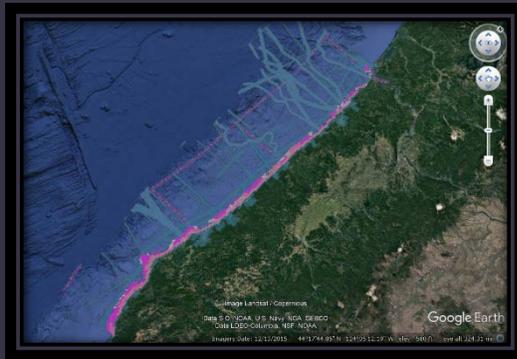


TERRITORIAL SEA PLAN

PART 5: MARINE RENEWABLE ENERGY

OPAC MEETING, DECEMBER 7TH, 2018

Andy Lanier, Marine Affairs Coordinator, OCMP-DLCD



BRIEFING OUTLINE:

- Quick Refresher (September 2018 OPAC & LCDC)
- Part Five Background
 - Contents of Part Five
 - Area Map and Designations
 - Amendment Process Summary
- Process Reminder for Part 5
- What's in the LCDC Transmittal Letter to OPAC
 - Clarifying the Specified Revisions
 - Opportunity for Additional Recommendations



COURT OF APPEALS DECISION IMPACT

TERRITORIAL SEA PLAN PART FIVE (AS OF MARCH, 2018)

PART FIVE CHAPTER

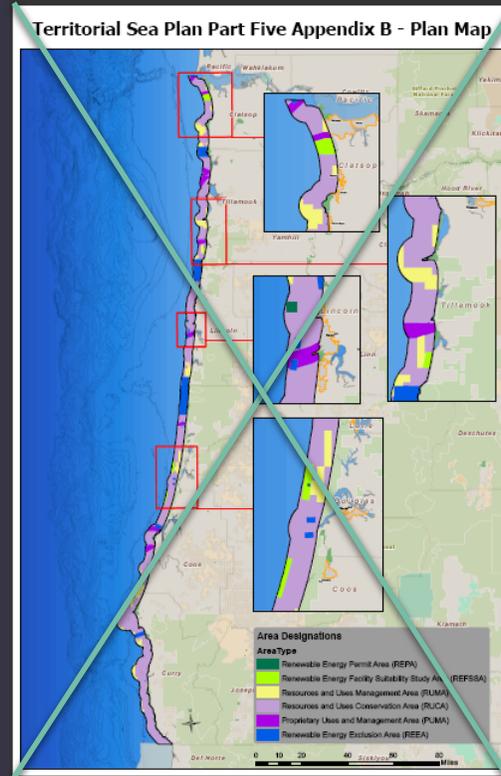
PLAN MAP & AREA DESIGNATIONS

RESOURCES & USES INVENTORY

1 Oregon Territorial Sea Plan
2
3 PART FIVE:
4 Use of the Territorial Sea for the Development of
5 Renewable Energy Facilities or Other Related
6 Structures, Equipment or Facilities
7
8 PART FIVE of the Oregon Territorial Sea Plan¹ describes the process for making
9 decisions concerning the development of renewable energy facilities (e.g. wind, wave,
10 current, thermal, etc.) in the state territorial sea, and specifies the areas where such
11 development may be sited. The requirements of Part Five are intended to protect areas
12 important to renewable marine resources (i.e. living marine organisms), ecosystem
13 integrity, marine habitat and areas important to fisheries from the potential adverse
14 effects of renewable energy facility siting, development, operation, and decommissioning
15 and to identify the appropriate locations for that development which minimize the
16 potential adverse impacts to existing ocean resource users and coastal communities.
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18 Oregon's renewable energy portfolio list² ocean energy as a renewable energy source with
19 potential to reduce dependence on fossil fuels.³ Renewable ocean energy facilities
20 development may present opportunities to apply technologies that rely on wind, wave,
21 wind-current or thermal energy, ~~however~~ may potentially reduce the environmental
22 impact of fossil fuels. Oregon prefers to develop renewable energy through a
23 precautionary approach that supports the use of pilot projects and planned development in
24 the initial stages of commercial development, if developed in a responsible and

¹ See Part One, section C, for the Oregon Territorial Sea and Territorial Sea Plan description.
² It is the goal of Oregon to develop permanently sustainable energy resources and the policy of the state to encourage the development and use of those resources. ORES 489.010(2) provides in part:
"It is the goal of Oregon to promote the efficient use of energy resources and to develop permanently sustainable energy resources. The end-use for transportation and industry energy production, distribution and utilization. It is, therefore, the policy of Oregon:
(a) That development and use of a diverse array of permanently sustainable energy resources be encouraged utilizing to the highest degree possible the private sector of our free enterprise system.
.....
(g) That state government shall provide a source of impartial and objective information in order that this energy policy may be enhanced."

