

Solar Rulemaking Advisory Committee Comments

Received as of December 30, 2010

December 13, 2010

Via email

Hanley Jenkins Commissioner
1001 4th St., Suite C
La Grande, OR 97850

Christine Pellett, Commissioner
Siskiyou Real Estate Appraisal
972 Old Stage Rd.
Central Point, OR 97502

Department of Land Conservation and Development
635 Capitol Street, N.E., Suite 150
Salem, OR 97301-2540

Dear Commissioners Jenkins and Pellett and DLCD staff,

At the Solar Rulemaking Advisory Committee meeting on Nov 22, 2010, the first draft of possible revisions to rules governing the siting of large, commercial-scale solar power generation facilities on Oregon's farm and ranch lands were presented. Committee members were asked to provide feedback on ten points (listed below in bold) related to that draft language.

We appreciate the opportunity to provide feedback:

1 - Definition of Photovoltaic

We agree that any current rulemaking should be limited to photovoltaic facilities (panels, not concentrated solar). Given the rapid evolution of renewable energy technologies, we recommend that any rule changes be restricted to current photovoltaic solar technologies. In addition we recommend a narrower definition of "Photovoltaic solar power generation facilities" than is included in the current draft (Section 38). As currently written it includes: 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, including but not limited to on-site and off-site facilities for temporary workforce housing for workers constructing a photovoltaic solar power generation facility. The definition of temporary should also be clarified.

2 - No Projects on High Value Soils

We support either maintaining the current 12 acre rule, or modifying as proposed in the draft language.

3 - Use of Term Arable

The terms used in this rulemaking should be clearly defined and if possible, associated with maps that clearly define those land and management types.

4 - 20 acre Threshold on Non High Value Arable Lands

We support keeping the 20-acre threshold. We would also like to include language that would apply the 20-acre threshold to projects proposed in the vicinity of existing projects regardless of project developer or landowner. We recommend including direction in the rules for appropriate distances for separation and/or times when concentrating projects is appropriate based on the value of the agriculture land or wildlife habitat.

5 - Alternatives Analysis in (E)

We are concerned about the potential impacts of solar development on native species and habitats found on Oregon's farm and ranch lands. It's not clear to us whether this language would provide significant protections for these resources. We would like further clarification and discussion on this important issue.

6 - Cumulative Effects Analysis in (F)

We support inclusion of a cumulative effects analysis as proposed in the draft rules. A cumulative effects analysis is essential to avoid fragmenting agricultural and rangeland habitats and values in Oregon. In addition to a determination that there will not be negative effects on the local farmers and ranchers, we would like to include language to also ensure that there will not be negative effects on important fish and wildlife habitat. As discussed in (4) above, the cumulative effects mentioned in (F) should be considered regardless of specific solar project developers and land ownership. The cumulative effects analysis should not be restricted by county lines and should include participation from county and state experts in the factors and information it considers.

Solar energy projects can have a serious impact on the landscape for the 25 years they are permitted for, as well as the likelihood that energy or other forms of development would continue on that landscape after the first permit expires. They may be fenced, may include concrete footings and foundations, may be on a variety of slopes and habitats, may require construction of roads, housing, and other facilities, as well as removal of all vegetation and grading of the immediate project area.

7 - Use of Term Non-Arable

As in (3) the terms used in this rulemaking should be clearly defined and if possible, associated with maps that clearly define those land and management types.

8 - 50 acre Threshold on Non-Arable

We don't fully agree with the justification for changing the threshold from 20 acres at this time. Developers can currently request an exception. For future rule-making we need to better understand the potential impacts of solar development on agriculture and wildlife habitat. As in (2) we would also like to include language that would apply any threshold to projects proposed in the vicinity of existing projects regardless of project developer or landowner. We recommend

including direction in the rules for appropriate distances for separation, and/or times when concentrating projects is appropriate based on the value of the agriculture land or wildlife habitat.

9 - Use of Items B-F for Non-Arable

We support applying Items B-F to siting of solar facilities on non-arable as well as arable lands. The issues of soil erosion, soil compaction, spread of noxious weeds, additional environmental, economic, social, and energy are potentially as important on non-arable lands as arable lands. It is not possible to know before a project is proposed how serious those issues will be, whether the land is arable or not.

10 - Need for Rulemaking

As we stated in our letter on November 18, 2010, the current rules do not appear to be limiting solar development, and the currently exception process provides sufficient flexibility for siting solar projects. As we understand it, the additional 15 MW (approximately 100 acres) needed to meet Oregon’s Renewable Portfolio Standard (RPS) carve-out for solar acres by 2020 does not seem to warrant a rule change at this time. In our opinion, Oregon can meet our RPS goal and any further demand for solar development under current rules for solar energy development.

In summary, we could support changing the current rules if the environmental and other consequences covered in (E) are followed, and if the draft rules surrounding cumulative effects and acreage thresholds are implemented regardless of ownership and project developer. This should include guidance for appropriate separation distances and/or times when concentration of projects is appropriate, based on the value of the agriculture land or wildlife habitat.

Thank you again for the opportunity to comment. Solar energy and other renewable energy projects should be encouraged in areas where they don’t conflict with agriculture and wildlife habitat. The Nature Conservancy supports the development of cleaner energy alternatives as an essential strategy for reducing carbon emissions. We look forward to helping make well-sited renewable energy projects part of our future, and part of a state-wide energy plan.

Sincerely,



Catherine Macdonald
Director of Conservation Programs



Ken Popper
Senior Conservation Planner

Tuttle, Casaria R.

From: perkinshay@aol.com
Sent: Tuesday, December 14, 2010 10:46 AM
To: casaria.r.tuttle@state.or.us
Subject: Solar Advisory Group -public comment

To whom it may concern,

My name is Linda Perkins and I also have been attending the solar advisory meetings. I have not made public comment before but, now as we are coming to the end of the comment time I would like to express a few of my opinions.

At least three times I have heard the comment made that the solar technology that we are thinking of changing the 12/20 rule for is 1950's technology. I liked what the economic development fellow from Jefferson County said about the new and exciting changes that are coming to the solar industry. He said that Oregon State and the University of Oregon are working on solar with a much smaller foot print and with more electric output. I truly resent the fact that our Country is deficit spending on renewable energy. The State of Oregon is 3.5 billion dollars in debt. They are spending my grandchildren's future on 1950's technology. If you want to change the 12/20 rule why don't you wait until solar is cutting edge. You saw Nicole Hughs power point presentation too. What was that four people building a solar site? Not very many jobs for the millions in federal dollars spent do you think?

These solar sites are a big deal for us. Our area will never be the same, Not ten miles from Elements proposed site the 10,000 year old sagebrush sandals were found. Now it seems we are destined to look like more something from outerspace than the Oregon Outback that we are used to. That is why most of us moved out here to enjoy the rustic rural landscape. They wouldn't get away with this in Sisters or Joseph. Maybe we are not those towns but we are a young town and we aspire to be like them. These solar companies really don't care because when they are done building they will all be gone. Sort of like the cuckoo that lays its egg in another birds nest and then leaves the big ugly baby for someone else to deal with.

Oregon is already third in the United States for renewable energy, can't we take a breather, and wait for some of this new technology, or do you really want to spend your children's and grandchildren's future with all this deficit spending? You at the state should understand better than most of us, you already have days when you are furloughed. And a furlough day is alot like being layed off on a small scale. As the state has to tighten it's budget we need sit down deep in the saddle and get a firm grip on the reins because if we can't ride this one out we will surely be bucked off.

Respectfully,

Linda Perkins

Tuttle, Casaria R.

From: perkinshay@aol.com
Sent: Tuesday, December 14, 2010 9:52 AM
To: casaria.r.tuttle@state.or.us
Subject: Solar Advisory Group- Dear Staff

December 13, 2010

Dear Staff,

We are now meeting for the last time, I would like to first say that it has been a privilege to serve on this committee, thank you for the opportunity. I wanted to come and represent the people I know that live and farm in Christmas Valley that are concerned over the siting of solar facilities in our area. I wanted them to have a voice at the state level since they have been shut out at the county level. I am disappointed however that you did not find a way to hold a meeting in Christmas Valley to look the people in the eye that are going to have to live next to one of these large solar facilities for the rest of their lives. Early on Jon Jinnings said that he would try hard to have a meeting in our town but, as we now know that it isn't going to happen. I feel that I have let them down because I have not been able to convince you of their distress.

