
Solar Rulemaking Advisory Committee

Land Conservation & Development Commission

February 11, 2011

Midstate Electric Cooperative, Community Room

16755 Finley Butte Road, La Pine, Oregon

OAR 660-033-0020 – Solar Draft 3

Definitions

For purposes of this division, the definitions in ORS 197.015, the Statewide Planning Goals and OAR chapter 660 shall apply. In addition, the following definitions shall apply:

(15) “Arable Lands” are lands that are composed predominantly of arable soils.

(16) “Arable Soils” are soils that are cultivated or suitable for cultivation due to an NRCS agricultural capability class I-IV, or an NRCS agricultural capability class V-VI with a demonstrated history of cultivation at any point during the ten years prior to the submittal of a land use application based on aerial photographs, assessors records or other credible information.

OAR 660-033-0020 – Solar Draft 3

(17) “NonArable Lands” are lands that are composed predominantly of nonarable soils.

(18) “NonArable Soils” are soils that are not cultivated and not suitable for cultivation due to an NRCS agricultural capability class VII-VIII, or an NRCS agricultural capability class V-VI with no demonstrated history of cultivation at any point during the ten years prior to the submittal of a land use application based on aerial photographs, assessors records or other credible information.

OAR 660-033-0130(38) – Solar Draft 3

(38) For purposes of this rule a photovoltaic solar power generation facility includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores and/or transfers that electricity. This includes photovoltaic modules, mounting and solar tracking equipment, foundations, inverters, wiring, and storage devices and other components. Photovoltaic solar power generation facilities also include electrical cable collection systems connecting the photovoltaic solar 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, ~~including but not limited to on-site and off-site facilities for temporary workforce housing for workers constructing a photovoltaic solar power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request filed after a decision to approve a power generation facility. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval.~~ For purposes of applying the acreage standards of this rule, a photovoltaic solar power generation facility includes all existing and proposed facilities on a single tract, as well as any existing and proposed facilities under common ownership, development, or operation on lands with less than 1320-feet of separation from the tract on which the new facility is proposed to be sited. A proposal for a photovoltaic solar power generation facility shall be subject to the following provisions:

OAR 660-033-0130(38) – Solar Draft 3

- (a) For high-value farmland soils described at ORS 195.300(10) 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 4. The governing body or its designate must find that:

OAR 660-033-0130(38) – Solar Draft 3

(A) The proposed photovoltaic solar power generation 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; and

OAR 660-033-0130(38) – Solar Draft 3

(B) 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; and

OAR 660-033-0130(38) – Solar Draft 3

(C) 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; and

OAR 660-033-0130(38) – Solar Draft 3

(D) 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; and

OAR 660-033-0130(38) – Solar Draft 3

(E) The long-term environmental, economic, social and energy consequences resulting from the photovoltaic solar power generation facility or any components thereof at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other agricultural lands that do not include high-value farmland soils described at ORS 195.300(10) or lands that are not protected under statewide planning goal 3. When applying this criteria the governing body or its designate may consider costs but costs alone may not be the only consideration in determining that siting any component of a photovoltaic solar power generation facility on high-value farmland soils is necessary; and

OAR 660-033-0130(38) – Solar Draft 3

(F) The cumulative effects of siting multiple photovoltaic solar power generation facilities in a single area of a county have been adequately considered and that the presence or possibility of multiple facilities in close proximity will not lead to negative effects on local farming and ranching operations. Satisfying this provision may include, but is not limited to, demonstrating that photovoltaic solar power generation facilities will not surround, or nearly surround all or a significant portion of a single farm or ranch operation and that the introduction of a new photovoltaic solar power generation facility will not tip the balance of existing land use activities away from commercial agriculture.

OAR 660-033-0130(38) – Solar Draft 3

(b) For arable soils, **meaning soils that are cultivated or suitable for cultivation but** not including high-value farmland soils described at ORS 195.300, 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 4. The governing body or its designate must find that:

OAR 660-033-0130(38) – Solar Draft 3

A) The long-term environmental, economic, social and energy consequences resulting from the photovoltaic solar power generation facility at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other agricultural lands of equal, lesser quality or lands that are not protected under statewide planning goal 3. When applying this criteria the governing body or its designate may consider costs but costs alone may not be the only consideration in determining that siting any component of a photovoltaic solar power generation facility at the proposed location is necessary; and

(B) The requirements of OAR 660-033-0130(38)(a)(A), (B), (C) and (D) are satisfied.

OAR 660-033-0130(38) – Solar Draft 3

(c) For nonarable soils, meaning soils that are not suitable for cultivation, which for purposes of this subsection shall include but are not limited to soils with an NRCS agricultural capability class V-VIII and no history of irrigation, 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 4. The governing body or its designate must find that: ~~the requirements of OAR 660-033-0130(38)(b)(B), (C), (D), (E) and (F) are satisfied;~~ and

(A) The requirements of OAR 660-033-0130(38)(a)(D) are satisfied;
and

OAR 660-033-0130(38) – Solar Draft 3

(B) If a proposed 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 are no standards 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 will be responsible for determining appropriate mitigation measures.

