



Oregon

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TO: Wind Energy Advisory Committee

FROM: Katherine Daniels, Farm/Forest Specialist

SUBJECT: Fleshing Out Possible Directions

The discussion at our first meeting fleshed out several questions or necessary components of an approach for reviewing proposed wind power generation facilities on agricultural land. They include:

- 1) **What process to use:** exceptions or conditional use or both?
- 2) **What agricultural lands to cover:** high value, cropland or all agricultural land?
- 3) **What threshold for review to use:** acreage of development/impacts, megawatt, other or none?
- 4) **What range of impacts to review:** location of turbines and roads, generation of “orphaned” or “shadow” lands, compaction of soil; remediation of site, etc.

This memo is intended to offer some further ideas for possible directions the committee could take to maximize the productivity of the next meeting on October 20.

- 1) Currently, an exception is required for wind power generation facilities that preclude the use of more than 12 acres of high-value farmland or more than 20 acres of non-high value farmland. According to Goal 2, an exception “does not establish a planning or zoning policy of general applicability.” It is meant to be the exception to the rule. One argument could be that to continue to require exceptions for wind projects (nearly all preclude more than 12/20 acres) is to say that they should continue to be the exception to the rule. However, in fact, they are becoming more and more common, are often compatible with agriculture and in many ways represent sound public policy, looking to the future. The supplemental means of income they provide farmers is another plus. These could be arguments to move away from the exceptions process and to just use a conditional use process that addresses issues of concern. These could involve issues to be addressed through coordination with affected state agencies. On the other hand, LCDC has more review authority over proposed exceptions than it does over conditional use permits. Also, the committee may feel that the exceptions process is an appropriate one for the largest of wind projects. Although those over 105 MW would still be reviewed by EFSC, an exception could still be required for them.

As to the question that was raised at our first meeting whether both the exceptions process and conditional use process can be used together in a meaningful way, the answer

is yes. The Statute requires that commercial utility facilities for generating power be reviewed as a conditional use against the standards of ORS 215.296 and counties may add other standards of their own, if they wish. The requirement for a conditional use review doesn't go away even where an exception is required, though the two processes could be combined. This makes sense from the perspective that while most exceptions involve a change in zoning, introducing a new set of applicable regulations, "reasons" exceptions (which wind projects would fall under), don't necessarily involve rezoning. Therefore, any additional standards the County wishes to adopt to apply to wind farms as part of its CUP process, it may. They could be general regulations or be part of an overlay or floating zone.

- 2) There was consensus at the first meeting that cropland is of greater concern than rangeland, both because of soil compaction and because of the creation of "orphaned" and "shadow" lands that are difficult to access by large farm machinery. The committee didn't discuss impacts on high-value farmlands, such as orchards and vineyards. The committee could take a few different approaches here, including: 1) reviewing impacts on all agricultural land, 2) reviewing impacts on cropland and possibly high-value land only, or 3) using a two-tier approach for reviewing impacts on cropland/high-value and rangeland separately.
- 3) Currently, the Goal 3 Rule uses an acreage threshold of 12/20 acres of lands that would be "precluded" from farm use. The committee will want to decide whether "preclude" refers to areas of direct impact only, or also areas of indirect impact. The Rattlesnake facility, with a total acreage of 5,900 acres, has a stated impact area of 123 acres. While it is not clear how "impact" is defined here, it is likely to be areas of direct impact, that is, the turbines, pads and roads. Trying to define areas or acreages of indirect impact for wind farms such as orphaned or shadow lands could be difficult, but possibly meaningful. Another possible threshold for review is megawatts, which EFSC uses. It is a good marker for scale, but not for particulars, such as location of the facility components with respect to agricultural land. Another option is that there be no size threshold and any review standards we recommend would apply to all commercial (as defined by each county) wind projects on farmland.¹
- 4) The range of impacts that could be reviewed includes: 1) location of system components to minimize use of and impacts to farmland, 2) stockpiling and reuse of topsoil, 3) safeguards to limit soil compaction and ensure de-compaction after construction and possibly others. Karen Chase of ODE communicated to DLCD on October 1 that EFSC does not have any more specific soil-related review standards beyond those outlined in OAR 345-022-0022 that we briefly discussed at our first meeting. That is to say that there are no standards that relate to soil compaction or compression. She stated that DOGAMI also has soils rules but that she believes they do not address these issues either. Neither do ODE or DOGAMI review standards address the issue of "orphaned" lands.

¹ Wind turbines used for generating power for on-farm use with minor net metering to the grid could be viewed by counties as accessory farm uses and not subject to state review standards.