

# Oregon Department of **ENERGY**

EFSC SOLAR PV RAC  
Meeting #5

March 9, 2020



OREGON  
DEPARTMENT OF  
ENERGY

# Agenda

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**1:00 pm**      **Introductions & Overview**

**1:15 pm**      **Review of Draft Proposed Rules**

Definition of “solar photovoltaic power generation facility”

    Definition

    Factors to be considered in jurisdictional determination

    Process for jurisdictional determinations

    Applicability of rule

Rule changes related to implementation of HB 2329 (2019)

**3:45 pm**      **Public Comments**

**3:55 pm**      **Wrap Up and Next Steps**

# Introductions and Overview

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- Purpose of RAC is to obtain input from all stakeholders, consensus is not required.
- Please identify yourself when providing comment for the record.
- Please do not speak over other participants. If you wish to speak, rotate your tent card and wait to be recognized.
- An audio recording and notes of the meeting will be made available.

# Purpose of Rulemaking Project

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- Clarify what is considered to be a “solar photovoltaic power generation facility” as that term is used in the definition of “energy facility” under ORS 469.300(11);
- Determine if there are issues unique to solar PV facilities that require development of specific siting standards; and
- Implement new statutory provisions related to solar facilities enacted by HB 2329 (2019).

# Issue 1: Definition of Solar Photovoltaic Power Generation Facility

ORS 469.320(1) \* \* \* no **facility** shall be constructed or expanded unless a site certificate has been issued for the site thereof \* \* \*

ORS 469.300(14) “Facility” means an **energy facility** together with any **related or supporting facilities**.

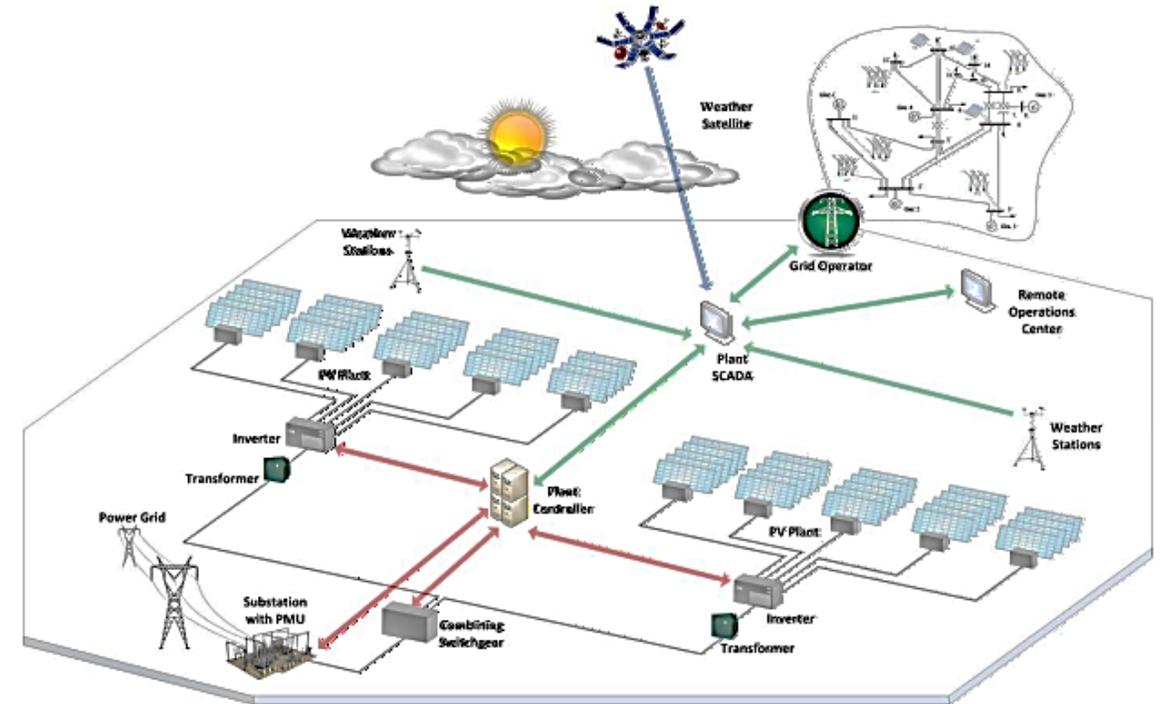


Figure 1. Components of a typical utility-scale PV power plant. Image from NREL

# Issue 1: Definition of Solar Photovoltaic Power Generation Facility

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469.300(11)(a)(D) [“Energy facility” means a] solar photovoltaic power generation facility using more than:

- (i) 160 acres located on high-value farmland as defined in ORS 195.300;
- (ii) 1,280 acres located on land that is predominantly cultivated or that, if not cultivated, is predominantly composed of soils that are in capability classes I to IV, as specified by the National Cooperative Soil Survey operated by the Natural Resources Conservation Service of the United States Department of Agriculture; or
- (iii) 1,920 acres located on any other land.

# Issue 1: Definition of Solar Photovoltaic Power Generation Facility

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ORS 469.300(13) “Related or supporting facilities” means any structure, proposed by the applicant, to be constructed or substantially modified in connection with the construction of an energy facility, including associated transmission lines, reservoirs, storage facilities, intake structure, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures.\* \* \*

# Issue 1: Definition of Solar Photovoltaic Power Generation Facility

Common components of solar facilities

ENERGY FACILITY COMPONENTS	RELATED OR SUPPORTING FACILITIES
Solar Modules Tracker Systems Posts Cabling Inverters Transformers	Collector Lines Substations Gen-Tie Lines Operations and Maintenance Buildings Communications and SCADA Systems Service Roads Perimeter Fencing Battery Storage Systems Staging Areas

# Issue 1: Definition of Solar Photovoltaic Power Generation Facility

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## Base Definition

OAR 660-033-0130(38)(f):

“Photovoltaic solar power generation facility” includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores, transfers, or both, that electricity. This includes photovoltaic modules, mounting and solar tracking equipment, foundations, inverters, wiring, storage devices and other components. \* \* \*

# Issue 1: Definition of Solar Photovoltaic Power Generation Facility

## Base Definition

Proposed EFSC Rule:

~~“Photovoltaic s~~Solar **photovoltaic** power generation facility” includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores, or transfers, ~~or both,~~ that electricity. This includes photovoltaic modules, mounting and solar tracking equipment, ~~foundations~~ posts, electrical cabling, inverters, transformers, and other components. \* \* \*”

# Issue 1: Definition of Solar Photovoltaic Power Generation Facility

## Inclusion of Related or Supporting Facilities

OAR 660-033-0130(38)(f):

“\* \* \* Photovoltaic solar power generation facilities also include electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, all necessary grid integration equipment, new or expanded private roads constructed to serve the photovoltaic solar power generation facility, office, operation and maintenance buildings, staging areas and all other necessary appurtenances.\* \* \*”

# Issue 1: Definition of Solar Photovoltaic Power Generation Facility

## Inclusion of Related and Supporting Facilities

Proposed EFSC Rule:

Delete sentence and specify that land used by related and supporting facilities counts toward “energy facility” threshold:

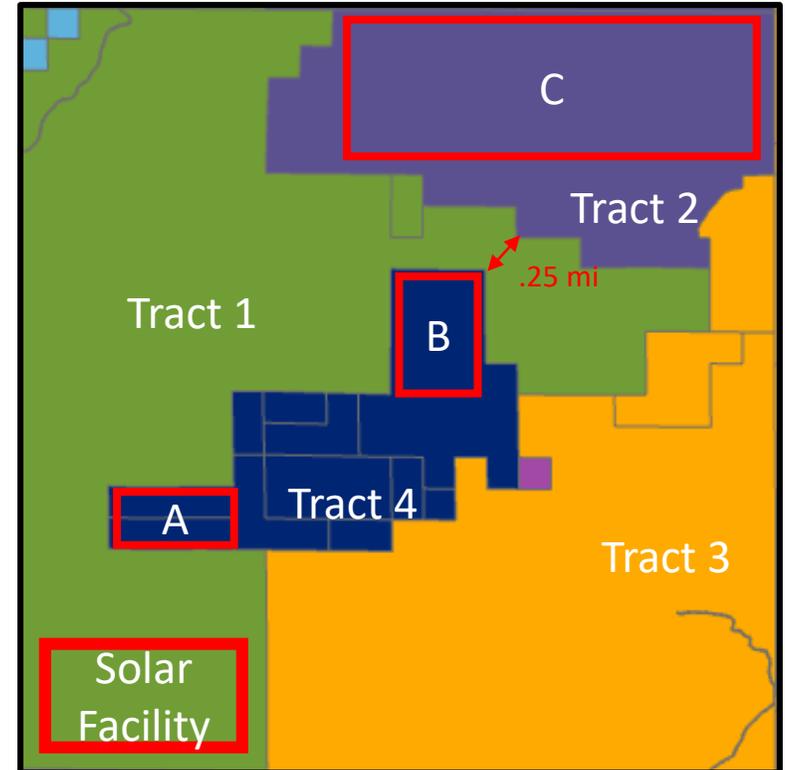
“For the purposes of applying the acreage standards of ~~this section~~ **ORS 469.300(11)(a)(D)**:

**(a) The land used by a ~~photovoltaic~~ solar photovoltaic power generation facility includes the land occupied by its related or supporting facilities;**

# Issue 1: Definition of Solar Photovoltaic Power Generation Facility

## Tract & Proximity Criteria

OAR 660-033-0130(38)(f): “\* \* \*For purposes of applying the acreage standards of this section, a photovoltaic solar power generation facility includes all existing and proposed facilities on a single tract, as well as any existing and proposed facilities determined to be under common ownership on lands with fewer than 1320 feet of separation from the tract on which the new facility is proposed to be sited. Projects connected to the same parent company or individuals shall be considered to be in common ownership, regardless of the operating business structure.”



# Issue 1: Definition of Solar Photovoltaic Power Generation Facility

## Antelope Valley, CA



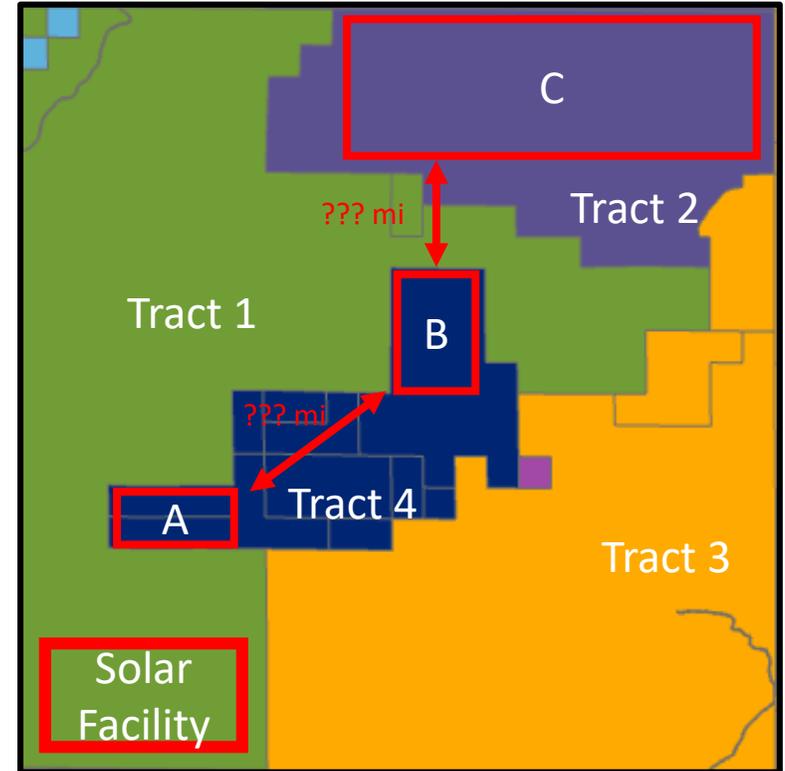
0 1.25 2.5 5 Miles

# Issue 1: Definition of Solar Photovoltaic Power Generation Facility

## Tract & Proximity Criteria

Proposed EFSC Rule: “For the purposes of applying the acreage standards of ~~this section~~ ORS 469.300(11)(a)(D):

