



# Oregon

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January 9, 2020

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director  
Jon Jinings, Community Services Specialist

SUBJECT: **Agenda Item 9, January 23-24, 2020, LCDC Meeting**



## **GREEN ENERGY CORRIDOR RULEMAKING**

### **I. AGENDA ITEM SUMMARY**

This agenda item is for the Land Conservation and Development Commission (LCDC or commission) to consider adopting revisions to Oregon Administrative Rule (OAR) Chapter 660, Division 33. The proposed revisions enable Morrow and Umatilla counties to designate corridors for siting electrical transmission lines on lands designated for exclusive farm use. The proposed revisions do not have statewide application and do not, in of themselves, designate the location of any corridor.

The purpose of this rulemaking is to carry out a recommendation of the Advisory Committee on Energy and Agriculture in the Umatilla Basin convened by the Governor's Office to consider the impacts of transmission development on highly valuable irrigated farmland in this region. Interest in electrical transmission development has been spurred by existing and potential renewable energy projects. In simple terms, the opportunity offered by the proposed revisions seek to provide better farmland protection while offering greater certainty for energy transmission development.

The Department of Land Conservation and Development (department) recommends the commission adopt the proposed revisions included in Attachment A.

For further information about this report, please contact Jon Jinings, Community Services Specialist, at 541-325-6928 or [jon.jinings@state.or.us](mailto:jon.jinings@state.or.us).

### **II. BACKGROUND**

The commission initiated this rulemaking at its regular July 2019 meeting in Condon, Oregon. A rules advisory committee (RAC) was also established at this time to assist the department in drafting a balanced set of revisions. The proposed revisions to OAR Chapter 660, Division 33 are included as Attachment A to this report. A list of RAC members is included as Attachment B to this report.

As discussed at length during the commission's July meeting, Governor Brown established an

advisory committee on Energy and Agriculture in the Umatilla Basin to find ways to resolve concerns regarding energy transmission development and associated impacts to agriculture.

The committee issued a final report on February 24, 2017 that included identifying a transmission corridor to avoid further bisecting irrigated agricultural lands with overhead electrical transmission facilities as a primary recommendation. Based on this recommendation, the Governor's Office requested the department initiate rulemaking to establishing local authority within the Umatilla Basin's two counties, Morrow and Umatilla, to engage in such a planning exercise.

### **III. RULEMAKING PROCESS**

#### **A. RULES ADVISORY COMMITTEE (RAC) MEETINGS**

The department originally intended RAC meetings to occur in August and September of 2019, positioning proposed revisions for a November 2019 adoption by the commission. Due to staffing challenges brought on by unforeseen litigation, the department was obligated to hold off on scheduling meetings for a period of two months. Ultimately, the department convened two RAC meetings. Both meetings were located at the Port of Morrow Office in Boardman, Oregon and occurred on October 29, 2019 and December 5, 2019, respectively.

Both RAC meetings were productive and well attended. Members appeared in person and by call or video conference. A solid set of stakeholders were represented that included local land owners, local and state government, energy developers and load serving entities as well as nongovernmental organizations and the United States Department of the Navy. While there was not absolute agreement on every single term in the draft rule, the department believes a general consensus was achieved.

#### **B. PROPOSED REVISIONS**

The proposed revisions have been drafted to be included in Division 33 as OAR 660-033-0055.

##### **1. OAR 660-033-0055(1): Purpose Statement.**

This language lays out a purpose of better protecting three categories of lands protected under statewide planning goal 3: "high-value farmland," "irrigated agricultural lands" and "productive agricultural lands." The terms "high-value farmland" and "irrigated" have seen longstanding use and are defined at OAR 660-033-0020. The term "productive agricultural land" (Page 1, Line 5) is new and was recommended by the Oregon Farm Bureau. Use of this new term did not receive objection. A proposed definition of "productive agricultural land" is included at OAR 660-033-0055(2)(c) and is discussed in more detail below.

Also of note is use of the term "corridors" as opposed to "corridor" (page 1, line 6). The Final Report of the Governor's Committee on Agriculture and Energy in the Umatilla Basin, the Governor's letter to the director and the rest of the conversation leading up to this rulemaking used the singular tense, as opposed to indicating the possibility for multiple corridors. Local stakeholders explained that since the advisory committee had issued its Final Report in 2017, circumstances had changed regarding the number and locations of possible renewable energy projects and substation development. This change in circumstances, they argued, made limiting

the project to a single corridor ineffective. Some individuals raised concerns about allowing the potential for multiple corridors.