OAR 660-033-0130(38) – Solar Draft 3

(C) If a proposed photovoltaic solar power generation facility is located on lands 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 ODFW (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 the appropriate state, federal, **and/or tribal** wildlife management agency.

(C) If a proposed photovoltaic solar power generation facility or any component thereof is located on lands where the potential exists for **impacts** to State or Federal special status species (threatened, endangered, candidate, or **species of concern**), the applicant shall conduct a **detailed site** assessment of the subject property in consultation with the appropriate state or federal wildlife management agency.

OAR 660-033-0130(38) – Solar Draft 3

If the applicant's site **specific** assessment shows that **adverse effects** cannot be avoided and mitigation measures are necessary, 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.

If the applicant's site assessment shows that **impacts to special status species** cannot be avoided and mitigation measures are necessary, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project-specific mitigation to offset the identified effects of the facility **on the resource** or cooperatively address mitigation through an agreement to participate in a broader-scale mitigation program at a level sufficient to offset the identified effects of the facility on the resource.

OAR 660-033-0130(38) – Solar Draft 3

The site **specific** assessment shall be conducted by a professional biologist 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 and if mitigation measures are necessary.

The site assessment shall be conducted by a professional biologist using methodologies accepted by the appropriate wildlife management agency and shall determine whether impacts to special status species are anticipated and if **avoidance, minimization or mitigation** measures are necessary.

OAR 660-033-0130(38) – Solar Draft 3

Where the applicant and the resource management agency cannot agree whether mitigation is necessary, or if the applicant and the wildlife management agency cannot agree on what mitigation will be carried out, the county will be responsible for determining appropriate mitigation, if any, required for the facility.

(D) The provisions of section (C) are repealed January 1, 2016.

Where the applicant's professional biologist and resource management agency agree that mitigation measures are not likely to adequately offset the identified impacts, the county will need to consider the long-term environmental, economic, social and energy consequences per (OAR 660-033-0020(38(9b)(E) before approval of the project.

OAR 660-033-0130(38) – Solar Draft 3

(d) In the event that a solar power generation facility is proposed on a combination of arable and nonarable soils described in OAR 660-033-0130(38)(b) and (c) the approval criteria of OAR 660-033-0130(38)(b) shall apply to the entire project.

~~(e) All other applicable provisions of law are satisfied, including but not limited to local comprehensive plan and zoning ordinance provisions and OAR Chapter 660, Division 23.~~

OAR 660-033-0130(38) – Solar Draft 3

- (e) The County governing body or its designate shall require as a condition of approval for a photovoltaic solar power generation facility, that the project owner sign and record in the deed records for the county a document binding the project owner, and the project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.**
- (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.**
- (g) Any amendment to ORS 469.300(11)(a)(D) shall constitute good cause for the Land Conservation and Development Commission to re-evaluate the acreage thresholds identified at OAR 660-033-0130(38)(a), (b) and (c) above.**

End of Draft Language



Effect of Soils Language

- (b) For arable soils, meaning soils that are cultivated or suitable for cultivation but....
- (c) For nonarable soils, meaning soils that are not suitable for cultivation, which for purposes of this subsection shall include but are not limited to soils with an NRCS agricultural capability class V-VIII and no history of irrigation....

Cultivated = Automatically Arable

If not cultivated then:

V-VIII & No History of Irrigation = Automatically Nonarable.

All Else = Substantial Evidence Before Local Decision Makers.

Soils Examples



Introduction To Wildlife Issues

- **Inventoried and Non-Inventoried Habitat.**
- **Prioritizes Poorest Soils w/Lowest Habitat Value.**
- **Not intended to replace existing process.**
- **Does not assume all sites will require mitigation.**
- **County is the arbiter.**

Summary of Substantive Differences in Wildlife Language Options

- **Scope of Species and Habitat available for consideration.**
- **Inclusion or absence of language regarding “broader scale mitigation program”.**
- **County decision makers as tie breakers vs. EESE analysis.**
- **To Sunset or not to Sunset.**

Special Status Species

- Includes a long list(s) of Fish, Birds, Amphibian, Reptiles and Mammals:



Special Status Species or Wildlife Species of Concern

- Includes everything offered by the other option and more.



Broader Scale Mitigation Language

- Department would support including the broader scale mitigation language:

“....the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project specific mitigation to offset the identified effects of the facility on the resource or cooperatively address mitigation through an agreement to participate in a broader-scale mitigation program at a level sufficient to offset the identified effects of the facility on the resource.”

Disagreement over Mitigation vs EESE Analysis

- Both options require coordination with applicable agency.
- One option specifies county as tie-breaker in the event of a disagreement.
- One option contemplates what should happen if mitigation can't off-set impacts to habitat.

To Sunset or Not to Sunset

- To Sunset.



What's Next?

- Other items for discussion.
- LCDC Hearing April 21-22, 2011.