



# Oregon

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**To:** Energy Facility Siting Council

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

**Date:** November 27, 2024

**Subject:** Agenda Item C (Information Item): [Land Use Standard](#) (OAR 345-022-0030) – Goal 3 Exceptions (Part I) for the December 13, 2024 EFSC Meeting

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## OVERVIEW

This staff report and agenda item is the first in a 3-part series intended to establish clear guidance for applicants/certificate holders and Council on the evolving land use evaluation for state-jurisdictional solar, photovoltaic energy generation facilities.

Each proposed solar facility in Exclusive Farm Use (EFU) zoned land is unique, with site specific environmental conditions and historic information regarding agricultural use, or the lack thereof. ORS 469.504(2)(c) establishes the requirements that apply to the Energy Facility Siting Council's (EFSC or Council) review of a Goal 3 exception request. ORS 469.504(2)(c) includes three substantive requirements: evaluation of reasons that justify an exception; evaluation of the environmental, economic, social and energy (ESEE) consequences from use of the site by the proposed facility; and an evaluation of how the proposed facility would be compatible with adjustment lands uses. This staff report presents Council's past decisions and analysis on one part of the Goal 3 exception – evaluation of reasons that justify an exception. The next two staff reports, to be presented during 2025 Council meetings, will present Council's past decision and analysis on the additional substantive requirements (ESEE and land use compatibility); and will provide guidance and recommendations for Council consideration to support consistency in decision making, and to ensure that analysis and information are appropriately evaluated within the applicable legal framework.

## BACKGROUND

The foundation of land use planning in Oregon is a set of 19 Statewide Land Use Planning Goals adopted by the Land Conservation and Development Commission (LCDC). The goals "express the state's policies on land use and related topics, like citizen involvement, housing, and natural resources."<sup>1</sup> In order to issue a site certificate, the Energy Facility Siting Council (EFSC or Council) must determine that a preponderance of evidence on the record supports a conclusion

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<sup>1</sup> <https://www.oregon.gov/lcd/op/pages/goals.aspx>

that the facility complies with these statewide planning goals<sup>2</sup> or that an exception to a goal is justified. The Council implements these goals, where applicable, through its Land Use standard, Oregon Administrative Rule (OAR) 345-022-0030.

The vast majority of EFSC-jurisdictional solar photovoltaic energy generation facilities are proposed in EFU zoned lands. For Council to approve an energy facility in an EFU zone, it must find the facility complies with Goal 3, to preserve and maintain Agricultural Lands, or that substantial evidence in the record supports granting an exception to Goal 3.<sup>3</sup>

According to the 2022 Census of Agriculture issued by the United States Department of Agriculture, between 2017 and 2022, the number of farms in Oregon declined by 6% and the acreage of land in farms in Oregon declined by 4%.<sup>4</sup> During that same time period, in Morrow County the number of farms declined by 9% and the amount of land in farms declined by 7%, whereas in Umatilla County, the number of farms declined by 6% but the amount of land in farms increased by 10%.<sup>5</sup> (In the last few years, a significant number of energy facilities that Council has reviewed have been located in these two counties). Given the generally declining amount of farmland in Oregon, Council's consideration of requests for exceptions to Goal 3 is even more significant than it has been in the past.

The criteria for Council to take an exception to a goal are set forth in ORS 469.504(2), including:

*(c) The following standards are met:*

- A. Reasons justify why the state policy embodied in the applicable goal should not apply;*
- B. The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the council applicable to the siting of the proposed facility; and*
- C. The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.*

The focus of this staff report is on (c)(A) – reasons that, to date, Council has found justify why Goal 3 should not apply.<sup>6</sup>

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<sup>2</sup> ORS 469.503(4)

<sup>3</sup> The Supreme Court of Oregon reviews final orders of the Council “for errors of law, abuse of agency discretion, and lack of substantial evidence in the record to support the challenged findings of fact.” *Matter of Site Certificate for Boardman to Hemingway* 370, Or. 792, 800 (2023), quoting *Save our Rural Oregon v. Energy Facility Siting Council*, 339 Or. 353, 356 (2005) and citing ORS 469.403(6) and ORS 183.482(7).

<sup>4</sup> [https://www.nass.usda.gov/Publications/AgCensus/2022/Online\\_Resources/County\\_Profiles/Oregon/cp99041.pdf](https://www.nass.usda.gov/Publications/AgCensus/2022/Online_Resources/County_Profiles/Oregon/cp99041.pdf)

<sup>5</sup> [https://www.nass.usda.gov/Publications/AgCensus/2022/Online\\_Resources/County\\_Profiles/Oregon/cp41049.pdf](https://www.nass.usda.gov/Publications/AgCensus/2022/Online_Resources/County_Profiles/Oregon/cp41049.pdf) and

[https://www.nass.usda.gov/Publications/AgCensus/2022/Online\\_Resources/County\\_Profiles/Oregon/cp41059.pdf](https://www.nass.usda.gov/Publications/AgCensus/2022/Online_Resources/County_Profiles/Oregon/cp41059.pdf)

<sup>6</sup> Staff intends to prepare a separate memorandum evaluating ORS 469.504(2)(c) in its entirety, including subsections (B) and (C), as well as how Council's goal exceptions analysis fits within and relates to its overall analysis of the land use standard and compliance with statewide land use planning goals.