I don't believe that the 12/20 rule needs changed at this time especially just for the financial benefit of solar developers. Trying to rush through and change the rules quickly may cause unintended consequences of misguided policy. If the LCDC finds it necessary to change these rules at this time I have a few points for them to consider. A 1320 foot set back from present farming operations would seem to be a sensible solution. Here in Lake County our officials seem to view a 35 foot set back as adequate, but they obviously don't have to live with their misguided ideas. At least other counties have tried to make a plan for solar before accepting and approving conditional use permits. Here the LCDC has an opportunity to make a rule that would be the same throughout the the state. The NRCS may not have rated our soil very high quality (even though we grow the best alfalfa in the state of Oregon) but you have missed my point that the NRCS has also classified our soil as highly erodible. Even the solar companies are being irresponsible for wanting a solar facility 35 feet from a farm. I challenge you to take my photos that I submitted for the last meeting to a solar manufacturer and ask them if the kind of dirt I showed you is the optimum environment for a solar array. On those dirty days not only are the solar panels not going to produce energy they are likely going to be damaged by the blowing dirt. Is that manufacturer going to warranty a panel that is filled with dirt or glass that is etched from being sandblasted from dirt? If you make a bad decision now and a farmer is put into this scenario where he may be held responsible with a law suit or an EPA fine, even though we are farming with the best farming practices possible. He will have no legal recourse against the state or the county for their poor siting rules for solar.

We have abundant wildlife out here. The mule deer, antelope and elk use our alfalfa fields for feeding in the summer and winter. They have become dependant on our crops for their very survival. Again solar facilities 35 feet from farmland will block their feeding access. Here in Lake County we have one farm with approved conditional use permits for solar on three sides with just a 35 foot setback. A 1320 foot feeding corridor would seem essential for these animals to access these feeding areas. Don't you think they deserve a feeding corridor between the farmers fields and the solar facility? We have plenty of room in Central Oregon for farming, animals and solar facilities. If we are going to change these rules lets get this right the first time.

Sincerely,
Gary Perkins

12/30/2010



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December 15, 2010

Hanley Jenkins Commissioner
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Christine Pellett, Commissioner
Siskiyou Real Estate Appraisal
972 Old Stage Rd.
Central Point, OR 97502

Department of Land Conservation and Development
635 Capitol Street, N.E., Suite 150
Salem, OR 97301-2540

VIA EMAIL

Re: Comments on the Proposed Solar Rules

Dear Commissioners and DLCD,

Thank you for welcoming comments on the draft solar siting rules distributed on November 17. We appreciate the Commission's efforts to find solutions that will both increase the viability of the solar industry in Oregon and ensure that utility scale installations are appropriately located.

Over all we are in strong support of encouraging the solar electricity industry in Oregon. We are already beginning to see a concentration of skilled workers in this field gathering in the state. This will make us nationally, if not globally competitive at bringing in new green-tech industry to the State. Additionally, unlike most new industry, this is an opportunity to bring economic development to rural economies.

However, we want to create rules that will create a pattern of development that supports rural communities, and doesn't make them feel overwhelmed by industrial development. Situations like Christmas Valley and the farmer that is surrounded on three sides by hundreds of acres of solar panels should be highly discouraged, if not prohibited outright.



Celebrating Thirty-five Years of Innovation

This is a solvable problem. We just haven't quite taken the time to do it. We have had excellent presentations on the existing land use law, and on the needs of the solar industry. But we have not had a similar presentation on the impacts to farm land and farmers, nor have we had any robust brainstorming sessions about how to avoid or mitigate those impacts. That has been left to our general judgment without the benefit of solid data. For example, we are not certain exactly how many arable lands may be taken out of production before there is no longer a critical mass of farmers to make the business work. We are not certain exactly what lands will count as arable. We have not addressed the impact of fields of solar panels close to residences. We have not wrestled with the potential loss in value EFU lands may experience as a result of having a sea of solar panels next door.

In short we believe there is more we could do to fine tune this proposal, and significantly increase the incentives for placing solar on non-arable lands, and in ways that don't interfere with existing farming practices.

Since it appears that we are not in a significant rush to complete this project, I suggest that hold at least a few, perhaps as few as one or two, more meetings, and try to come to some better understanding of these points. We may never all agree, but at least we could air the concerns more clearly. If there is room for a better agreement, we won't have left it on the table simply because we were in a rush.

The remainder of this letter addresses the specific items we were asked to discuss:

1. Exactly what kinds of solar facilities are we dealing with

The definition currently describes the photovoltaic systems that we are talking about well. It should make clear that we are not talking about concentrated solar.

The permitted facilities should not include workforce housing. We have had an excellent presentation showing that the installation of solar panels is not nearly as complex as the installation of wind towers, and takes only a few days for the sizes we are talking about here. Workforce housing should not be needed. However, we would not object to temporary permits to camp and/or park RVs on site for the duration of the installation process.

Offices should be limited to the size necessary to administer only the solar array(s) on that particular tract. Testimony we have heard suggests that in most cases there will be no onsite presence required except about twice per year when the panels are being cleaned. If a local office is required for administration of local business relating to the solar arrays it should be located within an urban growth boundary or in an unincorporated community if there are no cities nearby.

2. Siting on High Value Farmlands

We support maintaining the current rule on high value farmlands.



3. Use of the term “arable”

We support the concept embedded in the term arable, however, we are concerned that it continues to introduce ambiguity into the process. For example, would lands that have been seeded with crested wheat grass for grazing be considered arable? Or do they actually have to be plowed?

4. 20 acre threshold for arable lands

We support keeping the 20 acre threshold for non high value arable lands.

5. The Alternatives analysis

The alternatives analysis should only be used on high value farmlands. On arable lands an ESEE analysis should be done.

However, in that ESEE analysis special weight should be given to the impacts of large solar arrays on neighboring land owners. Evidence has been presented that land values go down, and farmers feel inappropriately hemmed in when large solar arrays are proposed immediately adjacent to them. A large setback – probably 1320 feet - should be required between solar arrays larger than 20 acres and neighboring land owners unless the neighboring land owner signs a statement agreeing that less distance will not impact their farming operations.

If such a setback is incorporated into the plan, then there should be a presumption that there will not be an impact to surrounding land owners. This would give developers a safe harbor where they know they are likely to be able to develop, and local farmers some assurance that they will not be hemmed in.

6. Cumulative effects analysis

The cumulative effects analysis should not consider land owners or project developers in any way. If multiple projects are being sited in the same region, the cumulative effects on the region are the same whether or not the same developer was behind them.

Further, it should be clarified that each analysis must take into consideration all existing, and all reasonably foreseeable projects. For example, a neighboring project that is proposed, but not yet permitted should be considered in a cumulative effects analysis.

7. Non arable

There should be a safe harbor definition of non-arable lands. The department of Agriculture and the local farmers and ranchers on the committee should present us with some data on what a reasonable definition would be.

There should be significant incentive to seek out non-arable lands for solar development. One of the best ways to do that is to make development there substantially easier than development on arable lands.

8. 50 acre threshold on non-arable lands

Our support of the 50-acre threshold depends on the definition of non-arable lands. If there is a strong definition of non-arable lands, and the Department of Agriculture and local farmers agree that such lands are of little value to farming and ranching operations, then we would support an increase to 100 acres. However, if the definition of non-arable lands is too wide, and actually includes lands that are currently suitable for farming, then we would support holding at the 20 acre level.

9. Use of items B – F for non-arable lands

There should be some significant incentive that drives developers to look hard for non-arable lands. One of the best incentives may be less permitting complexity and more certainty on non-arable lands. The alternatives analysis should not be required on truly non-arable lands.

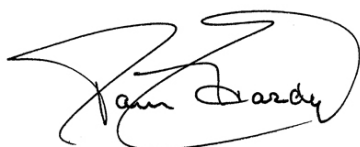
The cumulative effects analysis should be required for all installations larger than 20 acres. However, there should be some safe harbors written in such as large setbacks (unless a waiver from the neighboring landowner can be obtained).

10. Do we need to do this rule at all?

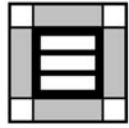
It does not appear that we need this rule immediately. However, I believe that we should finish this process. Whether larger developments are coming in two years or six years, there is every reason to believe they are coming. If we are ahead of the game right now, we are not very far ahead. It is better to be ready for the influx of developers when they arrive, than it would be to try to restart this process when local planning departments are being overwhelmed with applications for goal exceptions.

Additionally, our state needs to increase its capacity for renewable energy and the installation of utility scale solar could be an important economic boon to local communities. Creating a straight forward process for placement of solar panels on non-arable lands would help grow an industry that we want in the this state.

