



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: March 14, 2018

Department: Public Works Agenda Planning Date: March 8, 2018 Time required: 60 min

Audio/Visual aids

Contact: Joe Fennimore Phone: 503-566-4177

Department Head Signature:

TITLE Public Hearing for Legislative Amendment (LA) 17-002/Rural Zone Code Amendments Regarding Photovoltaic Solar Arrays.

Issue, Description & Background Under Oregon state law and administrative rules, the county can choose whether or not to allow photovoltaic solar arrays to be placed in farm zones. If a county chooses to allow these uses, Oregon Revised Statutes require them to be subject to obtaining a conditional use permit and Oregon Administrative Rules contain minimum standards that must be satisfied. Counties can adopt more restrictive standards and criteria. In 2015, Marion County began receiving conditional use applications to site photovoltaic solar power facilities in farm zones and as of this date has approved 17 sites covering a total of 205 acres. All but one of these approved sites is on land that is composed primarily of high-value farm soils, and many of those approved sites consist of Class I and II soils. A number of individuals and organizations have contacted the county with concerns about allowing these types of facilities on properties that are actively being farmed, particularly those farms with higher quality soils. Their primary concern is that these facilities are having an adverse impact on agriculture in Marion County by further reducing the limited supply of highly productive farm land. On January 31, 2018, the board of commissioners adopted Resolution #18R-1 initiating revisions to the Marion County Code Title 17 (Rural Zone Code) and scheduled a public hearing for March 14, 2018. The attachments contain a memorandum and the amendments proposed by staff.

Financial Impacts: None.

Impacts to Department & External Agencies None.

Options for Consideration: 1. Continue the public hearing. 2. Close the public hearing and leave the record open. 3. Close the public hearing and approve, deny, or modify the proposed amendments.

Recommendation: Staff recommends the board of commissioners adopt the amendments as proposed.

List of attachments: Memorandum form staff Proposed amendments



MARION COUNTY BOARD OF COMMISSIONERS

# Board Session Agenda Review Form

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Presenter:

Joe Fennimore

*Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)*

Copies to:

Joe Fennimore - gfennimore@co.marion.or.us



# ***Marion County*** **OREGON**

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## **MEMORANDUM**

**TO:** Marion County Board of Commissioners

**FROM:** Marion County Planning Division/Fennimore

**SUBJECT:** Photovoltaic Solar Arrays in Farm Zones

**DATE:** March 2, 2018

### **ISSUE**

Since 2015, Marion County has approved numerous applications to establish photovoltaic solar power generation facilities in farm zones. While these facilities are allowed as a conditional use in these zones, there are concerns that the establishment of these facilities is taking valuable land out of production for farming.

On December 27, 2017, the Marion County Board of Commissioners adopted a resolution initiating amendments to the Marion County Rural Zone Code to review the standards for the establishment of photovoltaic solar arrays (commonly referred to as “solar farms”) on high-value farmland soils to better ensure that photovoltaic solar power generation facilities are not established on land that is being farmed.

The board’s initial resolution directed the Marion County Planning Commission to make a recommendation to the board on proposed amendments without holding a hearing. It was later determined that the planning commission must hold a public hearing before it can make a recommendation to the board. Due to the county’s desire to consider potential amendments in a timely manner, the board adopted a new resolution on January 31, 2018, which did not request the planning commission to make a recommendation and instead scheduled a public hearing before the board for March 14, 2018.

### **BACKGROUND**

Under Oregon state law and administrative rules, the county can choose whether or not to allow photovoltaic solar arrays to be placed in farm zones. If a county chooses to allow these uses, Oregon Revised Statutes require them to be subject to obtaining a conditional use permit and Oregon Administrative Rules contain minimum standards that must be satisfied. Counties can adopt more restrictive standards and criteria.

On June 26, 2011, the County amended the code and adopted standards that required a goal exception if more than 12 acres were precluded from use as an agricultural enterprise on high-value

To: Marion County Board of Commissioners  
From: Marion County Planning Division/Fennimore  
RE: Photovoltaic Solar Arrays in Farm Zones  
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farmland, and more than 20 acres were precluded from farm use on non-high value farm land unless a goal exception was granted. On February 23, 2013, the current standards in MCC 17.120.110, specific to photovoltaic solar arrays, were adopted and these standards are identical to the minimum required by state statute and rule.

