Permitting Solar on Economic- or Water-Challenged Agricultural Lands

Support HB 3180

Supported By:

Background

Significant renewable energy development is required to meet Oregon's Clean Energy Targets adopted in newly-enacted House Bill 2021, and decarbonization efforts will predominantly require construction of solar energy facilities. However, under Oregon's solar-specific permitting rules, to issue a solar project a permit, a County or the Energy Facility Siting Council (EFSC) must take an exception to Statewide Land Use Planning Goal 3 if the solar project exceeds certain acreage thresholds.[1]

Problem

Getting these exceptions is in practice very difficult or impossible, particularly on high-value farmland. Meanwhile, Oregon's approach to designation of what is formally classified as high-value farmland ("HVF") in statute and rule is not *actually* based on the economic or agricultural quality of the ground. For example, various scenarios exist where land has no access to water or is not economic to cultivate but is still peculiarly designated as HVF.

These difficulties constrain or prevent projects from being sited on lands well-suited for solar development. This reduces the state's ability to generate clean energy, inhibits farmers with water-challenged ground from having economic alternatives to supplement income and sustain agricultural operations over time, and inhibits rural economic and grid resiliency investment opportunities. Additionally, siting near existing power lines is preferable and more feasible in many cases but faces similar challenges and should be up-facilitated. Targeted relief is necessary to address these issues.

Solution

Provide Goal 3 exception relief for a narrow class of water and economically challenged agricultural lands, or lands located in proximity to existing power lines. This would provide an instant, meaningful solution to these problems while preserving all other protections and standards in Oregon land use and solar-specific permitting rules (e.g. HB 2329), including well-developed permitting processes at counties and EFSC, which would have discretion to determine that the statutory factors have been satisfied, imposing conditions of approval as necessary.

[1] 12 acres of high-value farmland, 20 acres of lands predominantly cultivated / composed of soil classes I - IV, or 320 acres on any other land.

Bill Provisions
Relief from the Goal 3 exception requirement would be provided in the following cases:

Water-Challenged: The applicant demonstrates that the land is constrained by water issues – including land that:

(1) Is unirrigated dryland wheat east of the Cascades that is either unirrigated or water rights have been transferred;
(2) Is in a water moratorium or critical or restricted groundwater area[2];
(3) Has junior water rights preventing reliable farm use based on recent and projected water flows;
(4) Has lost water due to infrastructure removal or surface or groundwater depletion requiring total pump or infrastructure replacement or new investment exceeding X% of infrastructure value;
(5) Has water rights that are voluntarily retired and returned to other beneficial uses;
(6) Does not have water that is beneficially or reliably available;
(7) Was previously irrigated but is no longer; or
(8) Is in an irrigation district but cannot receive distributions or has not and will not be cultivated under irrigation;

Economic-Challenged or Power Line Proximity: Subject to a solar development cap of [3]% on each land classification (HVF, predominantly cultivated / composed of soil classes I – IV, or other land) within each county, the applicant demonstrates that either:

(1) economic factors restrain the landowner from using the property for agricultural production – including demonstration that the land:

(A) would not qualify under DLCD farm income standards to allow farm dwellings;
(B) is in the lowest economic quartile of value in the county;
(C) there are no farm use profits in [2] of the previous [5] years; or
(D) has been subject to a claim for crop revenue insurance in [X] of the last [Y] years;

(2) the project is located within a limited distance from an existing transmission line based on voltage – [1] mile from lines less than [34.5]kv, [5] miles from lines between [34.5]kv and [138]kv, or [15] miles from lines exceeding [138]kV.

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[2] Except for land that is irrigated, in which case a Goal 3 exception would be required and the county or EFSC may look to economic factors or power line proximity when analyzing the goal exception.