Best Regards



Pam Hardy
Staff Attorney & Central Oregon Advocate
1000 Friends of Oregon



ECONOMIC DEVELOPMENT FOR CENTRAL OREGON

Excellence in Business Development

December 15, 2010

Hanley Jenkins
Solar Facilities Rules Advisory Committee
Land Conservation and Development Commission
635 Capitol Street, Suite 150
Salem, OR 97301-2540

Dear Solar Facilities Rules Advisory Committee Members:

Modifying Oregon's land use, Goal 3, to accommodate solar energy production on non-irrigated agricultural land (rangeland) is an essential component for job creation and necessary to keep Oregon as a leader in renewable energy production - especially as it relates to solar energy production.

Oregon is investing significant time, effort and financial investment into developing the next generation of solar panels through our university system. An important aspect about solar panels is that the technology is changing and is going to significantly improve solar energy production, making it more efficient and less costly. This is evident as one sees the concepts researchers are pursuing. Unlike wind turbines which require the rotation of blades with a significant number of moving parts plus wind currents -which can be variable and unpredictable - solar is predictable, solar collectors are relatively static and can be strategically positioned to minimize their presence.

Break-through solar energy technology will be achieved and implemented. The question for Oregon is: Will solar farms be implemented on the vast, private open lands in our state to utilize Oregon-generated technology?

While solar farms require large parcels of contiguous land - to be worth a utility company or energy developer's investment - solar farms can be strategically placed to co-exist with our natural wildlife. Once installed, these sites require little maintenance and disruption to local habitat. The next generation of solar panels will probably be translucent or even colored to blend in with the natural color-scape of a location site.

If Oregon chooses to be flexible in its land use goals to accommodate solar energy farms, it will motivate and attract solar industry manufacturing and service sectors to locate in Oregon and create well-paying, long-term jobs because a significant number of manufactured products will be used in the state.

Many parcels of unproductive land in Oregon could be used to site solar farms to create electrical energy. This predictable, renewable energy could, in turn, be the resource necessary to spur other industrial activity. All new businesses require electrical energy

and it is necessary for the State of Oregon to be forward-looking to provide the necessary energy requirements. Green solar energy development could be a major part of that resource. Future energy needs may also be a closed-loop-systems within relatively small geographical locations.

I urge the LCDC Solar Farm Study Committee to consider the future need and application of solar farms on the wide expanse of unproductive land in rural counties and modify the Goal 3 land use for this purpose.

Sincerely,

A handwritten signature in dark ink, appearing to read "Wayne Pearson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Wayne Pearson, Manager
Economic Development for Central Oregon (EDCO) - Jefferson County
2028 NW Airport Way
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VIA E-MAIL
12/15/2010

Commissioners Jenkins and Pellett and DLCD staff:

Element Power submits this response to the proposed revisions to the Goal 3 12/20 administrative rule concerning solar development on agricultural lands in Oregon.

Element thanks the commissioners and staff for their time and effort on this issue, and for initiating the formation of the rule-making advisory committee (RAC). This is an important issue for the future of renewable energy in Oregon. It is important that the Department of Land Conservation and Development (DLCD) take the opportunity afforded by the formation of the RAC to develop new rule language that sufficiently addresses issues with the current rule while continuing to protect valuable agricultural land. A summary of issues with the current rule is outlined below; additionally, the recently drafted rule language not only fails to address our concerns with the existing rule, but would further disadvantage solar development in Oregon. The new proposed rule language does not represent a compromise and does not balance Oregon's agricultural interests with Oregon's stated policy for promotion of renewable energy development.

Issues with the current rule include the following:

- There is too much uncertainty in the land use process for solar development in Oregon.
- The current rule does not incentivize energy developers to site on non-prime agricultural lands.
- The current rule requires a two-step approval process for relatively small solar projects with minimal footprint impacts.

Questions have arisen in RAC meetings about the need for revisions to the rule and the timing of the rule change. We believe it is urgent to address an antiquated land use regulation that is unnecessarily impeding solar development in Oregon, as well as preventing farmers from diversifying use of their agricultural lands.

Here are some reasons why the proposed rule is inadequate

- **DCLD has an opportunity to tell developers where to site projects.** Leaving the rule as is, or adopting the proposed rule language would not result in protection of farmland. The acreage limitations and other requirements are not differentiated enough between high value and non-high value farmlands. The DLCD should adopt a rule which incentivizes developers to site on less valuable farmland, otherwise the state has squandered an opportunity to drive the siting of solar energy projects.
- **Uncertainty over the solar energy market in Oregon is in part driven by uncertainty in land use regulations.** Though it is not DLCD's intention to unnecessarily impede solar development in an area with an already challenging market, maintaining the current rule language or adopting the proposed language does just that—it is difficult for developers to expend resources and capital in a market where there is significant risk on land use.
- **The two-step permitting process allows opponents multiple opportunities at appeal while doing very little to protect farmland in Oregon.** The two-step permitting process increases the time and expense required to get local land use approval and provides a greater amount of risk to developers due to the multiple appeal opportunities. Under current regulations, there are at least three potential appeal avenues. This is one of the reasons developers choose to develop many smaller facilities, which likely will have greater impacts on Oregon's agriculture than consolidated larger facilities.
- **Solar facilities have minimal impacts compared to other commercial energy facilities requiring Goal 3 exceptions.** While the occupied acreage may be similar, the actual footprint impact of a solar project is minimal compared to other energy facilities such as natural gas plants. Solar projects require very little, if any, ground preparation, require very little water during construction and operation, and produce zero emissions during operations. The facilities can easily be removed and the land returned to agricultural use at the end of the facilities' operational life. To illustrate this point, RAC members representing industry have demonstrated through photos, videos and diagram the relatively minimal impact of a solar project. Element encourages DLCD to acknowledge the difference between solar projects and higher impact commercial energy facilities and modify the rule to ease the burden on solar in Oregon. Under the currently proposed rule change language it would be easier to permit a natural gas plant than a solar facility.
- **In tough economic times, the state needs more opportunity for jobs and tax revenues. Oregon will not benefit from protecting land that is not currently in commercial agricultural production, fallow, or considered not high value for agricultural production.** Allowing solar development on less productive agricultural lands provides a financial incentive to enable landowners to maintain agricultural operations on more productive agricultural lands and is an environmentally preferred alternative to other development options a landowner has. The state should do everything in their power to encourage diversified use of agricultural lands in Oregon and should not unnecessarily impede the process.

Specific Recommendations for a Revised Rule:

Acreage limitations

- **High Value Farmland.** Element suggests retaining the existing acreage limitations (12 acres) for high-value farmland.
- **Non-High Value Farmland.** This is the state's best opportunity to drive future solar development. Element feels it is appropriate to incentivize developers to choose non-high value farm land for development. Element recommends that the revised rule should incorporate the acreage caps (projects over 100 acres) defined by state statute for large solar facilities which warrant state level review by EFSC.

Language/Definitions

- **Arable vs. Non-arable.** The use of these terms is problematic because of the lack of definition for either term. The addition of these terms adds ambiguity into an already confusing, and somewhat subjective, process. If DLCD feels it is imperative to use these terms in the rule, a very clear definition is needed. However, rather than further complicating the analysis, Element believes that the same protections for farmland and directives to developers can be made without the addition of these terms. Any revised rule should retain the existing definitions of high value and non-high value land and should require an analysis of impacts to the underlying soils based on soil classification within the project footprint, not a larger parcel or tract.

Other

- **Addressing county level review criteria in a state land use rule making.** In RAC meetings, requests were made from participants for review of everything from impacts to wildlife, establishing zones for solar projects, cumulative impacts and decommissioning bonds. While Element recognizes that all of these topics are relevant to a county's planning decisions, these are considerations that should be addressed by a county's comprehensive plan, specific approval criteria, and development standards rather than addressing these matters through a state-level Goal 3 rulemaking process, it is more appropriate to address these types of considerations at a local level through local comprehensive plan and development code amendments.

We believe that the recommendations provided in this letter represent the desires of the broader energy development community, rural economic development advocates, and Oregon policy makers. We thank you for your time and effort and look forward to helping DLCD draft a rule which considers Oregon's goals for renewable energy development and protects Oregon's most important agricultural lands.

