily take from 9-12 months to complete.

A growing number of large projects, particularly renewable energy facilities, are being approved in remote areas of Oregon with limited accommodations for workforce housing. Many construction employees are forced to drive long distances to and from the jobsite. Others choose to temporarily reside in RVs or camp trailers before moving on to the next project.

Using RVs or camp trailers has long been a regular feature of mobile work forces that follow construction jobs from one location to another. Limited amounts of designated camp sites in remote, rural areas create potential economic opportunities for private land owners who are willing to allow construction employees to camp on their property. However, the private

campground rules at OAR 660-033-0135(19) do not allow a camper's stay to exceed 30-days out of any period of 180 consecutive days. This situation creates compliance issues for local governments because construction employees typically need to stay for longer than 30 days at a single location.

The commission heard testimony from the local county planning community and adopted a temporary rule responding to the workforce housing issue during the regular June, 2010 meeting in John Day, Oregon. At this meeting the commission also directed staff to appear at the regular September, 2010 meeting with a proposal for permanent rules to replace the temporary rules.

The permanent rules now proposed by the department differ from the temporary rules in that the current draft establishes temporary workforce housing facilities as an incidental use to an energy generation or transmission facility. The department believes this approach accomplishes the same fundamental purpose as the temporary rules, while adding the policy benefits of encouraging energy developers and local governments to plan for workforce housing opportunities as part of the land use review for the energy project. This structure also emphasizes that this use is not intended to be allowed as a stand-alone use, but must be in conjunction with the construction of an energy facility.

The department anticipates that on-site and off-site temporary workforce housing facilities normally would be identified by the project applicant and considered by local decision makers as part of the original proposal. However, sites not identified in the original proposal for the energy facility could be added later through a minor amendment process. In this instance, a party could apply to the county and request approval of an additional site(s) for temporary workforce housing facilities. The department has drafted the proposed rules to clearly specify that a decision on a minor amendment has no effect on the original decision. Whether a minor amendment could be requested by a party other than the original applicant would be up to the local jurisdiction. The department expects that many counties may chose to allow other parties to apply for a minor amendment to add facilities, however the proposed rules would require the concurrence of the original applicant. In addition, in all circumstances, the facilities must be temporary, and the proposed rules require that the facilities either be removed when construction of the energy facility is complete, or that the workforce housing facilities be authorized under some other authority if they are to remain (such as under the provisions for private campgrounds).

V. DEPARTMENT RECOMMENDATION AND DRAFT MOTION

The department recommends the commission adopt the proposed revisions to, OAR 660-033-0130(16), (17), (22) and (37) to replace temporary rules adopted in June, 2010 that adjusted OAR 660-033-0130(19).

Proposed Motion: I move the commission adopt revisions to OAR 660-033-0130(16), (17), (22) and (37) as proposed by the department to replace the temporary rules adopted in June, 2010 that created OAR 660-033-0130(19)(d).

ATTACHMENTS

A. Proposed Amendments to OAR 660-033-0130

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DIVISION 33

AGRICULTURAL LAND

660-033-0130

Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses

The following standards apply to uses listed in OAR 660-033-0120 where the corresponding section number is shown on the chart for a specific use under consideration. Where no numerical reference is indicated on the chart, this division does not specify any minimum review or approval criteria. Counties may include procedures and conditions in addition to those listed in the chart as authorized by law:

(16)(a) A utility facility is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

- (A) Technical and engineering feasibility;
- (B) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;
- (C) Lack of available urban and nonresource lands;
- (D) Availability of existing rights of way;
- (E) Public health and safety; and
- (F) Other requirements of state and federal agencies.

(b) Costs associated with any of the factors listed in subsection (16)(a) of this rule may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

(c) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

1 (d) The governing body of the county or its designee shall impose clear and objective conditions
2 on an application for utility facility siting to mitigate and minimize the impacts of the proposed
3 facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change
4 in accepted farm practices or a significant increase in the cost of farm practices on surrounding
5 farmlands.

6 **(e) Utility facilities necessary for public service may include on-site and off-site facilities for**
7 **temporary workforce housing for workers constructing a utility facility. Such facilities must**
8 **be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or**
9 **rule when project construction is complete. Off-site facilities allowed under this paragraph**
10 **are subject to OAR 660-033-0130(5). Temporary workforce housing facilities not included**
11 **in the initial approval may be considered though a minor amendment request. A minor**
12 **amendment request shall have no effect on the original approval.**

13 ~~(e)~~ **(f)** In addition to the provisions of subsections 16(a) to (d) of this rule, the establishment or
14 extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use
15 zone shall be subject to the provisions of OAR 660-011-0060.

16 ~~(f)~~ **(g)** The provisions of subsections 16(a) to (d) of this rule do not apply to interstate natural gas
17 pipelines and associated facilities authorized by and subject to regulation by the Federal Energy
18 Regulatory Commission.