V.12413 (55 sdt)
OREGON TERRITORIAL SEA PLAN Part Five: Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities
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MRE Policy
Inventory Requirements
Review Process (JART)
Inventory and Effects evaluation process
Review Standards
Decommissioning Requirements

POTENTIAL PATHWAYS FOR PART FIVE AMENDMENT

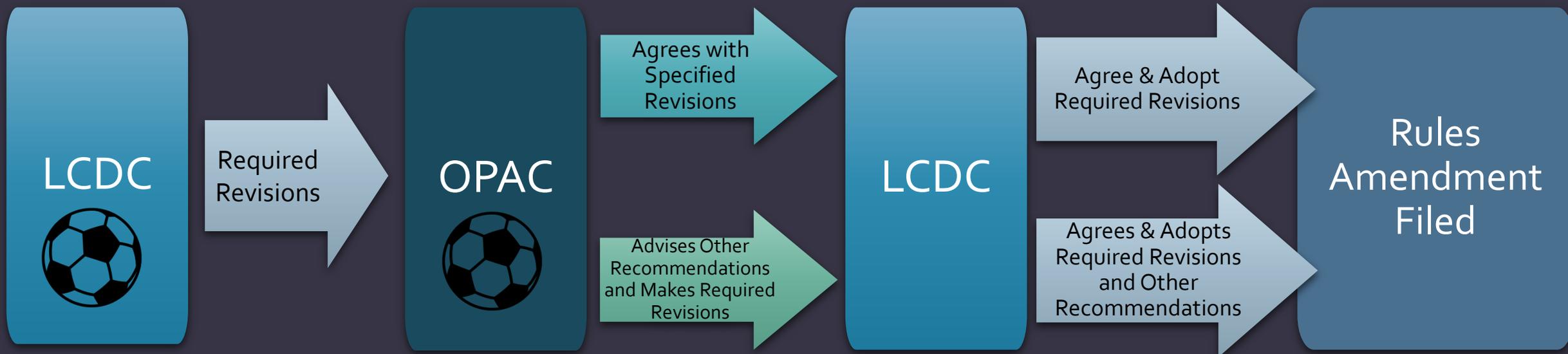
- Alternative 1: The commission could leave the 2009 version of Part 5 in place for the foreseeable future.
- Alternative 2: The commission could adopt the original 2013 OPAC recommendations, provided that the commission could make the required statutory and goal findings.
- Alternative 3: The commission could return the 2013 Part Five amendments to OPAC as its specification of needed revisions, or
- Alternative 4: The commission could modify the 2013 Part Five amendments and send those to OPAC along with its specification of needed revisions.

ALTERNATIVES 3 & 4

LCDC & OPAC TERRITORIAL SEA PLAN AMENDMENT PROCESS

Alternative 3: The commission could return the adopted 2013 Part Five to OPAC as its specification of needed revisions, or

Alternative 4: The commission could modify the adopted 2013 Part Five and send those to OPAC along with its specification of needed revisions.



LETTER TO OPAC FROM LCDC

- Delivered on Dec 5th, 2018
- Starts 155 day statutory clock for responding to the required revisions
- Provides the required revisions, and explains the LCDC findings from 2013
- Provides opportunity to recommended modifications



Oregon
Kate Brown, Governor

Land Conservation and Development Commission
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540
Phone: 503-373-0050
Fax: 503-378-5518
www.oregon.gov/LCD



December 5, 2018

Jena Carter, Chair
Ocean Policy Advisory Council
635 Capitol Street NE, Suite 150
Salem, Oregon 97301
(jcarter@tnc.org)

Dear Chair Carter and members of the Ocean Policy Advisory Council,

At our September 27, 2018 meeting, the Land Conservation and Development Commission (Commission) decided to recommence rulemaking on the Oregon Territorial Sea Plan and, in compliance with ORS 196.471(3), to return the amendments to *Part Five: Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities* to your Council with certain specific revisions. The Commission had considered the amendments to Part Five that the Ocean Policy Advisory Council recommended in January 2013, and, by Order 13-OCMP-001842, found that with specific modifications, the amendments carried out the statutory policies of the Oregon Ocean Resources Management Act and were consistent with the statewide planning goals. As you know, the Court of Appeals subsequently determined that the Commission did not follow the statutory procedures in ORS 196.471(3), and held the amendments to be invalid. *Ciecko v. DLCD*, 290 Or App 655 (2018). Therefore, the 2009 version of Part Five is currently the effective text. The Council and the Commission now undertake the process to restore the Joint Agency Review Team (JART) review processes, review standards, plan review, plan maps, and area designations to Part Five.