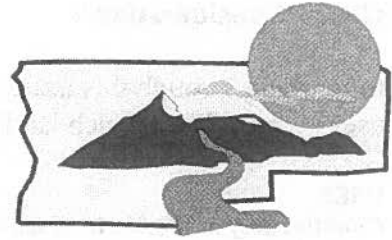
Sincerely,

Nicole S. Hughes
Senior Project Manager

Element Power 421 SW Sixth Avenue, Suite 1000 Portland, OR 97204

JEFFERSON COUNTY
Community Development Department

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December 15, 2010

Chair Christine Pellet
Chair Hanley Jenkins
Members of the Solar Farm Rules Advisory Committee

Re: Thoughts on Rule Making Efforts

Ladies and Gentlemen;

The Solar Farm Rules Advisory Committee has now been meeting for two months. We have discussed a number of items relating to the issue of solar farms on Goal 3 lands in Oregon. I want to make sure that we focus on the reason we are meeting which is to review the existing rule language regarding commercial energy production on Goal 3 lands and whether the “12/20 rule” should be revised to provide a more streamlined process for solar farm proposals on marginal resource lands.

One question continues to be asked: “Is there a problem?”

As mentioned at our last meeting, we would not be meeting and spending time and resources to discuss this issue if there was not a problem. The 12/20 rule didn’t contemplate the advent of solar farms when it was written. The acreage limitations imposed by the rule and the alternative goal exception process will continue to limit Oregon’s appeal for solar farm development. Neighboring states have more certainty in the permitting processes that will attract such projects despite Oregon’s quest to be recognized as the national leader in green technologies.

Oregon is a leader in solar panel and equipment production. The cost of solar panels continues to decrease and in doing so will improve the financial viability of utility scale solar farms because the cost of energy production will compete with other generation forms. Yet, our existing land use system and specifically, the 12/20 rule, provides a blanket of uncertainty on the land use review process to permit such proposals. This situation where we aim to be a green industry leader, lead the country in solar panel construction, yet have land use laws which deter the development of solar farms is a huge problem. This conflicting message provides uncertainty to the renewable energy marketplace and drives solar development away from Oregon.

Obviously protecting truly protective agricultural operations on high value soils is important to the state’s economy. However, diversification of our rural economies is another laudable goal. This goal to permit additional renewable energy generation abilities in Oregon is consistent with the policy objectives of our departing Governor as well as the Governor-elect. We need to align Oregon’s renewable energy policy with our land use laws.

Goal 3 Considerations:

In working through this issue, the committee needs to consider the purpose of Goal 3 and the uses permissible on such lands. The following language is from Goal 3:

USES

Counties may authorize farm uses and those nonfarm uses defined by commission rule that will not have significant adverse effects on accepted farm or forest practices.

As a state we have determined that a use will have an adverse effect upon farm use if the use requires a change in accepted farm practices or increases the cost of farm use. If we provide a process that will gauge the impacts of such proposals upon farm use, we have created the ability to evaluate whether such proposals will comply with Goal 3. If we find that the proposal will not have significant adverse effects on accepted farm practices, approval of the project complies with Goal 3, regardless of the size. I am therefore concerned the proposed rules include additional acreage limitations and lose sight of the fact that non-farm uses that do not have adverse impacts on farm use are permissible. There is no sound Goal 3 reasoning behind the acreage limits.

Our efforts need to balance the operational characteristics of solar farming and potential impacts to farm operations. But beyond that, we need to realize as a group that not all Goal 3 lands warrant such protection. As we all know, a lot of Goal 3 protected land has little agricultural value. Further, solar farming is a valid resource use of that land without accompanying adverse impacts to neighboring farm use. Solar development does not significantly impact traffic, impose a burden on local government resources or pollute the environment. We are not looking to allow “sagebrush subdivisions” or other enemies of agriculture. We are merely working to obtain additional land use options for rural communities which contain the attributes that are attractive to renewable energy generation in specific areas.

Different areas attract different industries based on their available resources. Our land use laws should not prescribe one type of accepted resource use over another – especially if the “preferred” resource use is not commercially viable in areas where a different resource use can flourish. As resource uses evolve, so too should our land use laws.

Thoughts on Proposed Language

Acreage Limitations:

A balance needs to be struck that will permit solar farms on less productive land and limits such development on high value soils. This is consistent with Goal 3 and a reasonable approach that meshes perfectly with the State’s sustainability and renewable energy goals. The initial rule language proposed seems to be too stringent in my opinion however, the basic format of the rule language with some specific changes could help us to create a rule that achieves the desired balance.

The first item of concern relates to the proposed acreage limitations. The rule would prohibit solar development on high value farmland soils, limit solar development on arable lands to 20 acres and limit solar development on non-arable lands to 50 acres. The outright prohibition on high value farmland soils is not an improvement over the current rule. It sends a message to the

world that Oregon will allow polluting energy generation facilities on 12 acres or less of high value farmland soils but not clean solar energy production. This is a big step backwards. I would recommend that the committee consider leaving the 12-acre rule in place as it is with respect to high value farm land soils.

The 20-acre maximum on arable land is another portion of the rule that is problematic. As the rule language in (38)(b) requires an analysis to determine that the proposed facility will not disrupt common and accepted farming practices, an acreage limitation is not needed. This acreage limit will require a goal exception for projects larger than 20 acres even though the proposal will not adversely impact agricultural operations. This introduces a level of uncertainty that is not desirable for the development community or the local counties. If a limit must be set, we should make it consistent with the current EFSC threshold or 100 acres. This type of a requirement introduces regulation which provides no protections to farm use.

The 50-acre limit on non-arable land is not necessary. We should remove the acreage limitation with the understanding that anything above 100 acres in size will be reviewed by EFSC.

Arable and Non-Arable Definitions:

It is best to stick with the distinction between high value and non-high value farm land in applying specific land use regulations to solar farm development. This system is “tried and true” which is why I am not supportive of varying from this approach. However, if there is a desire by the group to implement this distinction, as the wind facility rule has done, I suggest we work to provide definitions for the terms. Without defining these terms we introduce additional subjectivity into the proposed rule. It is not a good use of time or resources for local counties to defend decisions in LUBA so that the ambiguity of a new term in a new administrative rule is clarified. Three concepts that need to be addressed in such a definition include the history of raising crops on site, availability of irrigation and soil type.

Alternatives Analysis in section (38)(b)(E):

This language is similar to the goal exception analysis requirement in OAR 660-004-0020(2)(c). However, in this instance the analysis requires comparison of the impacts to lands that are not protected by Goal 3 in addition to lands that have such protection. This is different than the exceptions rule and the wind facility rules. This should not be required. We need to keep in mind that the locations of these facilities will be driven by the location and availability of existing transmission infrastructure. As such, it would be appropriate to remove the alternatives analysis and replace it with a two-pronged approach. First, require the proposals to identify ESEE conflicts and methods to be employed to avoid or mitigate such conflicts. Second, require documentation that explains why the proposed location is necessary, including technical/engineering feasibility, availability of needed infrastructure, topography, etc.

Non-Arable Land Requirements:

The proposed language in (38)(c) applies the requirements for arable lands to non-arable lands. Why? This actually discourages developers to look for non-arable lands. Rather, it levels the field in terms of the attractiveness of arable versus non-arable with the exception of the 20-acre limitation on arable lands. If the project aims to be a utility scale project, a goal exception would be required in either case, so this requirement could actually encourage development of arable

versus non-arable lands. It is reasonable to keep requirements for a weed control plan. Consideration of cumulative impacts is also reasonable, but should be included in local ordinances so that proper mitigation can be provided based on the specific surroundings of the subject property. Holding proposals on non-arable lands to the same standards as arable lands is not appropriate.

I appreciate the opportunity to provide comments to the group. Although the first draft of the rule is too stringent in a number of areas, we have the opportunity to tailor these regulations so that we properly analyze solar farm proposals while encouraging the siting of these facilities on appropriate Goal 3 lands. The Counties in Oregon and Jefferson County in particular, protect the farmlands with fervor. We, however, need to diversify the types of resource uses permitted on the less productive and marginal resource lands.

Governor-elect Kitzhaber addressed the need for job creation in rural areas in a speech to the Oregon Business Council's annual Leadership Summit this past Monday. An article from the Associated Press states, "The solution to Oregon's economic crisis must help rural communities as much as it helps the Portland metropolitan area, incoming Gov. John Kitzhaber told business and political leaders Monday. Kitzhaber said government officials promoting job creation should remember that 15 new jobs in Coos Bay are similar in their local effect to 500 new positions in the Portland area." I have attached a copy of that article.

The Coos Bay "order of magnitude" example referenced by the Governor-elect applies in central and eastern Oregon as well. Rural Oregon counties depend upon their lands to create economic opportunities. The needed changes to the 12/20 rule will primarily benefit rural counties outside of the valley based on the attributes that attract solar farms. We have an ability to create better land use laws to properly review solar farms, encourage clean energy production within our state and provide job opportunities for some of the hardest hit communities in the state (Jefferson County's unemployment rate hovers near 14%, Crook 16%, Klamath 13%, Lake 15%, Deschutes 13%). We do have a problem with the existing rule, but we also have an extraordinary opportunity to fix it, and in the process provide additional options for rural counties without adversely impacting farm operations.

