



# Oregon

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**To:** Energy Facility Siting Council

**From:** Todd Cornett, Assistant Director for Siting/Council Secretary

**Date:** November 5, 2021

**Subject:** Agenda Item G (Information Item):  
Land Use Standard Overview Part II, for the November 18-19, 2021 EFSC Meeting

**Attachments:** Attachment 1: Applicable Oregon Revised Statutes and Oregon Administrative Rules

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## BACKGROUND

The Energy Facility Siting Council (Council) was created to oversee a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in Oregon. ORS 469.300. To carry out this purpose, the legislature entrusted the Council with the authority to decide whether to issue a site certificate for any energy facility proposed to be constructed or operated in Oregon. ORS 469.470(1). The Council's decision to issue a site certificate is binding upon state agencies and local governments and requires those agencies and governments to issue any permits specified in the site certificate without further proceedings.<sup>1</sup>

In order to issue a site certificate, the Council must, in part, determine that the preponderance of the evidence on the record of proceedings on an application supports the conclusion that the facility, "complies with the applicable standards adopted by the council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by the applicable standards the facility does not meet." ORS 469.503(1). With some exceptions, the Council must make similar findings of compliance for other state laws and administrative rules, and with the statewide land use planning goals adopted by the Land Conservation and Development Commission. See ORS 469.503(3) and (4).

The legislature provided the Council with broad authority to determine both the scope and format of its standards but has provided a number of subjects which the standards may address, including the "compliance with the statewide planning goals adopted by the Land

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<sup>1</sup> ORS 469.401(3)

Conservation and Development Commission as specified in ORS 469.503.”<sup>2</sup> The Council adopted a standard to address this subject under OAR 345-022-0030, the “Land Use Standard.”

## **INTRODUCTION**

At the October 22, 2021 Energy Facility Siting Council (EFSC) meeting Jim Johnson, Land Use and Water Planning Coordinator from the Oregon Department of Agriculture provided an overview of the purpose, intent and protections associated with the Exclusive Farm Use zoning designation, which is where the majority of the state jurisdictional projects have been proposed and will likely be proposed in the future.

More than probably any other standard there is a lot of optionality and variability associated with the Land Use Standard. In order to better describe how this optionality and variability occurs, this staff report and the associated PowerPoint presentation describes the standard in the context of some of the specific steps in the Council’s review process.

## **LAND USE STANDARD PROCESS STEPS**

### Notice of Intent

1. Applicant – Includes a statement about their intended land use review path choice<sup>3</sup>
  - a. Path A = having the local government conduct the full land use review
  - b. Path B = having EFSC conduct the full land use review
  - c. A third path is to have one conduct the land use review on the energy facility and the other to conduct the land use review on the related and supporting facilities.
2. EFSC – Appoints each local government within whose jurisdiction the project is located as a Special Advisory Group (SAG)<sup>4</sup>
3. ODOE – Requests applicable substantive criteria from SAG<sup>5</sup>. Applicable substantive criteria are:
  - a. Land use ordinances
  - b. Directly applicable comprehensive plan provisions
  - c. Any specific interpretations of ambiguous terms related to a. & b.
  - d. a. and b. above are those adopted by the local government on the date the preliminary application is submitted
  - e. a. and b. above that are required by land use goals

Applicable substantive criteria only include local ordinances and regulations related to siting and land use.<sup>6</sup> Local standards or requirements related to the following are outside of the Council’s jurisdiction and are not “applicable substantive criteria”:

- a. Employee health and safety
- b. Building code compliance

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<sup>2</sup> ORS 469.501(1)(m)

<sup>3</sup> ORS 469.504(1) & OAR 345-020-0011(1)

<sup>4</sup> ORS 469.480(1)

<sup>5</sup> ORS 469.504(1)(b)(A) & (5)

<sup>6</sup> ORS 469.401(4)

- c. Wage and hour or other labor regulations
- d. Local government fees and charges
- e. Other design or operational issues that do not relate to siting the facility.