## REASONS DETERMINED JUSTIFIABLE BY COUNCIL

Council has recently relied on some combination of the following arguments to justify reasons exception to Statewide Planning Goal 3, *Agricultural Lands*: 1) no or minimal impacts to agriculture; 2) local economic benefits, in particular benefits to the local agricultural economy; 3) locational dependency; and 4) limited impacts to the environment and/or to other resources protected by Council standards.

### 1. No or Minimal Impacts to Agriculture

Council has agreed that a justifiable reason for granting an exception to Goal 3 includes use of a site that would result in minimal impacts to agriculture. Applicants and certificate holders have evaluated this reason based on direct and indirect impacts: a) at the site of the non-farm use (i.e., land to be used or occupied by the proposed solar facility as well as the remaining farm operation located on the underlying tract on which the non-farm use (proposed facility site) is located; b) on the surrounding agricultural area; and c) based on water use/water right history.<sup>7</sup>

#### a) Solar Facility Site Impact on Agriculture and the Remaining Farm Operation

This evaluation has typically included the following:

- Description of entire land holdings
- Description, and percentage, of the farm operation by use, acreage and soil type(s).<sup>8</sup>
- Description, and percentage, of the farm operation by use, acreage and soil type(s) that would be removed and/or have the potential to be indirectly impacted<sup>9</sup>

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<sup>7</sup> In the West End Solar Project Final Order on Application for Site Certificate, Council found “minimal direct impacts to agriculture within the subject tracts” and “minimal indirect impacts to agriculture within the surrounding area” as separate reasons justifying an exception to Goal 3. See analysis on pages 81-95 of the Final Order. <https://www.oregon.gov/energy/facilities-safety/facilities/Facilities%20library/2023-03-24-WES-APP-Final-Order-on-ASC.pdf>

<sup>8</sup> If there are lands within the established Land Use analysis area that are currently being farmed and of similar soil classification to a proposed solar site, Staff may ask the applicant/certificate holder to analyze the differences in the site conditions that allow viable farming for seemingly the same conditions as the proposed site. Such an analysis helps to build the record in support of justifying why the proposed site may be converted to a non-farm use.

<sup>9</sup> In the Wheatridge Wind Energy Facility Amendment 4 Final Order, Council rejected an argument that because the farmland acreage to be impacted by proposed RFA4 facility components was a small percent (0.07) of total farm use in Morrow County, which justified a Goal 3 exception based on a minimal impacts to agriculture reason. Council rejected the argument because it was solely based on the amount of agricultural land being taken out of production, and the proposed RFA4 components would take approximately 813 acres of dryland winter wheat out of production, significantly more than the goal exception thresholds. Council noted that it would not consider an argument for an exception based on acreage, given that the goal exception requirement threshold is based on acreage (that is much lower than that which would be taken out of production). In comparison, in the Final Orders on Montague Wind Power Facility Amendment 4 and Bakeoven Solar Project the Council relied on specific information related to minimal impacts to the remaining farming operation within the tract as part of their justification for granting a Goal 3 exception.

- Number of existing people/jobs operating on the land proposed to be converted to non-farm use; evaluation of job loss, including number of jobs lost and the income lost
- Estimated annual agricultural output (market value) generated by the land to be converted to non-farm use and that would be lost as a result of the conversion.
- Evaluation of potential direct/indirect impacts to farming practices on the total farming operation.

b) Impacts on Surrounding Agricultural Lands

Adverse changes / a reduction in farm practices on farmland to be converted for use as an energy facility could lead to reductions in the supply of operating, productive agricultural land in the surrounding area over time. This evaluation is typically informed by the following:

- The number of people indirectly employed in ancillary businesses and the amount of their income related to lands proposed to be converted to non-farm use.
- Quantities of inputs and types of services serving the land proposed to be converted; description of suppliers or service providers (e.g., tractor repair companies).
- Impact on suppliers and service providers if inputs are no longer purchased and services no longer needed after the land is converted.
- Impact on operability or pricing of suppliers and service providers.
- Availability of inputs and services at roughly comparable prices to remaining farm operations on agricultural lands.

c) Water Availability

Water rights on agricultural lands for a proposed solar facility site and for underlying tracts inform the evaluation of soil classification, soil suitability for agricultural use, and irrigation history. Agricultural lands with historic or current water rights have a higher soil classification and are therefore potentially suitable for a higher value per acre for agricultural use. Conversely, agricultural lands without water rights will have a lower soil classification and have a lower value per acre for agricultural use.