If you have any questions, please feel free to contact me at 541-475-4462 or jon.skidmore@co.jefferson.or.us.

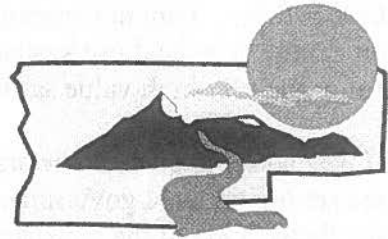
Sincerely,



Jon Skidmore, AICP
Planning Director / CDD Director

JEFFERSON COUNTY
Community Development Department

85 S.E. D St. Madras, Oregon 97741 ♦ Ph: (541) 475-4462 ♦ Fax (541) 325-5004



December 15, 2010

Chair Christine Pellet
Chair Hanley Jenkins
Members of the Solar Farm Rules Advisory Committee

Re: Comments on the Draft Rule Language

Ladies and Gentlemen;

I have compiled a list of my comments on the proposed rule language that was provided to the group on November 11, 2010. The comments relate to the proposed OAR 660-033-0030(38). Comments will be provided below the appropriate citation and specific language.

OAR 660-033-0020(38): Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request filed after a decision to approve a power generation facility. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval.

COMMENT: This is a great idea however, it likely doesn't belong in the definition of Photovoltaic Solar Power Generation Facility. It may fit in well with the proposed rule language, perhaps as 660-033-0030(38)(e).

OAR 660-033-0020(38)(a): No components of a photovoltaic solar power generation facility may be located on high-value farmland soils described at ORS 195.300(10) unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

COMMENT: Why go from a 12 acre maximum to what amounts to a prohibited use – unless an applicant wants to go through the exception process. This sends a very interesting message from the state which markets itself as a green industry leader. We are telling the world that 12 acre, coal-fired power plants are permitted on high value farm land soil but not 12 acre (or less) solar farms. I can understand an acreage limitation on high value farm land but an outright prohibition is contrary to the existing rules. It is also extremely short sighted as such facilities could be essential in the future if we transition to a distributive form of energy generation and consumption.

OAR 660-033-0020(38)(b): For arable lands, meaning lands that are cultivated or suitable for cultivation the governing body or its designate must find that:

COMMENT: I am not supportive of using terms in the new rule that have no definition in rule or statute. The land use system has existed for 30+ years relying on the distinction between high value and non-high value farmland soils. It seems prudent to continue in that direction.

If we choose to go with the arable/non-arable route we need to define the terms. If we don't, we are setting up local governments for LUBA appeals in which the definition of "arable" will be the focus. One of the consistent criticisms of any regulatory scheme is the lack of certainty in the review process. Local decisions that hinge on the interpretation of an undefined term from the administrative rules are extremely vulnerable to appeal. If we go this route, we have built uncertainty into the process. This is not what we should be doing. Our goal should be to create clear and objective standards so that everyone involved in these proposals understands from the outset what is needed for approval.

OAR 660-033-0020(38)(b)(B): 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.

COMMENT: Based on the conventional installation methods and the I-beam frame racking systems, there is no need to strip and stock pile topsoil. In fact, the solar panels will provide protection of such topsoil, if it exists in the first place.

OAR 660-033-0020(38)(b)(E): The long-term environmental, economic, social and energy consequences resulting from the photovoltaic solar power generation facility or any components thereof at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other agricultural lands of equal or lesser quality or lands that are not protected under statewide planning goal 3;

COMMENT: The exceptions rule currently requires analysis of the same proposal being located in other areas requiring a Goal exception. What is the reason for this change? One thing that appears to be lost with some of the proposed regulations is that the utility scale facilities are extremely reliant upon proximity to transmission and substations. Developers will only propose facilities on Goal 3 lands if the necessary infrastructure is available in close proximity.

OAR 660-033-0020(38)(b)(F): The cumulative effects of siting multiple photovoltaic solar power generation facilities in a single area of a county have been adequately considered and that the presence or possibility of multiple facilities in close proximity will not lead to negative effects on local farmers and ranchers.

COMMENT: My initial thought on this language is how a local government demonstrates that the cumulative effects of such proposals have been "adequately considered." In terms of the "will not to lead to negative effects" language, the analysis required by the other sections of this proposed rule are geared towards determining what impacts such proposals will have on farm uses. Further, as part of the review process applicants must address OAR 660-033-0130(5), i.e., won't cause change in farming practices and won't increase cost of farming. This concern is already addressed by other portions of Division 33 – there isn't a need to repeat it.

OAR 660-033-0020(38)(b)(G): (G) A photovoltaic solar power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

COMMENT: Why would the 20 acre rule still apply? If the proposal has been found to comply with the proposed standards, the proposed solar facility will not have an adverse impact on arable land or farm use. It won't increase the cost of farming or require a change in farming practices. Therefore, there is no reason to keep a 20 acre maximum. If the proposal isn't consistent with the other criteria, it won't be approved. This draft actually takes the 12/20 rule and makes it more restrictive. If a limit must be set – which it really doesn't as the proposed regulations already protect arable land and farm use – make it consistent with the EFSC threshold (100 acres).

This type of a requirement introduces regulation which provides no protection to farm use. Again, we are introducing uncertainty into a process where it isn't needed. Our mission is to protect farm use and diversify the types of resource uses possible on marginal resource lands. This type of a requirement would act as a huge deterrent and is contrary to the state's renewable energy goals.

OAR 660-033-0020(38)(c): For nonarable lands, meaning lands that are not suitable for cultivation, the governing body or its designate must find that the requirements of OAR 660-033-0130(37)(b)(B),(C),(D), (E) and (F) are satisfied;

COMMENT: I think the highlighted "37" above should be "38." If I have that correct, why would we review proposals on non-arable lands against criteria aimed at protecting the soil on arable lands? Keeping the requirement for control of noxious weeds is reasonable but the others make no sense. Further, this isn't required for approval of wind facility proposals on non-arable lands.

OAR 660-033-0020(38)(c)(A): A photovoltaic solar power generation facility shall not preclude more than 50 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

COMMENT: Why are we limiting such proposals to 50 acres on non-arable lands? If we are aiming to protect dispersed grazing abilities, we have already been informed by the Oregon State Extension service that such uses will not be adversely impacted nor will the amount of cattle that is managed on such lands be reduced. As demonstrated through the lease analysis I provided to the group, if a rancher decides to utilize part of the dispersed grazing area for solar farming, the farmer will intensify grazing on other portions of the ranch and bring in feed purchased from irrigated farmers. Rich DeBoodt, Rangeland Specialist with the Oregon State Extension Service explained, "The economic engine of solar farms is greater than the economic loss to grazing – the loss of grazing land will not impact the cattle operation efficiency – the same amount of cattle will be grazed but will need to be supplemented with additional feed at a minimal cost to the rancher."

Why set an artificial acreage limitation? We are not protecting agriculture with this type of a requirement. We are introducing regulations for the sake of it. The wind rule doesn't have this acreage limitation.

I appreciate the efforts of staff and the Committee chairs to provide proposed language for consideration by the group. I am a bit confused by the proposed rule. The proposed language actually makes the permitting process for such proposals more complicated and less certain. I would support increased standards in return for removing the acreage limitations which will invite Goal exception applications. However, the acreage limitations may not invite such exception applications as the language is likely a large enough deterrent to push developers to other states.

If you have any questions, please feel free to contact me at 541-475-4462 or jon.skidmore@co.jefferson.or.us.

Sincerely,



Jon Skidmore, AICP
Planning & CDD Director

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The Bulletin

Kitzhaber: Rural jobs as important as urban jobs

By Jonathan J. Cooper / *The Associated Press*

Published: December 14, 2010 4:00AM PST

PORTLAND — The solution to Oregon's economic crisis must help rural communities as much as it helps the Portland metropolitan area, incoming Gov. John Kitzhaber told business and political leaders Monday.

Kitzhaber said government officials promoting job creation should remember that 15 new jobs in Coos Bay are similar in their local effect to 500 new positions in the Portland area.

"These goals have got to apply to all Oregonians," Kitzhaber said in a speech to the Oregon Business Council's annual Leadership Summit.

The summit organized community, business and political leaders to suggest ideas that might create jobs and improve the state budget situation.

In a report prepared before Monday's conference, the group says government policy should be focused on job creation because getting Oregonians back to work — and therefore paying taxes again — will help the economy while also increasing state government revenue.