### Project Order

1. ODOE - Determines all of the applicable land use requirements which could be some combination of the following<sup>7</sup>:
  - a. Applicable substantive criteria
    - i. Based on what was provided by SAG; or
    - ii. Based on what was determined by ODOE if not provided by SAG; or
    - iii. Directly applicable land use planning goals if no applicable substantive criteria provided by SAG and ODOE chooses to apply goals directly
  - b. Directly applicable Land Conservation and Development Commission (LCDC) statutes and rules. There are numerous rules and statutes that counties must apply, particularly in the Exclusive Farm Use zone. If they have not adopted them in the local land use ordinance, they must apply them directly. Similarly, EFSC must apply them directly.<sup>8</sup>
  - c. Goal Exception requirement, such as those required in the Exclusive Farm Use zone related to the removal of specific acreages. Using EFSC statutes and rules and not LCDC's.<sup>9</sup>

### Preliminary Application

1. Applicant<sup>10</sup> –
  - a. Makes final land use review path choice
    - i. Path A = local government
    - ii. Path B = EFSC
    - iii. Hybrid
  - b. Submits all land use requirements and a description of how they meet each one
    - i. Applicable substantive criteria
      - In effect on the date of the preliminary application
      - If cannot meet an applicable substantive criterion, or chooses that is not required by land use planning goals, or chooses not to, requests that the applicable goal be applied directly<sup>11</sup>
    - ii. Directly applicable LCDC statutes and/or rules
    - iii. Goal exceptions
2. ODOE
  - a. Sends notice to reviewing agencies for review and comment about whether all of the required land use requirements are included.
    - i. SAG – Again ask for any interpretation of ambiguous terms
    - ii. DLCD

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<sup>7</sup> OAR 345-015-0160(1)

<sup>8</sup> ORS 197.646(3)

<sup>9</sup> ORS 469.504(2)

<sup>10</sup> OAR 345-021-0010(1)(k)

<sup>11</sup> ORS 469.504(1)(b)(B)

iii. ODA

Complete Application

1. ODOE
  - a. Provides reviewing agency (SAG, DLCD & ODA) notice for review and comment of complete application
  - b. Provides public notice and holds information meeting to explain EFSC process and the public's role in the next phase. Can begin reviewing complete application immediately.
2. Reviewing Agencies - Review and make recommendation about compliance with all applicable substantive criteria and recommend conditions

Draft Proposed Order

1. ODOE – Draft Proposed Order is the staff's first recommendation, including draft findings of facts, conclusions of law and conditions of approval, on whether or not the proposed facility complies with the land use standard. Under Path B, a facility complies with the Land Use Standard if:
  - a. The proposed facility complies with applicable substantive criteria and other applicable land use requirements;
  - b. The proposed facility does not comply with one or more of the applicable substantive criteria but otherwise complies with the applicable statewide planning goals, or qualifies for an exception to any applicable statewide planning goal it does not comply with; or
  - c. If no applicable substantive criteria were provided by the SAG or ODOE, the proposed facility complies with the applicable statewide planning goals or qualifies for an exception to any applicable statewide planning goal it does not comply with.<sup>12</sup>
2. Reviewing Agencies
  - a. Assist staff in drafting or by reviewing findings of facts, conclusion of law and conditions of approval.
  - b. Provide formal comments whether or not application meets all land use requirements.
3. Public
  - a. Review complete application and Draft Proposed Order.
  - b. Provide specific comments on whether or not application meets all land use requirements.
4. Applicant
  - a. Provide specific comments about any findings of facts, conclusions of law or conditions of approval they disagree with.
  - b. Provide additional evidence in response to comments by reviewing agencies or the public prior to the close of the record.
5. EFSC –
  - a. Review complete application, Draft Proposed Order and all comments and any additional information submitted prior to the close of the record.

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<sup>12</sup> ORS 469.504(1)(b)(A) to (C)

- b. Provide comments to ODOE about any changes to findings of facts, conclusions of law and conditions of approval.

### **FUTURE LAND USE STANDARD OVERVIEW PRESENTATIONS**

Future Land Use Standard Overview presentations will provide more details related to: 1) goal exceptions; 2) when applicable substantive criteria are required by the land use goals and when they are not; and 3) the applicability of case law related to the land use standard.