19 (17) A power generation facility **may include on-site and off-site facilities for temporary**
20 **workforce housing for workers constructing a power generation facility. Such facilities**
21 **must be removed or converted to an allowed use under OAR 660-033-0130(19) or other**
22 **statute or rule when project construction is complete. Temporary workforce housing**
23 **facilities not included in the initial approval may be considered though a minor amendment**
24 **request . A minor amendment request shall be subject to OAR 660-033-0130(5) and shall**
25 **have no effect on the original approval. Permanent features of a power generation facility**
26 shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an
27 exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

28 (22) A power generation facility **may include on-site and off-site facilities for temporary**
29 **workforce housing for workers constructing a power generation facility. Such facilities**
30 **must be removed or converted to an allowed use under OAR 660-033-0130(19) or other**
31 **statute or rule when project construction is complete. Temporary workforce housing**
32 **facilities not included in the initial approval may be considered though a minor amendment**
33 **request. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall**
34 **have no effect on the original approval. Permanent features of a power generation facility**
35 shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an
36 exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

37 (37) For purposes of this rule a wind power generation facility includes, but is not limited to, the
38 following system components: all wind turbine towers and concrete pads, permanent
39 meteorological towers and wind measurement devices, electrical cable collection systems
40 connecting wind turbine towers with the relevant power substation, new or expanded private
41 roads (whether temporary or permanent) constructed to serve the wind power generation facility,
42 office and operation and maintenance buildings, temporary lay-down areas and all other
43 necessary appurtenances, **including but not limited to on-site and off-site facilities for**

1 **temporary workforce housing for workers constructing a wind power generation facility.**
2 **Such facilities must be removed or converted to an allowed use under OAR 660-033-**
3 **0130(19) or other statute or rule when project construction is complete. Temporary**
4 **workforce housing facilities not included in the initial approval may be considered though a**
5 **minor amendment request filed after a decision to approve a power generation facility. A**
6 **minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect**
7 **on the original approval.** A proposal for a wind power generation facility shall be subject to the
8 following provisions:

9 (a) For high-value farmland soils described at ORS 195.300(10), the governing body or its
10 designate must find that all of the following are satisfied:

11 (A) Reasonable alternatives have been considered to show that siting the wind power generation
12 facility or component thereof on high-value farmland soils is necessary for the facility or
13 component to function properly or if a road system or turbine string must be placed on such soils
14 to achieve a reasonably direct route considering the following factors:

15 (i) Technical and engineering feasibility;

16 (ii) Availability of existing rights of way; and

17 (iii) The long term environmental, economic, social and energy consequences of siting the facility
18 or component on alternative sites, as determined under OAR 660-033-0130(37)(a)(B).

19 (B) The long-term environmental, economic, social and energy consequences resulting from the
20 wind power generation facility or any components thereof at the proposed site with measures
21 designed to reduce adverse impacts are not significantly more adverse than would typically result
22 from the same proposal being located on other agricultural lands that do not include high-value
23 farmland soils.

24 (C) Costs associated with any of the factors listed in OAR 660-033-0130(37)(a)(A) may be
25 considered, but costs alone may not be the only consideration in determining that siting any
26 component of a wind power generation facility on high-value farmland soils is necessary.

27 (D) The owner of a wind power generation facility approved under OAR 660-033-0130(37)(a)
28 shall be responsible for restoring, as nearly as possible, to its former condition any agricultural
29 land and associated improvements that are damaged or otherwise disturbed by the siting,
30 maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the
31 owner of the facility from requiring a bond or other security from a contractor or otherwise
32 imposing on a contractor the responsibility for restoration.

33 (E) The criteria of OAR 660-033-0130(37)(b) are satisfied.

34 (b) For arable lands, meaning lands that are cultivated or suitable for cultivation, including high-
35 value farmland soils described at ORS 195.300(10), the governing body or its designate must find
36 that:

1 (A) The proposed wind power facility will not create unnecessary negative impacts on
2 agricultural operations conducted on the subject property. Negative impacts could include, but are
3 not limited to, the unnecessary construction of roads, dividing a field or multiple fields in such a
4 way that creates small or isolated pieces of property that are more difficult to farm, and placing
5 wind farm components such as meteorological towers on lands in a manner that could disrupt
6 common and accepted farming practices; and

7 (B) The presence of a proposed wind power facility will not result in unnecessary soil erosion or
8 loss that could limit agricultural productivity on the subject property. This provision may be
9 satisfied by the submittal and county approval of a soil and erosion control plan prepared by an
10 adequately qualified individual, showing how unnecessary soil erosion will be avoided or
11 remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan
12 shall be attached to the decision as a condition of approval; and

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

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

24 (c) For nonarable lands, meaning lands that are not suitable for cultivation, the governing body or
25 its designate must find that the requirements of OAR 660-033-0130(37)(b)(D) are satisfied.

26 (d) In the event that a wind power generation facility is proposed on a combination of arable and
27 nonarable lands as described in OAR 660-033-0130(37)(b) and (c) the approval criteria of OAR
28 660-033-0130(37)(b) shall apply to the entire project.