



# Oregon

Kate Brown, 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](http://www.oregon.gov/LCD)

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TO: Solar Rulemaking Advisory Committee

FROM: Jon Jinings, Community Services Specialist  
Rob Hallyburton, Rural Policy Analyst

RE: Materials for November 14 meeting

The rulemaking advisory committee (RAC) has its third meeting scheduled for 10:00 a.m. to 3:00 p.m. on Wednesday, November 14. Materials for that meeting are included in, linked from, and attached to this report.

## I. BACKGROUND

The RAC met on October 4 and 29, 2018, with background information and perspectives having been provided through a site tour; presentations from the Oregon Department of Energy, the Oregon Public Utility Commission, Oregon Department of Fish and Wildlife, county planners, and farmland preservation interests; and group discussions. The agenda for the November 14 meeting includes a presentation from solar energy production interests, presentation of available land-use data, and an initial discussion of optional paths for rule amendments (including a no-action alternative).

Materials summarizing the discussion at the October 29 meeting are posted on the rulemaking webpage at <https://www.oregon.gov/lcd/LAR/Pages/Solar.aspx>.

## II. LAND USE DATA

The Department of Land Conservation and Development (department) has compiled data regarding high-value farmland in the Willamette Valley, solar facility permits in the valley and statewide, and other use permits in the valley (Attachment A). The department shares this information intending to provide additional context for the RAC's discussions. The data concentrates on the Willamette Valley because that is where the majority of solar facility approvals on high-value farmland have occurred.

Statute requires counties to report non-farm use approvals to the department annually, and these reports are the source of some of the data in Attachment A. The department has updated the data regarding solar facility applications, and that data is reported

through 2018. This data constantly changes, so it should be considered a point-in-time estimate.

The acreage information in Table A-2 is from the department's digital geospatial data. High-value farmland acreage is difficult to calculate because the definition of it is based on the percentage of a "tract," which is itself defined by the contiguous ownership of the land. That means that an accurate calculation of high-value farmland requires correlation of soils and other factors with ownership. The department does not possess accurate ownership data, which prevents precise calculation of high-value farmland acreage.

The data therefore includes the *soils* and the *American Viticultural Area (AVA)* land that are included in the definition of high-value farmland. The AVA covers much of the high-value farmland that is not defined by the soils. The figures in Table A-2 should therefore present a close approximation of high-value farmland acreage in the Willamette Valley.

Combining the data in tables A-1 and A-2 shows the following approximate percentages of high-value farmland affected by solar facility approvals in the Willamette Valley, rounded to the nearest one-hundredth of one percent:

**Table 1.** Solar acreage as a percent of HVF

Benton County	0
Clackamas County	0.23
Lane County	0
Linn County	0
Marion County	0.10
Multnomah County	0
Polk County	0.03
Washington County	0
Yamhill County	0.07
Willamette Valley	0.05

These calculations include only solar facilities that have been approved by the county and not appealed, and not those applications that have not yet received a final approval. The RAC has heard that solar facilities can convert land not directly under the panels, and that effect is not reflected in these data. The RAC has also heard that not all of these approvals will result in a built facility.

Table A-5 shows that counties in the Willamette Valley have approved about 323 land use permits in addition to the 71 solar facilities approved during 2012-2018. The department would like to report the acreage affected by these conditional use and other non-farm permit approvals, but the data is not complete or accurate enough to rely on. The data includes the number of applications approved simply to provide a perspective on the number of other non-farm uses gaining approval in the Willamette Valley. Some

of these uses convert farmland to other uses (a golf course, for example). Many do not consume large amounts of land but could cumulatively create impacts on farming (such as outdoor gatherings). Some are innocuous (many home occupations, for example), and some support the farm enterprise (farm stands, for example). Again, the data is provided only for context.

### **III. ADMINISTRATIVE RULE OPTIONS**

Most of the time scheduled for this RAC meeting will be devoted to discussing the existing rule. The department will use the table included as Attachment B to guide this effort. Attachment B has been color-coded to separate existing rule language from department proposals and possible concepts. It begins with the rule's wildlife habitat provisions and progresses into a discussion about the temporary rule language and the provisions for siting on high-value farmland.

#### **A. Wildlife Habitat Provision**

The department is proposing to revise the wildlife habitat provisions by extending the applicability of (38)(f)(F) from January 1, 2022 to January 1, 2032. As discussed at the October 29 RAC meeting, the wildlife provisions came about during the original solar rulemaking due to a concern that existing Goal 5 inventories at the county level were outdated and did not account for the presence of a good deal of significant wildlife habitat. LCDC's choice to provide protection to a Goal 5 resource through provisions in their Goal 3 rule was considered unprecedented. The commission balanced its choice by limiting the wildlife provisions to a 10-year period, which was intended to provide a window of opportunity for local Goal 5 wildlife programs to be updated.