Part Five is intended to accommodate a beneficial use of the ocean in a manner that conserves the long-term values, benefits and natural resources of the ocean that are identified in Goal 19. The Commission acknowledged that the adopted Part Five amendments differed from the 2013 OPAC recommendation and explained each instance. Order 13-OCMP-001842 at 14-17, *Ciecko*, 290 Or App at 658-660. To be certain, the Commission based its ultimate determination that the amendments carried out the statutory policies of the Oregon Ocean Resources Management Act and were consistent with the statewide planning goals on the modified, adopted Part Five amendments. In order to adhere to the statutory process and the *Ciecko* decision, the Commission now

PART FIVE TEXT AMENDMENTS - MATERIALS

- All proposed text amendments were provided to OPAC and LCDC in the Blackline copy of Part Five (Sept 2018).
 - Formatting indicates whether amendments were proposed in 2013, or 2018.
- Majority of text amendments to the plan agreed upon by TSPAC, OPAC, and DLCDC Staff.
- Small set of specified changes exist where differences between OPAC and the LCDC adopted text occur
- Minimal modifications were made to the Part 5 text to account for temporal changes between 2013 and 2018, and reflect the Departments desire to match the text amendment recommendations with the OPAC recommendations (*not* a specified revision or recommended change).
 - Total REFSSA buildout from 3% to 2%
 - Removal of Nestucca REFFSA Site

1 Oregon Territorial Sea Plan

2

3 **PART FIVE:**

4 **Use of the Territorial Sea for the Development of**

5 **Renewable Energy Facilities or Other Related**

6 **Structures, Equipment or Facilities**

7

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20 development may present opportunities to apply technologies that rely on wind, wave,
21 wind, current or thermal energy, ~~that~~ which may potentially reduce the environmental
22 impact of fossil fuels. Oregon prefers to develop renewable energy through a
23 precautionary approach that supports the use of pilot projects and phased development in
24 the initial stages of commercial development. If developed in a responsible and
25 appropriate manner, in accordance with the requirements of this Part and other

¹ See Part One, section C for the Oregon Territorial Sea and Territorial Sea Plan description

² It is the goal of Oregon to develop permanently sustainable energy resources and the policy of the state to encourage the development and use of these resources. ORS 469.010(2) provides in part:

"It is the goal of Oregon to promote the efficient use of energy resources and to develop permanently sustainable energy resources. The need exists for comprehensive state leadership in energy production, distribution and utilization. It is, therefore, the policy of Oregon:

"(c) That development and use of a diverse array of permanently sustainable energy resources be encouraged utilizing to the highest degree possible the private sector of our free enterprise system.

-- * * * *

"(g) That state government shall provide a source of impartial and objective information in order that this energy policy may be enhanced."

V.12413 (SS edit)

*OREGON TERRITORIAL SEA PLAN Part Five: Use of the Territorial Sea for the
Development of Renewable Energy Facilities or Other Related Structures, Equipment or
Facilities*

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Commented [LA1]: NOTE:

The bulk of the text adds to Part 5, as shown in ~~red~~ and ~~bold~~ text additions were recommended in 2013. Recommended changes made to the document by the department in 2018 are shown in ~~blue~~ and ~~bold~~ text.

SPECIFIC REVISIONS TO THE TEXT OF PART FIVE

- The Council should begin by conforming its 2013 recommendation to the text of Part Five that was filed as an administrative rule based on Commission Order 13-OCMP-001842. (2013 underlined and strike-out Part 5 text)

PART FIVE CHAPTER

LCDC specified changes from the OPAC Recommendation

- The adopted text (2013 language) includes specific buffer distances as required by Goal 19, Implementation Requirements 1(3)(e) and (f), and
- clarifies JART membership for appropriate representation of local jurisdiction representing people of the impacted area consistent with the policy of ORS 196.420(2).
- The adopted text does not include OPAC recommended language in the Proprietary Use and Management Area (PUMA) because it is inconsistent with the Delegation Clause under Article I, section 21 of the Oregon Constitution.