In 2015, Marion County began receiving conditional use applications to site photoelectric solar power facilities in farm zones. As of March 1, 2018, Marion County has approved 17 sites covering a total of 205 acres. All but one of these approved sites is on land that is composed primarily of high-value farm soils, and many of those approved sites consist of Class I and II soils. There are provisions in the current code that require the facilities to be placed on the lesser value soils of a parcel unless that placement will disrupt the existing farm operation.

Individuals and organizations have contacted the county with concerns about allowing these types of facilities on land that is actively being farmed, particularly farms with higher quality soils, which comprise most of the farm soils in Marion County. The concern that was raised is that these facilities are having an adverse impact on agriculture in Marion County by further reducing the limited supply of highly productive farm land.

Staff discussed the issue with the board at a public meeting on December 6, 2017, and directed the Planning Director to forward all new conditional applications for solar arrays directly to the hearings officer for a public hearing. This allows neighboring property owners to participate in the process before an initial decision is made and provides a thorough legal and technical review of all the criteria.

The board requested staff prepare draft code amendments for it to consider that would create standards for the establishment of photovoltaic solar power generation facilities on farm land. The revised standards are intended to ensure the facilities are being placed on land that is not being farmed due to the feasibility of the property to be farmed economically and physical constraints on the land, such as steep slopes, rocky or wet soil, etc.

### **RECOMMENDATION**

Staff recommends that the Marion County Board of Commissioners approve adoption of the amendments as provided in the attached document.

Attachment:  
Proposed Amendments

# PROPOSED AMENDMENTS

## 3/2/2018

### ADDITIONS IN BOLD AND UNDERLINED

#### Amending Chapter 17.120 of the Marion County Code (Rural Zone Code)

#### Chapter 17.120 SPECIFIC CONDITIONAL USES

#### **17.120.110 Photovoltaic solar power generating facilities.**

Photovoltaic solar power generating facilities shall be subject to the following criteria and definitions:

##### A. Definitions.

1. "Arable land" means land in a tract that is predominately cultivated or, if not currently cultivated, predominantly comprised of arable soils.
2. "Arable soils" means soils that are suitable for cultivation as determined by the governing body or its designate based on substantial evidence in the record of a local land use application, but "arable soils" does not include high-value farmland soils described in ORS [195.300](#)(10) unless otherwise stated.
3. "Nonarable land" means land in a tract that is predominately not cultivated and predominately composed of nonarable soils.
4. "Nonarable soils" means soils that are not suitable for cultivation. Soils with an NRCS agricultural capability classes V through VIII and no history of irrigation shall be considered nonarable land in all cases. The governing body or its designate may determine other soils, including soils with a past history of irrigation, to be nonarable based on substantial evidence in the record of a local land use application.
5. "Photovoltaic solar power generation facility" includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores, transfers, or both, that electricity. This includes photovoltaic modules, mounting and solar tracking equipment, foundations, inverters, wiring, storage devices and other components. Photovoltaic solar power generation facility also includes electrical cable collection systems connecting the photovoltaic solar power 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 section, a photovoltaic solar power generation facility includes all existing and proposed facilities on a single tract, as well as any existing and proposed facilities determined to be under common ownership on lands with fewer than 1,320 feet of separation from the tract on which the new facility is proposed to be sited. Projects connected to the same parent company or individuals shall be considered to be in common ownership, regardless of the operating business structure. A photovoltaic solar power generation facility does not include a net metering project consistent with ORS [757.300](#) and OAR Chapter [860](#), Division [039](#) or a feed-in-tariff project established consistent with ORS [757.365](#) and OAR Chapter [860](#), Division [084](#).