**ATTACHMENT 1**  
**Applicable Oregon Revised Statutes and Oregon Administrative Rules**

**ENERGY FACILITY SITING COUNCIL STATUTORY AUTHORITY**

**469.310 Policy.**

*In the interests of the public health and the welfare of the people of this state, it is the declared public policy of this state that the siting, construction and operation of energy facilities shall be accomplished in a manner consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, **land use (emphasis added)** and other environmental protection policies of this state.*

**469.401 Energy facility site certificate; conditions; effect of issuance on state and local government agencies.**

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*(3) Subject to the conditions set forth in the site certificate or amended site certificate, any certificate or amended certificate signed by the chairperson of the council shall bind the state and all counties and cities and political subdivisions in this state as to the approval of the site and the construction and operation of the facility. After issuance of the site certificate or amended site certificate, any affected state agency, county, city and political subdivision shall, upon submission by the applicant of the proper applications and payment of the proper fees, but without hearings or other proceedings, promptly issue the permits, licenses and certificates addressed in the site certificate or amended site certificate, subject only to conditions set forth in the site certificate or amended site certificate. After the site certificate or amended site certificate is issued, the only issue to be decided in an administrative or judicial review of a state agency or local government permit for which compliance with governing law was considered and determined in the site certificate or amended site certificate proceeding shall be whether the permit is consistent with the terms of the site certificate or amended site certificate. Each state or local government agency that issues a permit, license or certificate shall continue to exercise enforcement authority over the permit, license or certificate.*

*(4) Nothing in ORS chapter 469 shall be construed to preempt the jurisdiction of any state agency or local government over matters that are not included in and governed by the site certificate or amended site certificate. Such matters include but are not limited to employee health and safety, building code compliance, wage and hour or other labor regulations, local government fees and charges or other design or operational issues that do not relate to siting the facility.*

**469.480 Local government advisory group; special advisory groups; compensation and expenses; Electric and Magnetic Field Committee; rules.**

*(1) The Energy Facility Siting Council shall designate as a special advisory group the governing body of any local government within whose jurisdiction the facility is proposed to be located.*

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**469.501 Energy facility siting, construction, operation and retirement standards; exemptions; rules.**

*(1) The Energy Facility Siting Council shall adopt standards for the siting, construction, operation and retirement of facilities. The standards may address but need not be limited to the following subjects:*

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*(m) Compliance with the statewide planning goals adopted by the Land Conservation and Development Commission as specified by ORS 469.503.*

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**469.503 Requirements for approval of energy facility site certificate; carbon dioxide emissions standard; offset funds; use of offset funds by qualifying organization; rules.**

*In order to issue a site certificate, the Energy Facility Siting Council shall determine that the preponderance of the evidence on the record supports the following conclusions:*

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*(4) The facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission.*

**469.504 Facility compliance with statewide planning goals; exception; amendment of local plan and land use regulations; conflicts; technical assistance; rules.**

*(1) A proposed facility shall be found in compliance with the statewide planning goals under ORS 469.503 (4) if:*

*(a) The facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or*

*(b) The Energy Facility Siting Council determines that:*

*(A) The facility complies with applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and in effect on the date the application is submitted, and with any Land Conservation and Development Commission administrative rules and goals and any land use statutes that apply directly to the facility under ORS 197.646;*

*(B) For an energy facility or a related or supporting facility that must be evaluated against the applicable substantive criteria pursuant to subsection (5) of this section, that the proposed facility does not comply with one or more of the applicable substantive criteria but does otherwise comply with the applicable statewide planning goals, or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section; or*

*(C) For a facility that the council elects to evaluate against the statewide planning goals pursuant to subsection (5) of this section, that the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section.*

*(2) The council may find goal compliance for a facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal.*

*Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development*

*Commission pertaining to an exception process goal, the council may take an exception to a goal if the council finds:*

- (a) The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;*
  - (b) The land subject to the exception is irrevocably committed as described by the rules of the Land Conservation and Development Commission to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or*
  - (c) The following standards are met: (A) Reasons justify why the state policy embodied in the applicable goal should not apply; (B) The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the council applicable to the siting of the proposed facility; and (C) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.*
- (3) If compliance with applicable substantive local criteria and applicable statutes and state administrative rules would result in conflicting conditions in the site certificate or amended site certificate, the council shall resolve the conflict consistent with the public interest. A resolution may not result in a waiver of any applicable state statute.*
- (4) An applicant for a site certificate shall elect whether to demonstrate compliance with the statewide planning goals under subsection (1)(a) or (b) of this section. The applicant shall make the election on or before the date specified by the council by rule.*
- (5) Upon request by the State Department of Energy, the special advisory group established under ORS 469.480 shall recommend to the council, within the time stated in the request, the applicable substantive criteria under subsection (1)(b)(A) of this section. If the special advisory group does not recommend applicable substantive criteria within the time established in the department's request, the council may either determine and apply the applicable substantive criteria under subsection (1)(b) of this section or determine compliance with the statewide planning goals under subsection (1)(b)(B) or (C) of this section. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300 or a related or supporting facility that does not pass through more than one local government jurisdiction or more than three zones in any one jurisdiction, the council shall apply the criteria recommended by the special advisory group. If the special advisory group recommends applicable substantive criteria for an energy facility as defined in ORS 469.300 (1)(a)(C) to (E) or a related or supporting facility that passes through more than one jurisdiction or more than three zones in any one jurisdiction, the council shall review the recommended criteria and determine whether to evaluate the proposed facility against the applicable substantive criteria recommended by the special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. In making its determination, the council shall consult with the special advisory group and shall consider:*
- (a) The number of jurisdictions and zones in question;*
  - (b) The degree to which the applicable substantive criteria reflect local government consideration of energy facilities in the planning process; and*