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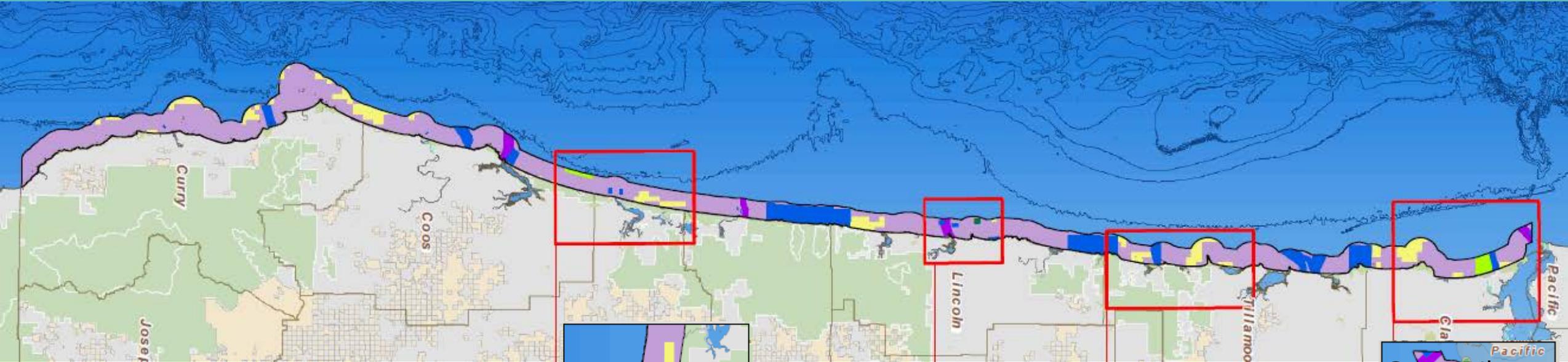
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V.12413 (SS 4/8)

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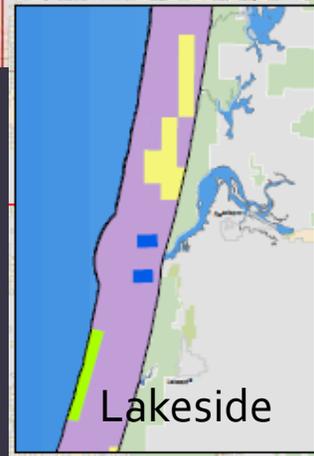
ALTERNATIVE 4: RECOMMENDED REFSSA SITES



REFSSA Modifications:

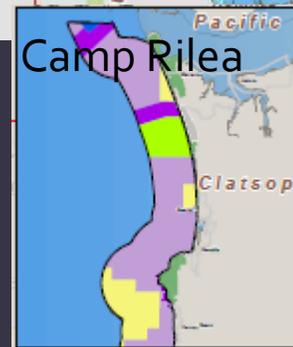
The Commission retains two REFSSA sites, which were part of the adopted 2013 version of Part Five (the Specified Revisions): Camp Rilea and Lakeside.

The two sites were the top site selection recommendations from TSPAC and OPAC, respectively.



OPT Reedsport Change: “The change of the OPT Reedsport REFSSA to a RUCA effectuates a condition that the Commission included in its order in the event OPT abandoned the site, which has transpired.” LCDC Transmittal Letter (12/5/2018), Order 13-OCMP-001842 at 28.

Nestucca/Pacific City Change: “Changing Nestucca/Pacific City REFSSA to a RUMA aligns with the 2013 OPAC recommendation and reflects the diminished interest in the site for possible development of renewable energy.” LCDC Transmittal Letter (12/5/2018)



OPTIONAL RECOMMENDATION

Plan Framework Recommended changes:



The department suggests that the OPAC recommends to LCDC moving both undersea fiber-optic telecommunications cables and research cables (along with their associated maintenance buffers) to the Renewable Energy Exclusion Areas (REEA's) to avoid the possibility of conflicting use proposals within the territorial sea.

PROPRIETARY USE AND MANAGEMENT AREA (PUMA)

Areas with authorized uses and special management designations under Goal 19 Ocean Resources.

▪ MRE applications will not be accepted unless the use is legally permissible, complies with the authorized use of the area.

▪ ~~68 mi² ~ 5%~~

▪ 26 mi² ~ 2%

Resource Inventory Layers Included:

- Commercial Shipping Lanes (Deep & Shallow draft)
- Coastal Discharge Outfalls
- Coastal National Wildlife Refuges
- OR Islands National Wildlife Refuges
- ~~Research Cables and Infrastructure~~
- ~~Undersea Telecommunication Cables~~
- Ocean Outfalls
- Pilotage Areas

RENEWABLE ENERGY EXCLUSION AREA (REEA)

Objective: To protect permitted uses and special management areas under Goal 19 Ocean Resources.

⦿ No development of marine renewable energy will be permitted in these areas.

~~• 130 mi² ~ 10%~~

• 170 mi² ~ 13%

Resource Inventory Layers Included:

- State Designated Marine Managed Areas including Marine Reserves and Protected Areas
- Dredge Material Disposal Sites
- Undersea fiber optic research or telecommunication cables (2018)

RENEWABLE ENERGY PERMIT AREA (REPA)

Areas are delineated sites for which there is an existing authorization for the development of MRE testing, research or facilities.

- ⦿ Applications for MRE development within a REPA must comply with the terms and conditions required by the regulating agency authorization for the site.

⦿ ~~2 mi² ~ 0%~~

⦿ 1 mi² ~ 0%

Resource Inventory Layers
Included:

- ~~OPT permitted site~~
- NNMREC permit site (now called P MEC PacWave)