Applicability of this rule is limited to two particular jurisdictions. The last sentence (Page 1, Lines 6-8) of this subsection includes language describing the two counties of the Umatilla Basin. This approach was advised by the Department of Justice as opposed to calling out Morrow and Umatilla Counties. Use of this description was not opposed by the RAC.

## **2. OAR 660-033-0055(2): Definitions.**

During the first RAC meeting, it became clear that developing a definition for “electrical transmission” would be helpful. RAC members representing Idaho Power and the Oregon Public Utility Commission volunteered to provide some examples and offer comments. The proposed definition of “electrical transmission (page 1, lines 10-13) has been substantially borrowed from the North American Electric Reliability Corporation (NERC). The definition of “electrical transmission corridor” is staff’s attempt to more thoroughly describe the emphasis of this rulemaking. The RAC accepted both definitions.

The definition of “productive agricultural land” is a modified version of language presented by the Oregon Farm Bureau at the second RAC meeting. As written, a county is not required to identify “productive agricultural land,” but would have the option of doing so. This definition was only recently shared with RAC members. As of January 8, 2020, the department has not received any comments.

## **3. OAR 660-033-0055(3): Comprehensive Plan Provisions.**

This section makes up significant portion of local project requirements. After considering alternatives, a county would be obligated to adopt a map showing the location of a corridor or corridors and adopt findings that show the county considered a variety of agricultural, natural resource and developer needs. Coordination with several state agencies and the United States Department of Defense is also required.

The RAC was generally supportive of the terms of the terms outlined here. However, RAC members debated and registered concerns regarding use of the term “reasonably avoid” (page 1, lines 30, 32 and 34). Some RAC members felt that use of the word “reasonably” could result in not enough attention being devoted to avoiding the identified areas. Others felt it could be too constraining.

A county would also adopt programmatic findings to the administrative rules ordinarily applying to electrical transmission development projects (page 2, lines 15-17). The county would then apply these findings to projects proposed within a designated electrical transmission corridor rather than requiring an applicant to develop individual project specific findings. The RAC accepted this provision.

At the second RAC meeting, the Oregon Farm Bureau suggested that programmatic findings to the farm impacts test at OAR 660-033-0130(5) also be adopted for uses related (ie. transmission towers, etc...) that might be sited in an electrical transmission corridor. The RAC accepted the Farm Bureau’s suggestion and it is included in the current draft (page 1, lines 18-22).

#### 4. OAR 660-033-0055(4) Implementing Ordinances

In addition to comprehensive plan provisions, it will be necessary for a county to adopt implementing ordinances. These ordinances will be applied through the county zoning code and will promote efficient processing of applications (page 2, lines 25-27), proper consideration of wildlife resources (page 2, lines 28-31) and early notice to interested agencies (page 2, lines 32-34).

The provision for early notice to interested agencies is unique. As written, it would apply to all proposals for electrical transmission development either inside of outside of a designated electrical transmission corridor. The RAC recognized the value of bringing certain agencies in as early as possible. Applying this requirement only to projects within a designated electrical transmission corridor could possibly be viewed as a deterrent, which could prove counterproductive. Applying this requirement to all electrical transmission development would level the playing field in this regard. There was no opposition from RAC members.

#### C. REGIONAL HEARING

A Regional Hearing must be held because the proposed revisions apply to a distinct geographic area. The Regional Hearing is scheduled for Thursday, January 16, 2020 beginning at 3:00 PM and running until 5:00 PM. The Regional Hearing will occur in the Port of Morrow Sand Hollow Conference Room located at 2 Marine Drive, Boardman Oregon. Department staff will serve as a hearings officer and will received testimony.

Results of the Regional Hearing will be available prior to the full commission hearing schedule for January 24, 2020.

#### IV. RECOMMENDED ACTION/CONCLUSION

In conclusion, the RAC process has adequately served its purpose. The department recommends the commission adopt the proposed revisions to OAR Chapter 660, Division 33 presented as Attachment A.

***Recommended motion:*** I move the commission adopt amendments to OAR Chapter 660, Division 33 as recommended by the department.

***Optional approval motion:*** I move the commission adopt amendments to OAR Chapter 660, Division 33 as recommended by the department with the following changes: [*changes*].

#### V. ATTACHMENTS

A. DRAFT OAR 660-033-0055

B. LIST OF RAC MEMBERS