- (c) *The level of consistency of the applicable substantive criteria from the various zones and jurisdictions.*
- (6) *The council is not subject to ORS 197.180 and a state agency may not require an applicant for a site certificate to comply with any rules or programs adopted under ORS 197.180.*
- (7) *On or before its next periodic review, each affected local government shall amend its comprehensive plan and land use regulations as necessary to reflect the decision of the council pertaining to a site certificate or amended site certificate.*
- (8) *Notwithstanding ORS 34.020 or 197.825 or any other provision of law, the affected local government's land use approval of a proposed facility under subsection (1)(a) of this section and the special advisory group's recommendation of applicable substantive criteria under subsection (5) of this section shall be subject to judicial review only as provided in ORS 469.403. If the applicant elects to comply with subsection (1)(a) of this section, the provisions of this subsection shall apply only to proposed projects for which the land use approval of the local government occurs after the date a notice of intent or an application for expedited processing is submitted to the State Department of Energy.*
- (9) *The State Department of Energy, in cooperation with other state agencies, shall provide, to the extent possible, technical assistance and information about the siting process to local governments that request such assistance or that anticipate having a facility proposed in their jurisdiction.*

## **ENERGY FACILITY SITING COUNCIL ADMINISTRATIVE RULES**

### **345-001-0010: Definitions**

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(51) *"Reviewing agency" means any of the following officers, agencies or tribes:*

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(q) *Any special advisory group designated by the Council under ORS 469.480; and*

(58) *"Study area" means an area defined in this rule. Except as specified in subsections (f) and (g), the study area is an area that includes all the area within the site boundary and the area within the following distances from the site boundary:*

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(c) *For land use impacts and impacts to fish and wildlife habitat, one-half mile.*

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### **345-020-0011 - Contents of a Notice of Intent**

(1) *The applicant must, to the extent reasonably practicable, include in the notice of intent (NOI) the information described in the following subsections. If the applicant proposes alternative sites, the applicant must describe each alternative separately. The applicant must designate the information with the appropriate exhibit label identified in the following subsections:*

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(i) **Exhibit I.** *A statement indicating whether the applicant intends to satisfy the Council's land use standard, OAR 345-022-0030, by obtaining local land use approval under ORS 469.504(1)(a) or by seeking a Council determination under ORS 469.504(1)(b).*

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### **345-015-0160 - Project Order**

*(1) Following the review of a notice of intent or, in the case of an expedited review, following receipt of a preliminary application for a site certificate, the Department of Energy shall send a project order to the applicant establishing the following:*

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*(b) All local government ordinances applicable to the Council's decision on the proposed facility.*

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*(d) All state and local permits necessary to the construction and operation of the proposed facility and the name of each agency with the authority to issue such permits.*

*(e) Any other data and information that must be included in the application for a site certificate to allow the Council to determine whether the proposed facility will comply with applicable statutes, administrative rules and local government ordinances.*

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### **345-021-0010 - Contents of an Application**

*(1) The project order described in OAR 345-015-0160(1) identifies the provisions of this rule applicable to the application for the proposed facility, including any appropriate modifications to applicable provisions of this rule. The applicant must include in its application for a site certificate information that addresses each provision of this rule identified in the project order. The applicant must designate the information with the appropriate exhibit label identified in the following subsections. If the same information is required in each of several exhibits the applicant may provide the required information in one exhibit and include appropriate references in the others. For the purpose of submitting an application for a site certificate in an expedited review granted under OAR 345-015-0300 or 345-015-0310, the applicant must include information that addresses all provisions of this rule. In such expedited reviews, analysis areas addressed in this rule are the study areas defined in OAR 345-001-0010, subject to later modification in the project order.*