The report also recommends luring higher-wage jobs, another revenue-boosting solution as Oregon grapples with a \$3.5 billion hole in the next two-year budget cycle.

Oregon's statewide per-capita income has declined relative to the rest of the nation since the end of World War II — a trend that reflects the long-term decline in timber and wood-products jobs.

Kitzhaber said Oregon is in a "death spiral" where declining revenue is forcing government to cut back on education and health care spending, which then makes it harder to recruit high-wage jobs and further reduces government revenue.

Lawmakers have spent too many years neglecting the state's fiscal health, Kitzhaber said.

"This is the legislative session where we must stop kicking the can down the road and start redesigning the way we provide public services in the state of Oregon," said Kitzhaber, a Democrat who will take the oath of office Jan. 10 for a third term as governor after spending eight years out of office.

After Kitzhaber's speech, state Sen. Bruce Starr, R-Hillsboro, said voters sent a clear message by electing a tied state House and a nearly tied Senate: "Having one political philosophy with their hands on all the levers of government is not a good idea."

"I think the stage has been set that we will work together and get the job done," Starr said.

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December 15, 2010

Commissioner Hanley Jenkins
Commissioner Christine Pellett
Co-Chairs, Solar Rulemaking Advisory Cmte.
c/o Casaria Tuttle
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

BY EMAIL (to casaria.r.tuttle@state.or.us)

Dear Commissioners Jenkins and Pellett:

Thank you for the work that you and DLCD staff have done to develop a straw proposal for discussion by the Goal 3 Solar Rulemaking Advisory Committee. Renewable Northwest Project (RNP) believes that constructive discussion of the straw proposal can result in a draft amendment that is good for Oregon. RNP continues to believe firmly that progress can be made for solar development, and for the economic development and environmental benefits that it brings, while preserving important agricultural and conservation values.

Now is the time

Now is the right time for the Commission to take action for solar. Uncertainties about the future market and conflicting local perspectives on specific projects should not discourage the Department or Commission from realizing the two significant policy opportunities presented here: directing future development to appropriate places; and advancing Oregon's support for renewable energy.

Acting now, and creating practical incentives, can proactively direct large-scale solar development to site on land that is less valuable to the agricultural community. Currently, there is little reason for developers to factor agricultural productivity into their siting analysis. By retaining the present rule, the state will have to react to development sited through goal exceptions or evidentiary presentations about local agricultural economies (*i.e.*, through a demonstration that projects do not impact a "commercial agricultural enterprise").

At a time when state budget constraints pose challenges to Oregon's leadership clean energy job creation and solutions to climate change, creating clear direction for solar permitting can be a bright spot that maintains Oregon's profile without impacting constrained state resources. Oregon's policy is to create markets for, and economic development from, new renewable energy resources, as reflected in the renewable portfolio standard, the BETC and

RETC, and many other programs. DLCDC itself has worked on enumerating the consequences of climate change for Oregon’s agriculture and habitat, and has been central to developing tools to responsibly face this threat.

It is not clear how waiting to address land use rules for solar generation would help the state. There is no indication of progress in developing improved classifications for agricultural land value, though we propose some work in that area in our comments below. There is no certain timeline for progress in Goal 5 inventory updates, nor any reason why proceeding with Goal 3 rules would constrain future developments in Goal 5 policy. Moreover, acting now does not preclude action in the future to refine the solar rule after more solar projects are developed.

Right now, state land use rules for solar are at cross-purposes with Oregon’s renewable energy policies. ORS 215 allows commercial facilities for production of electricity, yet DLCDC’s rules constrain solar development by subjecting it to rules developed for traditional, fossil-based generation. Progress on clear rules for solar development will reduce barriers to solar development and will be consistent with the state’s policy priorities.¹

Principles for responsible progress

RNP suggests four principles for developing a rule that makes forward progress on solar while respecting other important values:

- A) Create incentives for development on less valuable agricultural lands, while retaining all agricultural landowners’ ability to experiment with solar energy as a complementary resource;
- B) Reduce the uncertainty and expense that current state rules create for local permitting of medium-sized, utility-scale projects (*i.e.*, 12 to 100 acres);
- C) Interact sensibly with the state energy facility permitting system for projects larger than 100 acres; and
- D) Consider maintaining some level of review for projects larger than 12/20 acres that impact existing resources identified in the county’s acknowledged Goal 5 inventory documents.

Another critical principle is to avoid moving backward. Broad support will not exist for a rule that makes siting for clean technology more restrictive than the current rule—which, importantly, will continue to allow fossil generation to be sited on less than 12 acres of high-value farmland without an exception.

Getting there

With some constructive modifications, the straw proposal can achieve the above principles. RNP proposes six primary modifications: (1) create a safe harbor definition of non-arable lands; (2) limit the requirements for non-arable lands to operational criteria; (3) eliminate the

¹ If the Department decides to retain the status quo, then it should take responsibility to engage with the renewable energy community in coming up with principles for realistically evaluating what is a “commercial agricultural enterprise.”

exception-like alternatives analysis from the policy criteria applicable to arable and high-value development; (4) retain the ability to site projects smaller than 12 acres on high value farm *land*, while discouraging project components from being located on high value farmland *soils*; (5) eliminate the distinction in acreage thresholds between arable and non-arable lands (unless those terms can be defined *very* clearly); (6) for larger installations on the site of an inventoried and acknowledged Goal 5 resource existing at the time of project application, require the county to evaluate the ESEE consequences of solar as a potentially conflicting resource (if the county has not done so already). These suggestions are further explained below, with specific recommendations for language in the attached mark-up.

1. *Safe harbor for non-arable lands*

Introducing a relatively subjective and untested land classification (arable/non-arable) does not promote predictability for solar development and, for that reason, makes the attempt to create incentives for siting on non-arable land less effective. Even if those in the agricultural community “know it when they see it,” project developers will have to assume that perspectives may differ and that project opponents may use the arable/non-arable distinction as a basis for legal challenges. With the risk that, at the end of the process, a project could be determined to be on arable land, project developers may well be prudent to ignore the arable/non-arable distinction and satisfy the criteria for arable land from the beginning. Without clarity, the incentive to site on non-arable land will not be very effective.

At the same time, RNP recognizes that there are few other classifications available to distinguish between farm land and range land. Therefore, RNP recommends that the committee work to establish a safe harbor definition for non-arable land, or that a subcommittee be formed to work through the issue. Better still would be a definition of arable *soils*, as there is currently no definition of how much arable soil makes a tract “arable land.” An example of a safe harbor could be: “As a safe harbor, non-arable soils include, but are not limited to, soil Classes VI, VII, and VIII.”² This, in combination with the next suggested change, would help to create a clear path to siting on non-arable soils.

2. *Operational criteria only for non-arable lands*

The straw proposal requires projects on non-arable lands to satisfy nearly all of the same criteria as projects on arable lands. The only criterion left out for non-arable lands concerns impacts to agricultural operations—something that will be addressed in the general conditional use criteria anyway, per 215.296. This will not create an effective incentive to locate projects on non-arable land.

To create an effective incentive, the criteria for non-arable lands should be limited to pertinent operational issues—i.e., soil erosion,³ weed control, and decommissioning. These are important

² RNP suggested these soil classes based on a document from the PNW Ecosystem Research Consortium available at http://www.fsl.orst.edu/pnwerc/wrb/Atlas_web_compressed/2.Landform/2c.soils_web.pdf, but welcomes input from agricultural experts as to what a safe harbor definition could include.

³ Soil compaction would not seem to be an issue for non-arable lands.

issues, but are straightforward enough for developers to address without significant interpretive challenges or policy debates.

3. Reserve alternatives analysis for exceptions

For projects on arable land and high-value farm land below the exception size threshold, discretionary and policy-oriented criteria are appropriate, along with the operational criteria. But the straw proposal's section (38)(b)(E) goes beyond a policy evaluation and retains the most challenging substantive element of the exception analysis: the alternatives analysis. One of the most uncertain and difficult parts of an exception is identifying the scope of comparison with other unknown properties over which the developer has no control and which may not be comparable in terms of their suitability for generation and interconnection.

RNP suggests a requirement to evaluate the ESEE consequences of the facility and mitigate for any significant adverse impacts, but without a requirement to compare to other lands. For example, "The long-term environmental, economic, social and energy consequences resulting from the photovoltaic solar power generation facility or any components thereof at the proposed site have been evaluated and any significant adverse impacts will be mitigated."