\* \* \* (b) ~~a~~ A solar photovoltaic solar power generation facility includes all existing and proposed facilities on a single tract, as well as any existing and proposed facilities determined to be under common ownership on lands with fewer that are less than [1320 feet or other distance] of separation from the tract on which the a new or expanded facility is proposed to be sited. Projects Facilities connected to the same parent company or individuals by any ownership interest shall be considered to be in common ownership, regardless of the operating business structure.”



# Issue 1: Definition of Solar Photovoltaic Power Generation Facility

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## Net metering and Feed-in-Tariff projects

OAR 660-033-0130(38)(f):

“A photovoltaic solar power generation facility does not include a net metering project established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.”

Proposed EFSC rule: Remove (not relevant to energy facility siting).

# Issue 2: Factors for jurisdictional determinations

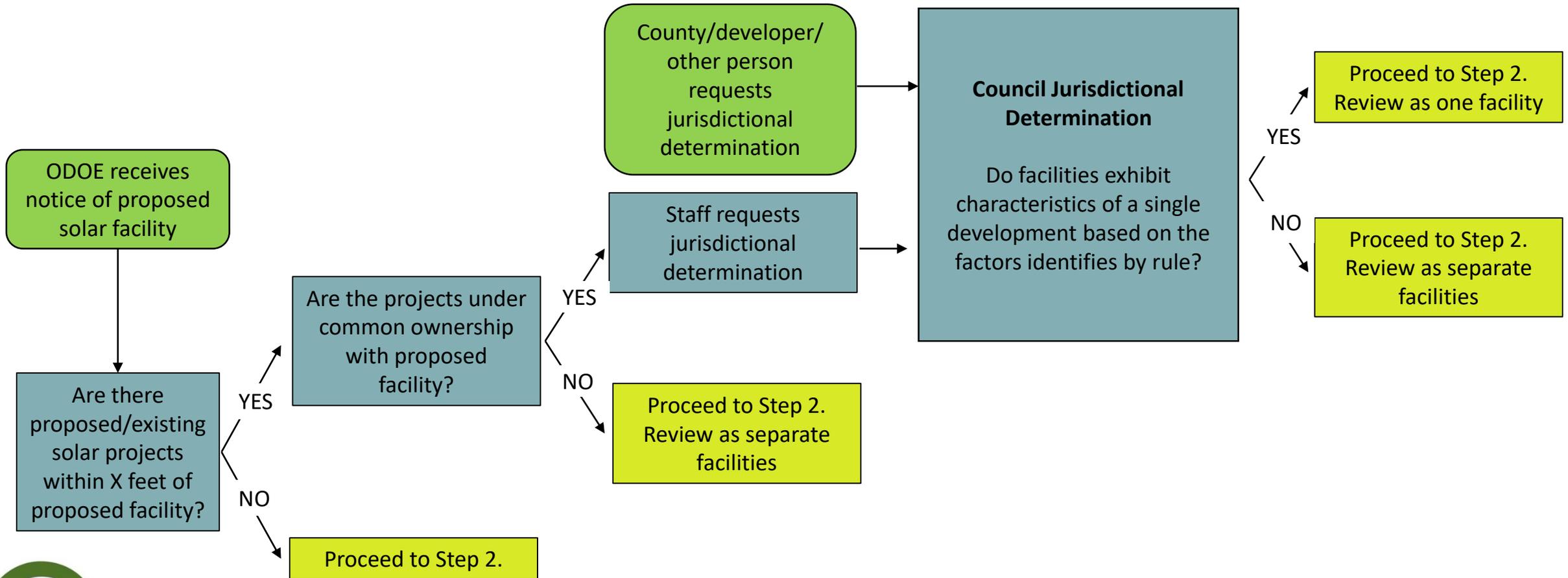
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(1) To determine that a proposed or modified solar photovoltaic power generation facility includes existing or proposed facilities as described under OAR 345-001-0010(XXX), the Council must find that the preponderance of the evidence supports the conclusion that the proposed facility is an expansion or component of the existing or proposed facilities. In making findings under this section, the Council may consider factors including, but not limited to:

- (a) The permitting or operational status of the existing and proposed facilities;
- (b) Whether or not facilities share related or supporting facilities;
- (c) Whether or not operational and financing decisions for the facilities would be made independently from one another;
- (d) Whether or not the output of the facilities would be sold under separate power purchase agreements; and
- (e) Whether or not the output of the facilities would be transmitted under separate interconnection agreements.

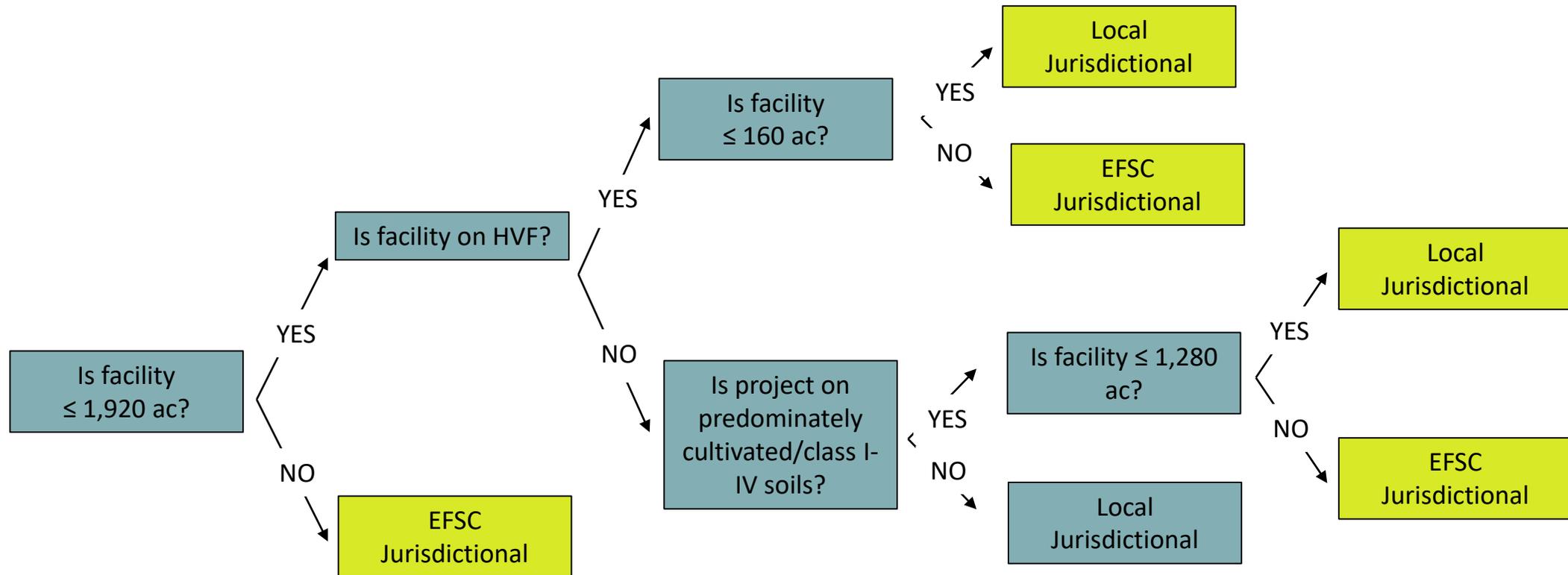
# Issue 3: Process for jurisdictional determinations

## Step 1: Define the facility



# Issue 3: Process for jurisdictional determinations

## Step 2: Jurisdictional Determination



# Issue 3: Process for jurisdictional determinations

## Non-Contested Cases

- Flexible proceeding
- No formal hearing, testimony, or argument
- Subject to review by Circuit Court