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- (k) **Exhibit K.** Information about the proposed facility's compliance with the statewide planning goals adopted by the Land Conservation and Development Commission, providing evidence to support a finding by the Council as required by OAR 345-022-0030. The applicant must state whether the applicant elects to address the Council's land use standard by obtaining local land use approvals under ORS 469.504(1)(a) or by obtaining a Council determination under ORS 469.504(1)(b). An applicant may elect different processes for an energy facility and a related or supporting facility but may not otherwise combine the two processes. Once the applicant has made an election, the applicant may not amend the application to make a different election. In this subsection, "affected local government" means a local government that has land use jurisdiction over any part of the proposed site of the facility. In the application, the applicant must:*
- (A) Include a map showing the comprehensive plan designations and land use zones in the analysis area;*
  - (B) If the applicant elects to obtain local land use approvals:*

- (i) Identify the affected local governments from which land use approvals will be sought;
  - (ii) Describe the land use approvals required in order to satisfy the Council's land use standard; (iii) Describe the status of the applicant's application for each land use approval; (iv) Provide an estimate of time for issuance of local land use approvals;
- (C) If the applicant elects to obtain a Council determination on land use:
- (i) Identify the affected local governments;
  - (ii) Identify the applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and that are in effect on the date the application is submitted and describe how the proposed facility complies with those criteria;
  - (iii) Identify all Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3) and describe how the proposed facility complies with those rules, goals and statutes;
  - (iv) If the proposed facility might not comply with all applicable substantive criteria, identify the applicable statewide planning goals and describe how the proposed facility complies with those goals;
  - (v) If the proposed facility might not comply with all applicable substantive criteria or applicable statewide planning goals, describe why an exception to any applicable statewide planning goal is justified, providing evidence to support all findings by the Council required under ORS 469.504(2); and
- (D) If the proposed facility will be located on federal land:
- (i) Identify the applicable land management plan adopted by the federal agency with jurisdiction over the federal land;
  - (ii) Explain any differences between state or local land use requirements and federal land management requirements;
  - (iii) Describe how the proposed facility complies with the applicable federal land management plan;
  - (iv) Describe any federal land use approvals required for the proposed facility and the status of application for each required federal land use approval;
  - (v) Provide an estimate of time for issuance of federal land use approvals; and
  - (vi) If federal law or the land management plan conflicts with any applicable state or local land use requirements, explain the differences in the conflicting requirements, state whether the applicant requests Council waiver of the land use standard described under paragraph (B) or (C) of this subsection and explain the basis for a waiver.

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### **345-022-0030 - Land Use**

- (1) To issue a site certificate, the Council must find that the proposed facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission.
- (2) The Council shall find that a proposed facility complies with section (1) if:

- (a) *The applicant elects to obtain local land use approvals under ORS 469.504(1)(a) and the Council finds that the facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or*
- (b) *The applicant elects to obtain a Council determination under ORS 469.504(1)(b) and the Council determines that:*
  - (A) *The proposed facility complies with applicable substantive criteria as described in section (3) and the facility complies with any Land Conservation and Development Commission administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646(3);*
  - (B) *For a proposed facility that does not comply with one or more of the applicable substantive criteria as described in section (3), the facility otherwise complies with the statewide planning goals or an exception to any applicable statewide planning goal is justified under section (4); or*
  - (C) *For a proposed facility that the Council decides, under sections (3) or (6), to evaluate against the statewide planning goals, the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under section (4).*
- (3) *As used in this rule, the “applicable substantive criteria” are criteria from the affected local government’s acknowledged comprehensive plan and land use ordinances that are required by the statewide planning goals and that are in effect on the date the applicant submits the application. If the special advisory group recommends applicable substantive criteria, as described under OAR 345-021- 0050, the Council shall apply them. If the special advisory group does not recommend applicable substantive criteria, the Council shall decide either to make its own determination of the applicable substantive criteria and apply them or to evaluate the proposed facility against the statewide planning goals.*
- (4) *The Council may find goal compliance for a proposed facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development Commission pertaining to the exception process, the Council may take an exception to a goal if the Council finds:*
  - (a) *The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;*
  - (b) *The land subject to the exception is irrevocably committed as described by the rules of the Land Conservation and Development Commission to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or*
  - (c) *The following standards are met:*
    - (A) *Reasons justify why the state policy embodied in the applicable goal should not apply;*
    - (B) *The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the Council applicable to the siting of the proposed facility; and*
    - (C) *The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.*