As of today, the envisioned window of opportunity has not been utilized. The department continues to believe that the best way to protect a Goal 5 resource is through implementation of a Goal 5 program at the county level. However, a continued interest in photovoltaic solar development in the presence of outdated inventories warrants an extension with the hope that the next decade will see more resources devoted to assisting with local program updates.

#### **B. Temporary Rule to Permanent Status**

The department proposes to retain the language established by the temporary rule in July 2018. The department has not observed any reason to cause it to depart from its original position expressed in the July 12, 2018 staff report provided in advance of the July LCDC meeting:

At the time of adoption LCDC specifically intended the rule amendment to require a commercial solar power generation facility larger than the specified acreages to take an exception pursuant to OAR chapter 660, division 4 before land use approval could be granted. As above, LCDC

intended to limit the size of solar power generation facilities that would occupy farmland – particularly high-value farmland soils – unless a specific need was demonstrated and alternatives examined through an exceptions process.

### **C. High-value Farmland Rule**

The department has not offered any direct proposals for high-value farmland provisions. Instead, possible concepts have been provided. However, there are two specific areas of the rule that do not appear to need any additional discussion. The first area is comprised of the provisions for soil erosion, soil compaction and weed management. The department views these items as best-management practices in the spirit of development standards rather than discretionary approval criteria. The department hopes that the RAC will agree. The second area is a special provision established by the Oregon Legislature for certain lands within the Columbia Valley AVA. Given that this is a provision of statute there should be no need for the RAC to discuss it. Please notice that these subsection have been included in Attachment C but that they have not been color coded.

The department intends to use the results of these discussions, combined with information from the previous meetings, to determine whether the existing rule is adequately protecting high-value farmland in Oregon. Therefore, it is imperative to get through all of these items in a timely manner. In the event that not everything is fully discussed at this meeting the department will remain compelled to develop specific language for the RAC's consideration in December and present LCDC with a recommendation for adoption in January of 2019.

## SOLAR ON EFU DATA

Table A-1. Photovoltaic Solar Facility applications on EFU in the Willamette Valley, 2012 - 2018

County	High-value Farmland				Non-High-value EFU				Total	
	Approved		Under review		Approved		Under review			
	Projects	Acres	Projects	Acres	Projects	Acres	Projects	Acres	Projects	Acres
Benton	0	0	0	0	0	0	0	0	0	0
Clackamas	23	294	2	24	4	104	1	98	30	520
Lane	0	0	0	0	0	0	0	0	0	0
Linn	0	0	0	0	0	0	0	0	0	0
Marion	26	295	4	44	1	20	0	0	31	359
Multnomah	0	0	0	0	0	0	0	0	0	0
Polk	4	48	0	0	0	0	0	0	4	48
Washington	3	36	1	12	0	0	0	0	4	48
Yamhill	10	120	7	84	0	0	0	0	17	204
<b>Total</b>	<b>66</b>	<b>793</b>	<b>14</b>	<b>164</b>	<b>5</b>	<b>124</b>	<b>1</b>	<b>98</b>	<b>86</b>	<b>1,179</b>

Table A-2. Acres of High-Value Farmland Soils and American Viticultural Area on EFU in the Willamette Valley

County	Acres of High-Value Soil	Additional acres of High-Value American Viticultural Area	Total High-Value Acres	Total EFU Acres	Percent of EFU that is High-Value Soils or AVA
Benton	93,990	10,805	104,795	126,197	83%
Clackamas	118,833	6,750	125,583	149,941	84%
Lane	136,863	19,686	156,549	197,813	79%
Linn	299,559	21,476	321,035	355,152	90%
Marion	286,411	10,921	297,331	331,972	90%
Multnomah	25,907	845	26,752	34,359	78%
Polk	119,975	24,787	144,762	180,669	80%
Washington	114,317	2,912	117,229	133,866	88%
Yamhill	154,951	10,600	165,552	193,172	86%
<b>Total</b>	<b>1,350,806</b>	<b>108,782</b>	<b>1,459,588</b>	<b>1,703,141</b>	<b>86%</b>

Table A-3. Percentage of Solar Facility approvals on High-value Farmland in the Willamette Valley, 2012 - 2017

	Approved
High-Value Farmland projects	90%
Non High-Value Farmland projects	10%
High-Value Farmland acres	89%
Non High-Value Farmland acres	11%