This evaluation has typically included the following:

- Water right history including actual water use of: 1) the proposed solar facility site; and 2) other lands within the same tract as the proposed solar facility site.
- Water rights appurtenant to a proposed site and whether the use of the water right is limited due to restricted water allocations in the area.
- Status of any pending or planned water right transfers by the underlying landowners of the proposed site.
- Identification of any water restrictions, designations or moratoriums issued by Oregon Department of Water Resources.

- Evidence from underlying landowners on the viability of the lands for non-irrigated agricultural use.

## 2. Local Economic Benefits / Benefits to the Local Agricultural Economy

Local economic benefits can be realized from a proposed solar facility. Local economic benefits typically include lease payments to underlying landowners, direct economic tax benefits to the local government in which the facility is proposed to be located, as well as direct and indirect economic benefits to the local economy in a variety of ways.

Recently, Council has taken a harder look at economic benefits under the “reasons” exception and required applicants / certificate holders to demonstrate not just benefits to the local economy in general but to demonstrate how the local agricultural economy will benefit as a result of conversion of the use for agriculture to an energy facility over the life of the proposed facility.<sup>10</sup>

To inform this reason, recent applicants have provided an analysis of the direct and indirect economic impact of removing the land to be occupied by the proposed solar facility on the local agricultural economy.

These analyses have included:

- the current annual agricultural productivity value of the land to be removed from resource production,
- its value relative to the local agricultural economy,
- economic impacts to surrounding farms and to the local agriculture sector and sectors that are related to/support agriculture.<sup>11</sup>

The purpose and goal of the analysis has been to quantify and offset the agricultural, economic impacts of a proposed facility.

### a) Landowners

Council has accepted landowner lease payments, as part of the evidence in support of the reason, when the underlying landowner has affirmed that lease payment would be used to support agricultural operations.

During review of several facilities the Council has considered written and oral testimony from the participating landowner(s) stating that leasing the land for solar development would be a

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<sup>10</sup> See, e.g., Madras Solar Energy Facility, Final Order on Application for Site Certificate, p. 104 (<https://www.oregon.gov/energy/facilities-safety/facilities/Facilities%20library/2021-08-02-MSEF-Final-Order-SIGNED-Attachments.pdf>); Sunstone Solar Project, Final Order on Application for Site Certificate, pp. 121-124 (<https://www.oregon.gov/energy/facilities-safety/facilities/Facilities%20library/2024-11-18-SSPAPP-Final-Order.pdf>)

<sup>11</sup> See, e.g., analysis provided in the Sunstone Solar Complete Application for Site Certificate, Exhibit K, Attachment K-2, Economic and Agricultural Impact Analysis and attachment K-3 Agricultural Mitigation Plan (<https://www.oregon.gov/energy/facilities-safety/facilities/Facility%20Exhibits/SSP/2024-05-16-SSPAPPDoc25-11-ASC-Exhibit-K-Land-Use.pdf>).

net economic benefit to the landowner(s).<sup>12</sup> The Council has in the past evaluated the landowner information as part of a proposed larger reason (containing either estimated job and tax revenue increases or a discussion of minimal impacts to agriculture) and concluded that the reason, in part, justified a goal exception. However, in the Wheatridge Wind Energy Facility Amendment 4 Final Order and the West End Solar Project Final Order the Council determined that lease payments to the landowners alone do not support a Goal 3 exception.<sup>13</sup> The fact that an agricultural landowner will profit from lease payments, or even may make more money leasing their property for a solar facility than it would farming does not in and of itself justify an exception to the State's goal to preserve farmland.

b) Local Government

If tax incentives are part of the argument, applicants/certificate holders have provided specific information about the program, evidence or an agreement, the dollar amount to be received by the local government and any information regarding how the local government will use the tax revenue, including whether the tax revenue will be earmarked for agricultural projects/uses.

c) Local Economy

If local economic benefits, generally, are part of the argument, similar to a. and b. above, specificity is needed, for example, through identifying the wage ranges of facility related jobs/positions and including a description and estimate of how those jobs relate directly and indirectly to the local economy. Applicants/certificate holders have explained how the proposed facility or amendment would benefit the local agricultural economy specifically and, have committed to establishing a fund to mitigate for estimated impacts to the local agricultural economy including the proposed dollar amount and whether and to what extent the fund will provide a benefit above and beyond the anticipated impacts.

3. Locational Dependency

Locational dependency refers to proximity and interrelatedness of operations of a proposed solar facility and existing energy infrastructure or proximity to / ability to take advantage of uncommon geographical attributes. Certain locational dependency characteristics have been considered justified by Council in several Goal 3 exception justifications.

