



# Oregon

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**To:** Energy Facility Siting Council

**From:** Sarah Esterson, Senior Policy Advisor

**Date:** May 2, 2025

**Subject:** Agenda Item F (Information Item): Department of Land Conservation and Development Update on Farm Impacts Test (OAR 660-033-0130(5)) for the May 16, 2025 EFSC Meeting

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## OVERVIEW

The Oregon Land Conservation and Development Commission (LCDC) adopted changes to OAR 660-033-0130(5) (referred to as the “farm impacts test” rule) on December 5, 2024, which became effective on January 1, 2025.

Prior to January 1, 2025, OAR 660-033-0130(5) established the following conditional use criteria for proposed development in farm and forest zoned lands, including energy facilities under Energy Facility Siting Council (EFSC or Council) jurisdiction:

- (a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
- (b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

The January 1, 2025 changes to OAR 660-033-0130(5) include the addition of the following (new language presented in underline format):

- (c) For purposes of subsection (a) and (b), a determination of forcing a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use or a determination of whether the use will significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use requires:
  - (A) Identification and description of the surrounding lands, the farm and forest operations on those lands, and the accepted farm practices on each farm operation and the accepted forest practices on each forest operation;
  - (B) An assessment of the individual impacts to each farm and forest practice, and whether the proposed use is likely to have an important influence or effect on any of those practices; and
  - (C) An assessment of whether all identified impacts of the proposed use when considered together could have a significant impact to any farm or forest

operation in the surrounding area in a manner that is likely to have an important influence or effect on that operation.

- (D) For purposes of this subsection, examples of potential impacts for consideration may include but are not limited to traffic, water availability and delivery, introduction of weeds or pests, damage to crops or livestock, litter, trespass, reduction in crop yields, or flooding.
- (E) For purposes of subsection (a) and (b), potential impacts to farm and forest practices or the cost of farm and forest practices, impacts relating to the construction or installation of the proposed use shall be deemed part of the use itself for the purpose of conducting a review under subsections (a) and (b).
- (F) In the consideration of potentially mitigating conditions of approval under ORS 215.296(2), the governing body may not impose such a condition upon the owner of the affected farm or forest land or on such land itself, nor compel said owner to accept payment to compensate for the significant changes or significant increases in costs described in subsection (a) and (b).

## **BACKGROUND**

The OAR 660-033-0130(5) rulemaking was primarily implemented to codify applicable case law holdings so that those holdings were then consistently applied during project reviews. The most notable case law holdings occurred in 2019 with the Oregon Supreme Court's decision in the Stop the Dump Coalition v. Yamhill County, 364 Or 432<sup>1</sup>, where the holdings included step-by-step guidance for evaluating the impacts of a proposed development on surrounding agricultural lands. The amended rules, under -(c)(A) – (C) as presented above, incorporate this step-by-step guidance.

In the Stop the Dump case, -(c)(B) as presented above, provides clarification on the approach to evaluating the significance of impacts of a proposed development on accepted farm practices, or the cost thereof, on surrounding agricultural lands. The rule language establishes that significance is to be evaluated based on whether the proposed use is likely to have an important influence or effect on the accepted practices.

In the Stop the Dump case, the decision discussed how the farm impacts test treats cumulative impacts, which is now reflected in -(c)(E) as presented above. The language clarifies that impacts from construction and operation, cumulatively, must be evaluated as part of the farm impacts test.

## **COUNCIL REVIEW**

In general, the impact of the above-described rule change to applicants and certificate holders seeking review of an application for site certificate or request for amendment of a site certificate from Council is expected to be relatively minimal for proposed renewable energy facilities (e.g. wind and solar energy facilities) given the level/type of evaluation required under LCDC's solar rule under OAR 660-033-0130(37) and -(38). However, the Department expects that the clarity provided in the rule regarding the approach to the farm impacts test will result

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<sup>1</sup> [S064894, Opinion - Opinions -- Oregon Supreme Court - State of Oregon Law Library Document Collection](#)

in a more detailed, clear analysis, and much more detailed depending on the complexity in variation of farm practices adjacent to/surrounding a proposed site.