**Table A-4. Photovoltaic Solar Facility applications on EFU in Oregon, 2012 - 2018**

County	High-Value Farmland				Non High-Value EFU				Total	
	Approved		Under review		Approved		Under review			
	Projects	Acres	Projects	Acres	Projects	Acres	Projects	Acres	Projects	Acres
Baker					1	25			1	25
Benton									0	0
Clackamas	23	294	2	24	4	104	1	98	30	520
Clatsop									0	0
Columbia									0	0
Coos									0	0
Crook					7	1,864			7	1,864
Curry									0	0
Deschutes	1	3			4	445			5	448
Douglas									0	0
Gilliam							1	640	1	640
Grant									0	0
Harney					2	540			2	540
Hood River									0	0
Jackson	1	90	1	80	1	68			3	238
Jefferson					2	180			2	180
Josephine									0	0
Klamath			1	94	10	654			11	748
Lake					9	1,645	2	9,091	11	10,736
Lane									0	0
Lincoln									0	0
Linn									0	0
Malheur					6	450			6	450
Marion	26	295	4	44	1	20			31	359
Morrow	1	798			1	99	2	388	4	1,285
Multnomah									0	0
Polk	4	48							4	48
Sherman					1	100			1	100
Tillamook									0	0
Umatilla	2	85							2	85
Union									0	0
Wallowa									0	0
Wasco									0	0
Washington	3	36	1	12					4	48
Wheeler									0	0
Yamhill	10	120	7	84					17	204
<b>Total</b>	<b>71</b>	<b>1,769</b>	<b>16</b>	<b>338</b>	<b>49</b>	<b>6,194</b>	<b>6</b>	<b>10,217</b>	<b>142</b>	<b>18,518</b>

**Table A-5. Nonresidential approvals on EFU in the Willamette Valley, 2012 - 2017**

Use	County									Total
	Benton	Clackamas*	Lane	Linn	Marion	Multnomah	Polk	Washington	Yamhill	
Agri-tourism events	0	0	1	0	2	0	0	0	31	<b>34</b>
Commercial activities with farm use	0	0	1	12	16	0	6	5	20	<b>60</b>
Commercial dog boarding kennel	1	0	1	1	0	0	1	0	0	<b>4</b>
Commercial power generating facility (non-solar)	0	0	0	0	0	0	1	0	0	<b>1</b>
Community center	1	0	0	0	0	0	0	0	0	<b>1</b>
Composting facility	0	0	1	0	0	0	0	0	0	<b>1</b>
Dog training class/testing trial	0	0	0	1	1	0	0	0	0	<b>2</b>
Farm processing facility	3	2	8	1	0	0	6	3	8	<b>31</b>
Farm stand	2	0	0	2	5	2	1	4	2	<b>18</b>
Golf course	0	0	1	1	0	0	0	0	0	<b>2</b>
Home occupation	6	1	8	3	25	0	6	4	11	<b>64</b>
Landscape contracting business	0	0	2	0	2	0	0	0	0	<b>4</b>
Living history museum	0	0	0	0	1	0	0	0	0	<b>1</b>
Log truck parking	0	0	0	0	1	0	0	0	0	<b>1</b>
Mineral Aggregate	0	0	0	0	0	0	0	1	0	<b>1</b>
Outdoor gathering	0	0	0	0	0	0	0	0	2	<b>2</b>
Personal-use airport	0	0	0	1	1	0	0	1	1	<b>4</b>
Private park/campground	0	0	0	0	0	0	0	1	0	<b>1</b>
Public park	0	1	0	0	0	0	0	2	1	<b>4</b>
Roads improvements, conditional	3	0	0	0	1	0	0	6	1	<b>11</b>
Roads improvements, outright	0	0	0	0	1	0	0	4	0	<b>5</b>
School	0	0	0	1	2	0	2	0	0	<b>5</b>
Utility facility	2	0	2	5	1	0	3	11	2	<b>26</b>
Wetland creation/restoration	0	0	0	0	0	0	0	2	0	<b>2</b>
Winery	1	0	0	0	1	0	8	2	26	<b>38</b>
<b>Total</b>	<b>19</b>	<b>4</b>	<b>25</b>	<b>28</b>	<b>60</b>	<b>2</b>	<b>34</b>	<b>46</b>	<b>105</b>	<b>323</b>

\* Data was under reported for 2012 - 2015

## LCDC’s Solar Rule – OAR 660-033-0130(38)(f)(F) & (G)

Administrative Rule Provision – Wildlife Habitat	DLCD Proposal	Notes
<p>(F) If a proposed photovoltaic solar power generation facility is located on lands where, after site specific consultation with an Oregon Department of Fish and Wildlife biologist, it is determined that the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive) or habitat or to big game winter range or migration corridors, golden eagle or prairie falcon nest sites or pigeon springs, the applicant shall conduct a site-specific assessment of the subject property in consultation with all appropriate state, federal, and tribal wildlife management agencies. A professional biologist shall conduct the site-specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or wildlife habitats are anticipated. Based on the results of the biologist’s report, the site shall be designed to avoid adverse effects to state or federal special status species or to wildlife habitats as described above. If the applicant’s site-specific assessment shows that adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project-specific mitigation to offset the potential adverse effects of the facility. Where the applicant and the resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation, if any, required for the facility.</p> <p>(G) The provisions of paragraph (F) are repealed on January 1, 2022.</p>	<p>DLCD proposes to leave (38)(f)(F) as written.</p> <p>DLCD proposes to extend the sunset date in (38)(f)(G) from January 1, 2022 to January 1, 2032.</p>	