4. Retain high-value farmland opportunities

RNP appreciates the distinction that the straw proposal draws between high value farmland and high value farmland soils, and acknowledges that the straw proposal's focus on *soils* could allow a larger project on high value farm *land* if the project were located entirely on non high value farmland *soils*. This could be a step forward for some properties, at least if the straw proposal could be modified to provide that a de minimis project component on high value farmland soils would not trigger the exception requirement.

But the straw proposal's shift to high value farmland soils is also a significant step backward for solar in many parts of Oregon. On land comprised entirely or largely of high value farmland soils, the straw proposal would entirely preclude landowners from experimenting with solar as a complementary resource. For those landowners, the straw proposal puts solar generation at a disadvantage compared with traditional fossil-fueled generation. This is likely to be perceived in the broader community as a step backward for solar.

To move forward for both types of land, RNP proposes the following: Retain the existing 12-acre threshold for high value farmland, but allow for larger facilities on high value farm *land* without an exception so long as they occupy fewer than 2 acres of high value farmland *soils*. An alternative option would be to retain the existing 12-acre threshold but adopt a criterion that requires project developers to show that they have avoided high value farm land soils to the extent consistent with the property configuration, technical and engineering feasibility, and the availability of existing rights of way. (This parallels section (37)(a)(A) of the wind rule.)

Some compromise on this issue is important to retain forward momentum, avoid a perception of regression, and allow all agricultural landowners the opportunity to experiment with utility-scale solar as a complementary resource.

5. Acres threshold should increase, and possibly be equal

The straw proposal sets the acreage threshold for arable lands at 20 acres (as it is today) and for non-arable lands at 50 acres. RNP believes that both thresholds should be higher—and that the threshold for each category should be the same unless greater clarity can be brought to the arable/non-arable distinction.

As RNP argued above, developing a safe harbor definition of non-arable lands could be a way to make the arable/non-arable distinction a more effective tool for directing development. If a safe harbor cannot be established, then it may make sense to make the acreage threshold the same for each type of land. This is because uncertainty about the ultimate acreage threshold may make it too difficult to plan for larger projects, and the result may be that siting smaller projects on arable land is equally attractive. Even with an equal acreage threshold, the distinction between discretionary policy criteria and clear operational criteria will serve to direct developers to non-arable land.

In any event, the threshold for non-arable lands should not be lower than 100 acres. Non-arable lands, by definition, are less significant for agricultural production and evidence presented by Jefferson County demonstrates that a 100-acre project will have no negative impact on ranching operations. Indeed, a stable, diversified revenue source will have a positive impact on ranching operations. Increasing the acreage threshold to promote installations in the 10-15 MW range is appropriate to expand the range of project types that Oregon encourages, while ensuring rigorous EFSC review for larger projects.

6. Retain review of already inventoried, acknowledged Goal 5 resources

RNP understands and supports the Department's objective to focus this rulemaking on Goal 3 issues. Broader Goal 5 issues are not part of this committee's mandate.

However, RNP also acknowledges ODFW's point that removing the exception requirement for certain projects eliminates the state-mandated review that Goal 5 resources already inventoried by the county and acknowledged by the Department would receive during an exception process. RNP believes that the full exception process is not necessary to retain some level of Goal 5 resource review for projects larger than 12/20 acres. The Department could adopt a criterion, for projects larger than 12/20 acres, that requires review of Goal 5 resources that have been inventoried in the county planning documents and acknowledged by the Department at the time of the solar project application. This would retain review similar to that which currently would occur in an exception process for projects larger than 12/20 acres.

Although RNP has suggested some language to implement this idea, the concept is provisional at this point pending feedback from other members of the committee on some other recommendations in this letter. If the acreage thresholds in the straw proposal cannot be increased to streamline the process for significantly larger projects, then addressing Goal 5 concerns is less relevant.

Additional specific comments are attached

In addition to this discussion of the general principles motivating its comments, RNP has marked up the straw proposal with specific language that would implement our comments and suggest a few other technical changes.

We hope these comments can be helpful as the process moves forward. Removing barriers to solar development in Oregon is an important objective, and we hope that the committee, the Department, and the Commission will continue their work into 2011.

Sincerely,



Megan Decker
Senior Staff Counsel
Renewable Northwest Project

Encl.: RNP Comments re Straw Proposal – December 15, 2010

RNP Comments re Straw Proposal – December 15, 2010

Table:

R5.38 Photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale.

(38) For purposes of this rule a photovoltaic solar power generation facility includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores and/or transfers that electricity. This includes photovoltaic modules, mounting and solar tracking equipment, foundations, inverters, wiring, and storage devices and other components. 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. For purposes of applying the acreage standards of this rule, a photovoltaic solar power generation facility includes all existing and proposed facilities on a single tract, as well as any existing and proposed facilities under common ownership, development, or operation on lands with less than 1320 feet of separation from the tract on which the new facility is proposed to be sited. A proposal for a photovoltaic solar power generation facility shall be subject to the following provisions:

(a) A photovoltaic solar power generation facility located on high-value farmland, as defined in ORS 215.710, shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. However, an exception shall not be required for such a facility if project components occupy fewer than 2 acres of high value farmland soils described at ORS 195.300(10). All photovoltaic solar power generation facilities located on high-value farmland soils shall satisfy the approval criteria of OAR 660-033-0130(38)(b).

(b) For arable soils, meaning soils that are cultivated or suitable for cultivation, the governing body or its designate must find that:

(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; and

Megan Decker 12/15/10 5:03 PM

Comment: I have included this to be sure that, as we discussed in the committee, only commercial facilities for the purpose of generating power for public use would be affected. Net metering to offset on-site energy use continues to be allowed as before.

Megan Decker 12/14/10 2:52 PM

Deleted: , including but not limited to on-site and off-site facilities for temporary workforce housing for workers constructing a photovoltaic solar power generation facility

Megan Decker 12/15/10 5:05 PM

Comment: RNP is not certain whether this method of addressing cumulative effects is the best method, but is open to discussion. In any event, placing the concept here avoids needing to repeat it several times.

Megan Decker 12/14/10 2:52 PM

Deleted: Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request filed after a decision to approve a power generation facility. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval.

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(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; and

(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 unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval; and

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

(E) The long-term environmental, economic, social and energy consequences resulting from the photovoltaic solar power generation facility have been evaluated and significant adverse impacts will be mitigated; and

(F) The positive and negative cumulative effects of siting multiple photovoltaic solar power generation facilities in a single area of a county have been adequately considered and the presence or possibility of multiple facilities in close proximity will not lead to significant adverse effects on local farming and ranching operations.

(G) A photovoltaic solar power generation facility shall not preclude more than 100 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

(c) For nonarable soils, meaning soils that are not suitable for cultivation, the governing body or its designate must find that the requirements of OAR 660-033-0130(37)(b)(B), (D), and (H) are satisfied; and

Megan Decker 12/14/10 4:07 PM

Deleted: or any components thereof at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other agricultural lands of equal or lesser quality or lands that are not protected under statewide planning goal 3

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Megan Decker 12/15/10 6:58 AM

Comment: It is important to tie this provision to farming and ranching operations, not merely the subjective preferences of neighboring farmers and ranchers.

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Deleted: Expansion of an existing solar generation facility on the same tract or multiple projects pursued by the same developer(s) on lands with less than 1320-feet of separation shall be counted towards the 20 acre threshold. -

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(A) A photovoltaic solar power generation facility shall not preclude more than 100 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

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(B) As a safe harbor, nonarable soils shall include, but are not limited to, Classes VI, VII, and VIII soils according to the most recent publication of the Soil Conservation Service.

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Deleted: Expansion of an existing photovoltaic solar generation facility on the same tract or multiple projects pursued by the same developer(s) on lands with less than 1320-feet of separation shall be counted towards the 50 acre threshold.

(d) In the event that a photovoltaic solar power generation facility is proposed on a combination of arable and nonarable soils as described in OAR 660-033-0130(38)(b) and (c), the approval criteria of OAR 660-033-0130(38)(b) shall apply to the entire project.

(e) If any proposed photovoltaic solar power generation facility larger than 12 acres on high value farmland, or larger than 20 acres on any other lands, conflicts with an acknowledged Goal 5 resource that was inventoried in the county's planning documents before the date of the application and for which the county has not previously considered photovoltaic solar power generation as a conflicting use, then the county shall evaluate the long-term environmental, economic, social and energy consequences of the facility relative to the acknowledged Goal 5 resource and may adopt or not adopt project conditions consistent with its evaluation.

(f) On-site and off-site facilities for temporary workforce housing for workers constructing a photovoltaic solar power generation facility are permitted. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request filed after a decision to approve a power generation facility. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval.