- (5) *If the Council finds that applicable substantive local criteria and applicable statutes and state administrative rules would impose conflicting requirements, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the Council cannot waive any applicable state statute.*
- (6) *If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300(10)(a)(C) to (E) or for a related or supporting facility that does not pass through more than one local government jurisdiction or more than three zones in any one jurisdiction, the Council shall apply the criteria recommended by the special advisory group. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300(11)(a)(C) to (E) or a related or supporting facility that passes through more than one jurisdiction or more than three zones in any one jurisdiction, the Council shall review the recommended criteria and decide whether to evaluate the proposed facility against the applicable substantive criteria recommended by the special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. In making the decision, the Council shall consult with the special advisory group, and shall consider:*
- (a) *The number of jurisdictions and zones in question;*
- (b) *The degree to which the applicable substantive criteria reflect local government consideration of energy facilities in the planning process; and*
- (c) *The level of consistence of the applicable substantive criteria from the various zones and jurisdictions.*

## **LAND CONSERVATION AND DEVELOPMENT COMMISSION STATUTORY AUTHORITY**

### ***197.646 Implementation of new requirement in goal, rule or statute; rules.***

- (1) *A local government shall amend its acknowledged comprehensive plan or acknowledged regional framework plan and land use regulations implementing either plan by a self-initiated post-acknowledgment process under ORS 197.610 to 197.625 to comply with a new requirement in land use statutes, statewide land use planning goals or rules implementing the statutes or the goals.*
- (2)(a) *The Department of Land Conservation and Development shall notify local governments when a new requirement in land use statutes, statewide land use planning goals or rules implementing the statutes or the goals requires changes to an acknowledged comprehensive plan, an acknowledged regional framework plan or land use regulations implementing either plan.*
- (b) *The Land Conservation and Development Commission shall establish, by rule, the time period within which an acknowledged comprehensive plan, an acknowledged regional framework plan and land use regulations implementing either plan must be in compliance with:*
- (A) *A new requirement in a land use statute, if the legislation does not specify a time period for compliance; and*
- (B) *A new requirement in a land use planning goal or rule adopted by the commission.*
- (3) *When a local government does not adopt amendments to an acknowledged comprehensive plan, an acknowledged regional framework plan or land use regulations implementing either plan, as required by subsection (1) of this section, the new requirements apply directly to the*

*local government's land use decisions. The failure to adopt amendments to an acknowledged comprehensive plan, an acknowledged regional framework plan or land use regulations implementing either plan required by subsection (1) of this section is a basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335. [1991 c.612 §7; 2005 c.829 §7; 2007 c.71 §67; 2011 c.469 §4]*

**215.283 Uses permitted in exclusive farm use zones in nonmarginal lands counties; rules.**

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*(2) The following nonfarm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:*

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*(g) Commercial utility facilities for the purpose of generating power for public use by sale. If the area zoned for exclusive farm use is high-value farmland, a photovoltaic solar power generation facility may be established as a commercial utility facility as provided in ORS 215.447. A renewable energy facility as defined in ORS 215.446 may be established as a commercial utility facility.*

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**215.296 Standards for approval of certain uses in exclusive farm use zones; violation of standards; complaint; penalties; exceptions to standards.**

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*(10) This section does not prevent a local governing body approving a use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) from establishing standards in addition to those set forth in subsection (1) of this section or from imposing conditions to ensure conformance with the additional standards.*

**LAND CONSERVATION AND DEVELOPMENT COMMISSION ADMINISTRATIVE RULES**

**660-033-0130 - Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses**

*The following requirements apply to uses specified, and as listed in the table adopted by OAR 660-033-0120. For each section of this rule, the corresponding section number is shown in the table. Where no numerical reference is indicated on the table, this rule does not specify any minimum review or approval criteria. Counties may include procedures and conditions in addition to those listed in the table, as authorized by law.*

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*(37) Wind power generation facility standards*

*(38) Photovoltaic Solar power generation facility standards*

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