B. For high-value farmland soils described at ORS 195.300(10), the following must be satisfied:

1. A photovoltaic solar power generation facility 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 [004](#);
2. The proposed photovoltaic solar power 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;
3. 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;
4. 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;

5. 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;

6. The project is not located on high-value farmland soil unless it can be demonstrated that:

a. Non-high-value farmland soils are not available on the subject tract; or

b. Siting the project on non-high-value farmland soils present on the subject tract would significantly reduce the project's ability to operate successfully; or

c. The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised on non-high-value farmland soils; **and,**

**d. In addition to (a), (b), or (c) of this subsection, the applicant shall demonstrate that it is not economically feasible to farm the proposed site of the location of the facility. Evidence shall include consideration of the following factors:**

**i. Soil conditions, such as the presence of rocks or wet soils.**

**ii. Steep slopes.**

**iii. Lack of water rights precludes irrigation.**

**iii. Isolation from other lands being farmed.**

**iv. Other factors.**

7. A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:

a. If fewer than 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area, no further action is necessary;

b. When at least 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits, either as a single project or multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar power generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the overall land use pattern of the area will be materially altered if the overall effect of existing and potential photovoltaic solar power generation

facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland or acquire water rights, or will reduce the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

C. For arable lands the following must be satisfied:

1. 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 [004](#);
2. The proposed photovoltaic solar power 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;
3. 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;
4. 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;
5. 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;



6. The project is not located on high-value farmland or arable soils unless it can be demonstrated that:

a. Nonarable soils are not available on the subject tract; or

b. Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or

c. The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised of nonarable soils; **and,**

**d. In addition to (a), (b), or (c) of this subsection, the applicant shall demonstrate that it is not economically feasible to farm the proposed site of the location of the facility. Evidence shall include consideration of the following factors:**

**i. Soil conditions, such as the presence of rocks or wet soils.**

**ii. Steep slopes.**

**iii. Lack of water rights precludes irrigation.**

**iii. Isolation from other lands being farmed.**

**iv. Other factors.**

7. A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:

a. If fewer than 80 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area, no further action is necessary;

b. When at least 80 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits, either as a single project or multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar power generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the overall land use pattern of the area will be materially altered if the overall effect of existing and potential photovoltaic solar power generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland or acquire water rights, or will reduce the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

D. For nonarable lands the following must be satisfied:

1. 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 [004](#);
2. No more than 12 acres of the project will be sited on high-value farmland soils described in ORS [195.300\(10\)](#);
3. No more than 20 acres of the project will be sited on arable soils unless an exception is taken pursuant to ORS [197.732](#) and OAR Chapter [660](#), Division [004](#);
4. 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;
5. The project is not located on high-value farmland or arable soils unless it can be demonstrated that:
  - a. Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or
  - b. The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised of nonarable soils;
6. If a photovoltaic solar power generation facility is proposed to be developed on lands that contain a Goal 5 resource protected under the county's comprehensive plan, and the plan does not address conflicts between energy facility development and the resource, the applicant and the county, together with any state or federal agency responsible for protecting the resource or habitat supporting the resource, will cooperatively develop a specific resource management plan to mitigate potential development conflicts. If there is no program present to protect the listed Goal 5 resource(s) present in the local comprehensive plan or implementing ordinances and the applicant and the appropriate resource management agency(ies) cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures; and
7. If a photovoltaic solar power generation facility is proposed, prior to January 1, 2022, to be located on land where the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive), or to wildlife

species of concern identified and mapped by the Oregon Department of Fish and Wildlife (including big game winter range and migration corridors, golden eagle and prairie falcon nest sites, and pigeon springs), the applicant shall conduct a site-specific assessment of the subject property in consultation with all appropriate state, federal, and tribal wildlife management agencies. A professional biologist shall conduct the site-specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or wildlife species of concern are anticipated. Based on results of the biologist's report, the site shall be designed to avoid adverse effects to state or federal special status species or to wildlife species of concern described above. If the applicant's site-specific assessment shows that adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project-specific mitigation to offset the potential adverse effects of the facility. Where the applicant and resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation, if any, required for the facility.

E. A condition of any approval for a photovoltaic solar power generation facility shall require the project owner to sign and record in the deed records of Marion County a document binding the project owner and project owner's successor in interest, prohibiting them from pursuing a claim for federal relief or cause of action alleging injury from farming or forest practices defined in ORS [30.930](#)(2) and (4).

F. Nothing in this section shall prevent a county from requiring a bond or other security from a developer or otherwise imposing on a developer the responsibility for retiring the photovoltaic solar power generation facility.