Megan Decker 12/15/10 6:48 AM

Comment: Because temporary workforce housing is not a standard industry practice, this provision is not necessary. If it is retained, it should be moved to the end to avoid complicating the definition of solar facility.



December 17, 2010

Chair Christine Pellet
Chair Hanley Jenkins
DLCD Staff
Members of the Solar Farm Rules Advisory Committee
RE: Solar Rulemaking Efforts and the “12/20 rule”

Dear Chairs and Committee Members:

Thank you for your work regarding this rulemaking. This is a critical issue for renewable energy in Oregon that will impact the state’s ability to diversify agricultural operations and attract further investment in Oregon’s economy. The best renewable resources are often in rural areas and this industry provides critical investment across the entire state. Oregon has been a national leader by passing several important laws to encourage renewable energy development and the job creation, energy security, economic development and environmental benefits that come with it. The state’s land use laws should be aligned with those goals and this rulemaking is a good opportunity to do so. I have some general comments about the important role renewable energy plays in Oregon’s agricultural economy and a few related specifically to the most recently proposed language.

General Comments

As evidenced by the over 2,100 MW of renewable energy operating in Oregon, renewable energy development is compatible with a healthy agricultural economy. The two are NOT mutually exclusive. Mr. Steve Goffena is a farmer in Yamhill County who has leased his land for solar PV development. He submitted comments on this rulemaking process and I believe he explains it best when he says:

“Most recently I grew tall fescue grass seed on this 12 acre parcel and since the price for that crop has fallen by over 50% recently, solar is providing me a steady income in uncertain economic times. I know that many farmers are against using farmland for solar installations, and believe me, I did not enter into this decision lightly. However, there are several reasons why I think this is a good idea.

- 1) Solar energy allows me to harvest a new crop and provides an opportunity for me as a farmer to use lower quality soils in a way that will support my long term farming operations.
- 2) Solar energy development is compatible with my agricultural operations as well as those of neighboring farming families. The site itself will require minimal modifications and I can easily farm around the perimeter of the project.
- 3) The solar panels and other equipment can easily be removed after the project is complete and I can go right back to planting crops as I did before.”

Renewable energy and “clean tech” is one of the few bright spots for the national and statewide economies. Oregon is a leader in renewable energy and solar PV in particular. Solar World manufactures panels in Hillsboro and employs over 1,000 people (<http://sustainableindustries.com/print/8409>). PV Powered is a reputable inverter manufacturer based in Bend. In addition to these large companies there are many smaller businesses in Oregon

that supply parts and labor for the solar industry. Additionally, wind power has drawn many companies (enXco included) to Oregon and thousands of Oregonians are employed in that industry. Further advancing these accomplishments in renewable energy will take a rethinking of several land use policies that were developed prior to renewable energy projects and which currently create permitting uncertainty and restrictions that don't recognize the compatibility between this kind of development and Oregon's land use framework.

It should not be unnecessarily burdensome to site solar on marginally productive land that can't support a commercial agricultural enterprise. Some have argued in this rulemaking venue that such land could theoretically support agriculture if water was trucked in or other unlikely and expensive things came to be. Such exercises in theoretical possibilities prevent landowners, farmers and ranchers in Oregon from capitalizing on the realistic economic development opportunity that renewable energy such as solar provides.

Comments on Recent Draft

Proposed setback of 1320 feet. This distance is curiously included in the draft language although Chairman Hanley Jenkins has mentioned in previous committee meetings that this is not a topic for this committee to consider, rather that is a county issue. In fact, at the November 22, 2010 meeting that issue was not added to the list of ten items the committee agreed to discuss in this venue. I agree with Mr. Jenkins on this point and encourage this to be omitted from the proposed language.

Proposed elimination of 12 acre threshold. The most recent draft of the rules is more restrictive by eliminating the 12 acre limit on high value soils. This is simply a step away from facilitating renewable energy development and it was surprising to see that proposed.

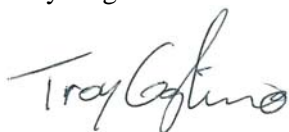
Proposed fifty acre maximum. If there is to be an acreage limit at all on siting solar facilities on non-high value soils I would support 100 acres instead of 50 because this fits well with existing law related to Oregon EFSC rules.

Conclusion

Oregon has done much to attract the growing renewable energy industry that creates jobs, diversifies farming and ranching operations, and increases our self-reliance on domestic energy resources. Solar power development and traditional agricultural operations are not mutually exclusive. Solar panels and their infrastructure are easily removed after their useful life and as Mr. Goffena states above, "the solar panels and other equipment can easily be removed after the project is complete and I can go right back to planting crops as I did before." Developers, counties and citizens have an important role to play in making sure projects are sited responsibly but land use laws should not make it more difficult to site a solar farm on 12 acres than it would be to build something much more destructive to agricultural land.

Thank you and please contact me with any questions.

Troy Gagliano



Project Developer

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| High Value Farmland Soils ORS 195.300(10) | Non-High Value Farmland Soils ORS 195._____(correct citation?) | Arable Lands – those lands as defined by ORS/OAR or NRCS standard (<i>whichever longest accepted or most peer-reviewed</i>) |
| No components of a photovoltaic solar power generation facility may be located on high-value farmland soils unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. | Components of a photovoltaic solar power generation facility may be located on less than 5/10/20 (?) acres of non high-value farmland soils without an exception pursuant to ORS 197.732 and OAR chapter 660, division 4 (<i>not sure I have correct citations</i>). | |
| Said exception must provide for enhanced public involvement e.g. broader than just adjacent landowners and shall include neighbors within 1 mile (or a limited yet appropriate sight distance). | No components of a photovoltaic solar power generation facility exceeding 20/50/100 (?) acres may be located on non-high-value farmland soils unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. | |
| | Subsequent proposals within one mile, no matter how small, shall be deemed to trigger an exceptions process pursuant to ORS 197.732 and OAR chapter 660 div. 4. Additionally, the coordinated cumulative effects analysis will be triggered. | |
| | Said exception must provide for enhanced public involvement e.g. broader than just adjacent landowners and shall include neighbors within 1 mile (or a limited yet appropriate sight distance). | |
| High Value Farmland Soils ORS 195.300(10) | Non-High Value Farmland Soils ORS 195._____(correct citation?) | Arable Lands – those lands as defined by ORS/OAR or NRCS standard (<i>whichever longest accepted or most peer-reviewed</i>) |
| A coordinated cumulative | A coordinated cumulative | A coordinated cumulative |

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| <p>effects analysis must be completed by each approving jurisdiction upon receipt of subsequent proposals. This analysis must look at a minimum total acreage potentially proposed, spatial distribution, soil types, vegetation control, chemical use, etc. The analysis will determine how many are too many per square mile.</p> | <p>effects analysis must be completed by each approving jurisdiction upon receipt of subsequent proposals. This analysis must look at a minimum total acreage potentially proposed, spatial distribution, soil types, vegetation control, chemical use, etc. The analysis will determine how many are too many per square mile.</p> | <p>effects analysis must be completed by each approving jurisdiction upon receipt of subsequent proposals. This analysis must look at a minimum total acreage potentially proposed, spatial distribution, soil types, vegetation control, chemical use, etc. The analysis will determine how many are too many per square mile.</p> |
| <p>Temporary housing facilities not included in initial approval may be considered through a minor amendment request subject to OAR 660-033-0130(5).</p> | <p>Temporary housing facilities not included in initial approval may be considered through a minor amendment request subject to OAR 660-033-0130(5).</p> | <p>Temporary housing facilities not included in initial approval may be considered through a minor amendment request subject to OAR 660-033-0130(5).</p> |
| <p>For a facility proposal on a combination of high value farmland soils and non-high-value farmland soils, the approval criteria for ‘high-value farmland soils’ shall apply to the entire project.</p> | | <p>For non-arable lands, meaning lands not suitable for cultivation, the governing body or its designate must find that the requirements of OAR 660-033-0130(37)(b)(B), (C), (D), (E) and (F) are satisfied and shall not preclude 100 or more acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to</p> |
| | | <p>For a facility proposal on a combination of arable and non-arable lands as described in OAR 660-033-0130(38)(b) and (c) the approval criteria for ‘arable lands’ shall apply to the entire project.</p> |
| <p>NOTE: A PV solar generation facility proposal that is equal to 100 acres or larger must</p> | <p>NOTE: The proposed PV solar activities will not create unnecessary negative impacts on agricultural operations adjacent</p> | <p>NOTE: Noxious weed introduction will not be tolerated and a certified weed control plan is mandatory</p> |

enter into a joint EFSC-DLCD overseen process regardless of soils or arability.

to project components.

along with long-term maintenance protocol.