## Declaratory Rulings

- Parties must agree on facts
- Opportunity to submit briefs and oral argument
- Subject to review by Court of Appeals

## Contested Cases

- Quasi-Judicial Proceeding
- Opportunity for briefs, testimony, and oral argument
- Subject to review by Court of Appeals

# Issue 3: Process for jurisdictional determinations

(2) Any person, including the Department, may petition the Council to issue a declaratory ruling with respect to the applicability of ORS 469.300(11)(a)(D) to a proposed solar photovoltaic power generation facility. The Council will review such a petition under the procedures described in OAR chapter 137-002-0010 to 137-002-0060, subject to the following:

(a) A petition under this rule must be submitted to the Department in writing and must include all information required under OAR 137-002-0010, including:

(A) The name of the developer or owner of the proposed facility;

(B) A specific request for findings that the proposed facility is or is not an energy facility; and

(C) A detailed statement of facts relevant to the factors described under section (1) of this rule, including sufficient facts to show petitioner's interest; and

(D) The name and address of petitioner and of any other person known by petitioner to be interested in the requested declaratory ruling.

(b) Within seven days after a petition is filed, the Department will post an announcement of the petition to the Department's website.

# Issue 3: Process for jurisdictional determinations

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(c) If the Council decides to issue a ruling, the petitioner, the owner of the facility, and the Department will be parties to the proceeding. Other persons may petition the Council for permission to participate in the proceedings as described in OAR 137-002-0025; and

(d) The Council will not issue a ruling on the petition if the owner of the facility indicates that it intends to submit an NOI for the proposed facility within 60 days after the petition is filed with the agency. If the NOI is not submitted by the date indicated, the Council will immediately serve notice on the parties under OAR 137-002-0020.

(3) The developer or owner of the facility is not subject to fees under ORS 469.421 for the expenses incurred by the Council and Department related to proceedings under this rule.

# Issue 4: Applicability of rule to existing facilities

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(4) The provisions of this rule do not apply to a solar photovoltaic power generation facility with a land use permit approved by a local government on or before [effective date] unless the facility is expanded.

# Issue 5: Implementation of HB 2329

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ORS 469.320(8) (2017 Version): Notwithstanding the definition of “energy facility” in ORS 469.300 (11)(a)(J), an electric power generating plant with an average electric generating capacity of less than 35 megawatts produced from wind energy at a single energy facility or within a single energy generation area may elect to obtain a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. An election to obtain a site certificate under this subsection shall be final upon submission of an application for a site certificate.

# Issue 5: Implementation of HB 2329

ORS 469.320(8)(2019 Version): (a) If the developer of a facility elects, or the governing body of the local government after consulting with the developer elects, to defer regulatory authority to the Energy Facility Siting Council, the developer of a facility shall obtain a site certificate \* \* \* for a facility that, notwithstanding the definition of “energy facility” in ORS 469.300, is:

(A) An electric power generating plant with an average electric generating capacity of less than 50 megawatts produced from wind energy at a single energy facility or within a single energy generation area;

(B) An associated transmission line; or

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

(b) An election by a developer or a local government under this subsection is final.

(c) An election by a local government under this subsection is not a land use decision as defined in ORS 197.015.

(d) A local government may not make an election under this subsection after a permit application has been submitted under ORS 215.416 or 227.175.

# Issue 5: Implementation of HB 2329

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Proposed Rule:

(18) “Energy facility” ~~means~~ includes:

(a) ~~a~~An energy facility as defined in ORS 469.300;~~;~~

(b) ~~including a~~A small generating plant for which an applicant must have a site certificate according to OAR 345-001-0210;~~;~~ and

(c) A facility for which a developer or governing body has elected to defer regulatory authority to the Council under ORS 469.320(8).

Delete OAR 345-020-006(3); 345-021-0000(2)

# Next Steps

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- Please submit any additional feedback by **March 20, 2020**
- Staff will present proposed rules to Council at its April meeting.

THANK YOU!