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<sup>12</sup> See, e.g., Final Order on the ASC for the Nolin Hills Wind Power Project (July 19, 2023), pp. 128-129, discussing statements from the landowner that lease payments would allow his family to intensify agricultural practices on land surrounding the project boundary, including improvement of housing for sheep herders and farm employees. <https://www.oregon.gov/energy/facilities-safety/facilities/Facilities%20library/2023-08-30-NHW-APP-Final-Order.pdf>

<sup>13</sup> Wheatridge Wind Energy Facility – Final Order on Request for Amendment 4 (November 22, 2019), p. 64 - <https://www.oregon.gov/energy/facilities-safety/facilities/Facilities%20library/2019-11-22-WRWAMD4-Final-Order-on-Request-for-Amendment-4.pdf>; West End Solar Project – Final Order; West End Solar Project Final Order on Application for Site Certificate (March 24, 2023), pp. 94-95 <https://www.oregon.gov/energy/facilities-safety/facilities/Facilities%20library/2023-03-24-WES-APP-Final-Order-on-ASC.pdf> The fact that an agricultural landowner will profit from lease payments, or even may make more money leasing their property for a solar facility than it would farming does not in and of itself justify an exception to the State's goal to preserve farmland.

a) Proximity to the Regional Transmission Grid

Applicants/certificate holders have explained and demonstrated graphically the proposed facility interconnection options and needs within the region; and, unique characteristics of the proposed interconnection location and proposed facility site.

b) Proximity to Major Transportation Corridors/Infrastructure

Applicants/certificate holders have explained and demonstrated graphically the regional transportation access route options to the proposed facility site and unique characteristics of the proposed transportation access routes and proposed facility site. The analysis typically includes whether a proposed facility site would eliminate or minimize the need to construct new external access roads; and whether the proposed facility site and access to existing transportation routes have sufficient carrying capacity for the proposed facility traffic impacts.

c) Proximity to Existing Energy Infrastructure

Applicants/certificate holders have provided commitments to have shared use agreements or otherwise agreed upon access to existing, proximate infrastructure needed for a proposed facility, but that would be shared with an existing facility. Applicants/certificate holders have provided descriptions/maps that demonstrate the unique characteristics and operational/resource benefits of siting the proposed facility adjacent to existing energy infrastructure.

4. Minimal Impacts to Other Resources Protected by Council Standards

Applicants/certificate holders rely upon the evaluation of all Council standards and other requirements evaluated through the EFSC process to justify whether the proposed facility site would have minimal or no impacts to the other resources protected by all other standards/requirements (e.g., cultural resources, wetlands and other waters of the state, threatened and endangered species).

**REASONS DENIED BY COUNCIL**

Council has denied the following arguments as reasons to justify an exception to Statewide Planning Goal 3, *Agricultural Lands*:

1. Temporary Land Use Conversion

Several applicants have presented, as a reason, that an exception is justified because the conversion of land from agricultural use to use by an energy facility is not permanent. The argument is that the land would be returned to agricultural use following retirement and restoration of the facility.

The Council has consistently rejected this reason finding that while removal of land from agriculture may not be “permanent,” the solar facilities would remove the site from agriculture for such a long-time scale (30 + years), that it was not a sufficient reason to justify a Goal 3 exception.

## 2. Consistency with State and Local Policies

Several applicants have presented, as a reason, that an exception is justified because the facility supports Goal 13, the policy to identify, protect, and develop potential renewable resources within counties; and Oregon House Bill 2021 (large investor-owned utilities and electricity service suppliers must reduce greenhouse gas emissions by 100 percent by 2040). The Council has consistently rejected these arguments finding that neither Goal 13 nor HB 2021 requires new renewable energy facilities or directs such facilities to be located on EFU zoned land.

Several applicants have also presented that a reason justifying an exception is because of Oregon’s Renewable Portfolio Standard (RPS) requirements of 50 percent renewable energy for the state by 2040. The Council has consistently rejected this reason finding that there is no requirement in the state RPS requirements that renewable energy be procured from Oregon-based resources, nor directs facility development on agricultural lands. Council has also determined that the reason was not supported by evidence because applicants have not provided a power purchase agreement or other documentation that would demonstrate that the proposed facility would provide power to an Oregon utility in support of its RPS requirements.

## 3. Certain Site Characteristics

Several applicants/certificate holders have presented, as a reason, that an exception is justified due to unique site characteristics, such as:

- Availability of solar radiation
- Flat topography
- Enough space to site a large solar facility
- Minimal trees to clear/minimal site shading

The Council has consistently rejected this reason finding that because these site characteristics are not unique and are available at other locations in the region, their presence did not justify a Goal 3 exception.