## LCDC's Solar Rule – OAR 660-033-0130(38)(f)

Administrative Rule Provision – Acreage Threshold	DLCD Proposal & Possible Concepts	Notes
<p>(f) For high-value farmland described at ORS 195.300(10), a photovoltaic solar power generation facility <u>shall not use, occupy, or cover</u> more than 12 acres unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. The governing body or its designate must find that:</p> <p>Notes:</p> <p>Temporary Rule Language <u>underlined</u> above.</p> <p>Original language replaced by Temporary Rule– “...shall not preclude more than 12 acres from use as a commercial farm enterprise...”</p>	<p>Temporary Rule –</p> <p>DLCD proposes to retain the language established by the Temporary Rule.</p>	
	<p>(38)(f) Generally -</p> <p>No Change?</p> <p>Use definition of HV farmland in ORS 215.710?</p> <p>Reduce/Increase 12 acre threshold?</p> <p>Consider reductions in HV development in exchange for increases on arable &amp; nonarable?</p> <p>Offer credit for “co-location.”?</p> <p>Limit in Willamette Valley only?</p> <p>Other?</p>	

Administrative Rule Provision – Onsite Farm Impacts	Possible Concepts	Notes
<p>(A) The proposed photovoltaic solar power generation facility will not create unnecessary negative impacts on agricultural operations conducted on any portion of the subject property not occupied by project components. Negative impacts could include, but are not limited to, the unnecessary construction of roads dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing photovoltaic solar power generation facility project components on lands in a manner that could disrupt common and accepted farming practices;</p> <p><b>Note:</b> Accounts for “orphan” parcels and other possible negative impacts to on-site farming practices.</p>	<p>No Change?</p> <p>Revise?</p> <p>Remove?</p>	

Administrative Rule Provisions – Erosion, Compaction & Weeds	Possible Concepts	Notes
<p>(B) The presence of a photovoltaic solar power generation facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval;</p> <p>(C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how..... The approved plan shall be attached to the decision as a condition of approval;</p> <p>(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weed species. This provision may be satisfied by the submittal and county approval of a weed control plan .... maintenance agreement. The approved plan shall be attached to the decision as a condition of approval;</p>	<p>Presumed that there is no need to discuss. Language modestly condensed to fit on one page.</p>	

Administrative Rule Provision – Protection for HV Soils	Possible Concepts	Notes
<p>(E) The project is not located on high-value farmland soils unless it can be demonstrated that:</p> <p>(i) Non high-value farmland soils are not available on the subject tract;</p> <p>(ii) Siting the project on non high-value farmland soils present on the subject tract would significantly reduce the project’s ability to operate successfully; or</p> <p>(iii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised of non high value farmland soils; and</p>	<p>No Change?</p> <p>Revise to focus on the location on the subject tract with the least impact to agriculture regardless of soil type?</p> <p>Remove?</p> <p>Other?</p>	

Administrative Rule Provision – Cumulative Impacts	Possible Concepts	Notes
<p>(F) A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:</p> <p>(i) If fewer than 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area, no further action is necessary.</p> <p>(ii) When at least 48 acres of photovoltaic solar power generation have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar energy generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar energy generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland or acquire water rights, or will reduce the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.</p>	<p>No Change?</p> <p>Increase/decrease size of study area?</p> <p>Adjust trigger - more than 48 acres/less than 48 acres?</p> <p>Codify when the land use stability of the area has been “materially altered?”</p> <p>Remove?</p> <p>Other?</p>	

Administrative Rule Provision – UEC Carve Out	Possible Concepts	Notes
<p>(G) A photovoltaic solar power generation facility may be sited on more than 12 acres of high-value farmland described in ORS 195.300(10)(f)(C) without taking an exception pursuant to ORS 197.732 and OAR chapter 660, division 4, provided the land:</p> <p>(i) Is not located within the boundaries of an irrigation district;</p> <p>(ii) Is not at the time of the facility’s establishment, and was not at any time during the 20 years immediately preceding the facility’s establishment, the place of use of a water right permit, certificate, decree, transfer order or ground water registration authorizing the use of water for the purpose of irrigation;</p> <p>(iii) Is located within the service area of an electric utility described in ORS 469A.052(2);</p> <p>(iv) Does not exceed the acreage the electric utility reasonably anticipates to be necessary to achieve the applicable renewable portfolio standard described in ORS 469A.052(3); and</p> <p>(v) Does not qualify as high-value farmland under any other provision of law.</p>	<p>Statutory requirement.</p>	